



**REGULAR COUNCIL MEETING AGENDA
MONDAY, APRIL 22, 2024 - 5:30 PM**

**THE HUBBARD ROOM
123 DOWNS DRIVE
RUIDOSO DOWNS, NEW MEXICO 88346**

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. APPROVAL OF AGENDA
5. APPROVAL OF CONSENT AGENDA

(The consent agenda is approved by a single motion.)

A. *APPROVAL OF GOVERNING BODY MINUTES

*February 26, 2024, Regular Meeting Minutes

*March 25, 2024, Regular Meeting Minutes

*April 8, 2024, Workshop Meeting Minutes

6. PUBLIC INPUT

(Citizens who wish to speak must sign the Public Input Registration Form located in the Council Chambers, prior to the beginning of the meeting. There is a 3-minute time limit to address your concerns to the Governing Body.)

7. COUNCILORS COMMENTS
8. MAYORS COMMENTS
9. NEW BUSINESS

A. Discussion and Possible Action on Adoption of Resolution 2024-08, a Resolution Approving the Budget Adjustment Requests for the Third Quarter of the 2024 Fiscal Year.

B. Discussion and Possible Action on Approval of the Purchase of a 2023 NFPA 1906 Compliant Brush Truck through a NM Statewide Price Agreement in the amount of \$270,498.00.

C. Discussion and Possible Action on Approval of Change Order No. 1 for the All-American Park Drainage Improvement Project in the Amount of \$55,899.56 including NMGR.

D. Discussion and Possible Action on Approval on Award to White Sands Construction

Proposal Utilizing NM Statewide Price Agreement for Milling and Haul off on Reservoir Dr. Paving Project in the Amount of \$39,311.15 including NMGRT.

- E. Discussion and Possible Action on Approval on Award to White Sands Construction Proposal Utilizing NM Statewide Price Agreement for Upstairs Restroom Partitions Upgrade at the HMAW in the Amount of \$13,562.97 including NMGRT.
- F. Discussion and Possible Action on Approval on Award to White Sands Construction for Entry Drain Trench Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$26,647.63 including NMGRT.
- G. Discussion and Possible Action on Approval of Pay Raises for all Public Works Employees After Restructuring of Public Works Personnel.
- H. Discussion and Possible Action on Approval on Award to White Sands Construction for Front Door Replacement and ADA Upgrade at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$57,888.80 including NMGRT.
- I. Discussion and Possible Action on Approval on Award to White Sands Construction for Southwest Sidewalk Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$24,592.90 including NMGRT.
- J. Discussion and Possible Action on Approval on Award to White Sands Construction for Entry way Handrail Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$23,591.97 including NMGRT.
- K. Discussion and Possible Action on Approval on Award to White Sands Construction for Canopy Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$27,921.27 including NMGRT.
- L. Discussion and Possible Action on Approval on Award to White Sands Construction for Lower Parking Lot Entry Doors at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$25,824.04 including NMGRT.
- M. Discussion and Possible Action on Approval of Agreement with Dennis Engineering Co. for Task Order 2024-01 Design Phase and Construction Phase Services of the Tractor Supply Waterline Extension in the amount of \$26,000.00 exclusive of NMGRT.

10. ADJOURNMENT

If you are an individual who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the City Clerk's office at least one week prior to the meeting or as soon as possible.

AGENDA MEMORANDUM

CITY OF RUIDOSO DOWNS

APPROVAL OF GOVERNING BODY MINUTES -

To: Mayor Holman and Councilors

Presenter(s): City Clerk/Treasurer

Meeting Date: April 22, 2024

Re: *February 26, 2024, Regular Meeting Minutes

Item Summary:

The Governing Body met in a Regular Session on February 26, 2024, Regular Meeting Minutes, and the minutes attached are the product of the proceedings.

On March 25, 2024, the Governing Body voted to have the February 26, 2024, Regular Meeting Minutes be amended to reflect any corrections needed to input Mr. Lewicki's statement.

After researching, we have found that Mr. Lewicki's statement was already in the minutes on page 30 of 50. Page 30 of 50 was only missing from the agenda packet that was emailed to the Councilors and staff.

After speaking with IT, they confirmed the glitch may have taken place due to the large 40 megabyte of data the packet was. The average email only holds 10 megabytes of data in a single email. The Agenda packet for the March 25, 2024 meeting was 753 pages long.

Page 30 of 50 in the February 26, 2024 meeting was there in the agenda packet that was on the city website, Novus agenda, and Facebook.

Financial Impact:

This item has no financial impact.

Recommendations:

To approve, February 26, 2024, Regular Meeting Minutes.

ATTACHMENTS:

Description

IT email explanation

February 26, 2024, Regular Meeting Minutes

Selena Chavez

From: Jason R Gipson <admin@tegsys.com>
Sent: Tuesday, April 2, 2024 1:35 PM
To: Selena Chavez
Subject: RE: Agenda Packet

That file is too large.

You need to stay under 10 Megs per email for most “free” email services to work. (Gmail, yahoo, etc)

It's also almost 800 pages....

Jason

**CITY OF RUIDOSO DOWNS
GOVERNING BODY, REGULAR MEETING
123 DOWNS DRIVE, RUIDOSO DOWNS, NEW MEXICO 88346
FEBRUARY 26, 2024**

The City of Ruidoso Downs Council met in a regular session on Monday, February 26, 2024. Mayor Holman called the regular meeting to order at 2:00 p.m. and asked Councilor Baber to lead in the Pledge of Allegiance.

ROLL CALL

Present: Councilor Proctor, Councilor Baber, Councilor Miller, Councilor Lacewell

Meeting Participants:

John Underwood, City Attorney
Alejandra L. Giron, City Clerk/Treasurer
Joe Commander, Police Chief
Robert Knight, Deputy Police Chief
Joey Jarvis, Public Works Director
Jennet Recendez, Planning Services Director
Blythe Gilmore, Court Administrator

Meeting Presenters via Zoom:

Melissa Martin, Sorensons' Attorney
Sara Sorenson, zoning appellant

Meeting Presenters:

Alexandra Bobbit, Ontiveros' Attorney
Edgar Ontiveros, zoning applicant
Luther Light
Brian Roberts
Cassidy Meeks
Thomas John Lewicki

APPROVAL OF AGENDA

Councilor Miller moved to approve the agenda with the postponement of Item F, under New Business. There being no second, the motion died.

APPROVAL OF CONSENT AGENDA

(All matters listed under Item 5 will be enacted by one motion.)

A. *APPROVAL OF GOVERNING BODY MINUTES

- *December 11, 2023, Regular Meeting Minutes
- *January 8, 2024, Regular Meeting Minutes
- *January 22, 2024, Regular Meeting Minutes
- *February 12, 2024, Regular Meeting Minutes

No motion was made for the Approval of Consent Agenda.

PUBLIC INPUT

No Public Input was given.



COUNCILORS COMMENTS

Councilor Lacewell moved to have her statement be listed verbatim in the minutes. Councilor Proctor seconded and upon a roll call vote of all voting “aye” the motion passed.

Councilor Lacewell stated, “Good afternoon to the citizens of Ruidoso Downs. New Mexico state statute 3-11-5 states, ‘If the governing body fails to confirm any person as an appointive official or employee of the municipality, the mayor, at the next regular meeting of the governing body shall submit the name of another person to fill the appointed office or to be employed by the municipality.’ At the first city council meeting of this governing body, during our organizational meeting, under the above stated statute, we did not confirm two appointed officials and two employees of the municipality. Essentially that means that two (2) weeks later, on January 22nd, those four (4) individuals should have been replaced, and they should no longer be working for our city. I researched the word statute and found that it clearly stated that, ‘A statute is essentially a written law that is enacted by a legislative body, such as Congress or a state legislature. It is a formal rule or regulation that is codified and recorded in the book. Once a statute is enacted, it becomes part of the legal framework of the jurisdiction in which it was passed. Mr. Underwood told me that ‘shall’ is a mandatory word for a discretionary act. He kindly said that the mayor doesn’t have to do it. I maintain that putting the mandatory word ‘shall’ in front of a statutory requirement makes it mandatory. This mayor has had three (3) opportunities in two (2) months to obey the law, but he has willingly and knowingly disobeyed the law. And I’m thinking three (3) strikes and you’re out. As a governing body, what we are trying to do is what we were elected to do for the good of the city, and we have heard what the citizens of the City of Ruidoso Downs want. This mayor is intentionally breaking the law, and is continuing to be negligent in fulfilling his oath of office by acting contrary to state statutes. We must take the next step, a legal step, to see that he is accountable for his lack of action, and refusal to obey the law.”

Councilor Proctor stated, “Last Friday, I guess they were supposed to have turned in our list to get on the agenda and it didn’t get out to everybody. So, I came in. I think it was that Monday or that Tuesday, I’m sorry, and spoke to the City Clerk. And we agreed to that if a holiday falls on a Monday, they can’t get it turned in on Tuesday at 10 o’clock and then it will let her have an extra day just like the Council meeting moving on. And she agreed to that. I don’t see the need to put it on any kind of Resolution or anything. I just wanted to let the rest of the governing body know and the audience know. When the holiday falls on the Monday we’re supposed to turn in it on it. It will go to Tuesday and she’ll have Tuesday from 10 o’clock, Wednesday, and Thursday, and put them out sometime Thursday afternoon. And that’s still earlier than what we were getting them.”

Councilor Miller made comments.



MAYORS COMMENTS

Mayor Holman had no comments.

The Public Works Director presented on the operations of the Public Works Department for the month of January.

The Planning Services Director presented on the operations of the Planning & Zoning Department for the month of January.

The Deputy Police Chief presented on the operations of the Police Department for the month of January.

The Fire Chief presented on the operations of the Fire Department for the month of January.

The Finance Director presented on the operations of the Finance Department for the month of January.

The Court Administrator presented on the operations of the Court for the month of January.

PUBLIC HEARING:

A. Sara Sorenson, on behalf of herself, Will Sorenson, Charlie Sorenson, and Mike Sorenson Appeal of The Planning Commission Approval of P & Z Case 2023-11, Approving Conditional Use to allow for a Recreational Vehicle Park at the Property located in a C-2 Zoning District.

The City Attorney stated, “So it’s the first one of these that we’ve had in quite some time, and certainly with this new council. So, I thought I might give some ground rules of where we are. Appeals are handled in Section 155.021 of the Land Usage Code of the Ruidoso Downs. So, a person has a right to appeal a decision that was made in the Planning Commission and this commission. And the person who has agreed to this decision has the right to appeal it to district court. For that reason, I will be swearing in all witnesses today, because today’s testimony has to be taken verbatim because it’s a court record. So, with that, the way that this works and the way we’ll have it is that the appellant will present their case first, ok. I will ask Jenet to introduce the subject, on behalf of the city, and then the appellant will have the opportunity to state their reasons for their appeal and the appellee, the person who was granted the conditional use permit will then have the opportunity to state the reasons for not granting the appeal. Each party will have the right to cross examine witnesses of the other party. But what I want you to understand, council, is that I’m not going to follow specifically the rules of evidence. If you become argumentative with the witness. I’ll ask that you not be argumentative. I’ll ask that you try any leaning questions to a minimum. But in order to move the matter a long, so that we are not here till ten o’clock at night. I’d ask that we move the matter a long expeditiously. But I know it’s an



important issue for the parties that are involved in it and it deserves a full hearing. At the close of that, I will present the city's case of why the Planning & Zoning sided the way that they did and under what theory or quality they found that there was conditional use to be granted. And after all that is heard, the public will have an opportunity, at that point in time, those who haven't been witnesses prior to. If the public has any reason that they want to state, one way or the other, for what they believe before the council takes it under consideration, they may do so. After that point in time, it turns into a council matter. The council can then discuss whether or not to uphold the appeal or to deny the appeal. Questions?"

Councilor Lacewell stated, "Yes, does that mean we're literally voting on that today?"

The City Attorney stated, "Mhmm."

Councilor Lacewell stated, "Oh, wow."

Councilor Miller stated, "I didn't understand that either, I thought it was just."

The City Attorney stated, "You may delay your decision for a period of time, but it is a matter that is being appealed and to be voted on at the time of the appeal. If you want to put it off for any reason for putting it off for, what is it, fifteen (15) days."

Mayor Holman stated, "And as I stated, a while ago, when you rose that, you'll be getting that information, correct John? From both sides."

The City Attorney stated, "If the City will hear the appeal and render a decision within forty-five (45) days, so."

Councilor Miller stated, "We could put it off then because I haven't had a chance to go look at it or anything yet, so."

Mayor Holman stated, "Ok so."

The City Attorney stated, "Ok but the witnesses and the attorneys are not required to come back. You will just simply rework it out on what you've written down. And you are permitted to take notes on it."

Councilor Miller stated, "Ok, thank you."

Mayor Holman stated, "Ok so, I guess the next move then is to ask for a motion to postpone this item?"



The City Attorney stated, “No.”

Mayor Holman stated, “This item, no?”

The City Attorney stated, “What we’ll do is we’ll go ahead and have it carried today. And then the council, if it doesn’t want to make a decision today, they postpone that decision.”

Mayor Holman stated, “Ok, yeah. Well, that makes sense. Ok.”

The Planning Services Director stated, “Hi, it’s me again, council. I (inaudible).”

Mayor Holman stated, “This will be the city’s position.”

The City Attorney stated, “Basically, she’s going to present what happened at the Planning & Zoning meeting. And we have minutes of that Planning & Zoning meeting which we’d be happy to hand out, where the decision was made but the decision was itself is in your notebook.”

The Planning Services Director stated, “So, Mr. Edgar Ontiveros came to apply for a conditional use to allow recreational vehicle use parked at the property located at 26557 US Highway 70, but there was some issues with how the Ordinance was written on how the Planning & Zoning Commission took it and interpreted it themselves. They decided to grant the conditional use required because it is in a C-2 commercial property, and I also have Mr. Luther Light here, the chairman of the Planning & Zoning Commission. So, he can explain that a little bit better than I can.”

Luther Light stated, “(inaudible) now.”

The City Attorney stated, “Yes, please.”

Luther Light stated, “During the, I guess the neighbors challenge to this is that the property in question has an easement running through it, an egress easement of the property is down by the river and there’s a thirty (30) foot wide egress easement, egress and utility easement running through another piece of property up to Highway 70. The people whose property runs through, I guess are opposed to the using of the piece of property down by the river as a RV park. There case with that, our Ordinance says specifically that recreational vehicle park shall abut and have access to major arterial streets and shall be a minimum of two (2) acres. So, this meets. The property down by the river meets the minimum of two (2) acres there. Their argument was that, it doesn’t technically abut the Highway 70. The Planning & Zoning Commission, along with Mr. Underwood read abut and have access as they have that easement out to the highway and it’s a thirty (30) foot wide easement which is what the width of what our streets, all of our streets except Highway 70 as a right of way. So, it’s certainly big enough for two (2) RVs to pass you



know side by side in each direction on the property and on the easement. I guess in the meeting, the Planning & Zoning Commission decided that the intent of this access requirement in general, requirements is that we don't want two (2) acre RV park to exit out into a small residential street. Like you wouldn't want a two (2) acre RV park to (inaudible) back on to River Lane and then all of the RVs would have to go down River Lane and then up Parker Road to get to Highway 70. The intent is that they have essentially a driveway to major arterial or a major arterial such as Highway 70. So, we interpreted abut and have access as being there egress easement across this other piece of land. We did offer, the neighbors were also concerned about having children on this. You know, maybe being endangered on this easement and we offered to have, as a condition, to put up a fence along the easement, to keep people from running in front of RVs. And I think, they declined that?"

The City Attorney stated, "Never heard back."

Luther Light stated, "Never heard back. Ok, so, we offered that as a minimum and we also set a five (5) mile per hour speed limit, as a condition of granting this conditional use. I, it's probably one of the highest and best uses of this property and I think it would bring in, you know gross receipts tax for the city and the people who bought it intended to turn it into an RV park from the time that they bought it. So, from the Planning & Zoning Commission's point of view, this is, seems like a good use of this piece of property. And we certainly see that we have a need to have RV parks in the area. So, any questions?"

Councilor Baber stated, "So the lawyers are reading it one way and you're reading it another?"

Luther Light stated, "Some of the lawyers are reading it one way and some of the lawyers are reading it another. The Planning & Zoning Commission is reading it, I guess, in the way that I think it was probably written in for the way that we design our RV parks in this town. There are other RV parks that have the same amount of access on to Highway 70 across other pieces of property. So, and we tend to not have RV parks that dump out into other smaller small little streets."

Mayor Holman stated, "Councilor Proctor, did you have something?"

Councilor Proctor stated, "Yes. So, what you're saying is the property down there by them all should've had a piece of their land that went all the way up."

Luther Light stated, "No, not necessarily, I mean like when they subdivided it they, because you can't land block a piece of land. So, when they subdivided it, a few years ago they specifically asked for and have a surveyor draw in an easement and that provides access to the piece of land. It doesn't have to be a property. I live on a road on the North side of the river and the city maintains the road, but it's on my property. The city has an easement for Parker Road through



my property. It's the way many roads are done. So, it's not, I don't think there was an oversight to not have a piece of property run up to the highway. The way this has always been taken care of is. Usually, you put the easement along an existing road which is, I believe what they did. They just ran the center line an offset fifty (50) feet on each end. It can be approved and it would probably have to be approved but it, it, there's no oversight on the part of the surveyors or the previous owners to maintain an actual physical piece of property. This is, having an easement is very common for this type of situation."

Councilor Proctor stated, "So these that I look at them on the map, Luther stipulated that it was for utilities underground?"

Luther Light stated, "Utilities and egress."

Councilor Proctor stated, "I don't see the word egress on there."

Luther Light stated, "It's, it's on the plot, the main plot that we were given. It said utilities and egress."

(inaudible)

Luther Light stated, "A utility easement is typically it wasn't a very big utility easement but for an overhead power line, a large overhead power line they're usually only two hundred fifty (250) feet. So, thirty (30) feet is usually the standard for a road."

Councilor Miller stated, "I just feel like that's what's in that are quite a bit, is RV parks. And I think it would be a great thing for people. There's not enough houses for people. A lot of people can't get workers because they don't have anywhere to live. And you see how these other parks fill up in the summer, not so much in the winter. But it is a good business, it sounds like."

Luther Light stated, "That's kind of beyond the scope of Planning & Zoning. I mean if you asked my personal opinion would I like for them to put in a bunch of affordable home, absolutely. Would they be profitable, probably not? So, I understand why they're doing RVs. You know, Planning & Zoning, they just said we want to do this and its conditional use, we heard it and this is how we pose our position on it. This is why."

Councilor Miller stated, "Well, I feel like it would be a great business for Ruidoso Downs because we don't have that many, you know, places for people to live. We get people here that want to come and work but they can't find a house a lot of times, so."

Luther Light stated, "I will say, it states in our ordinance that the only place in the City of Ruidoso Downs, where you can currently live in an RV, is in an RV park."



Councilor Miller stated, “Yes.”

Luther Light stated, “You want people to live in, like be able to live in an RV park they are.”

Councilor Miller stated, “They’re small homes.”

Luther Light stated, “Affordable, you could live in an RV park. So, in that respect that those provide, I guess you could (inaudible).”

Councilor Miller stated, “I haven’t had a chance to go out and look at it. Seems like every time I want to something comes up. I think, I hear from everybody. I want to hear what all of the neighbors say.”

Councilor Lacewell stated, “So I’ve looked at this. I’ve printed it out. I’ve colored it. That RV Park is a great idea on the little land lot. Did I perceive you to say that the easement is fifteen (15) feet on the Sorenson property?”

Luther Light stated, “You know, it’s all on one piece of property. I’m saying its fifteen (15) feet. The way surveyors typically lay these out is they just run the center line of the road. And then offset that center line on each side of the center line. So there, they put the easement on top of an existing road, they put a road on the easement.”

Councilor Lacewell stated, “I see, so I did see that the driveway easement. To me a driveway easement is typically (inaudible). Whereas, a commercial easement is something that is more designed for a whole lot of traffic. I’m not following here, but it seems like the easiest way to fix this is to make a new easement that goes across the Lewicki property and straight up there without getting into the Sorenson property. Is that a possibility?”

Luther Light stated, “I have no idea. I’m not, I don’t know any of the neighbors (inaudible). They could, if you could find somebody else who would give them access and would allow them to set up an easement that would certainly be allowed, they would have to replat it.”

Councilor Lacewell stated, “Ok and will the, I know the Sorensens are up on the screen there. Will the Lewicki’s be given an opportunity to speak as well?”

Luther Light stated, “I don’t have the foggiest idea.”

Councilor Lacewell stated, “Oh, you’re not in charge of this meeting?”

Luther Light stated, “I am not in charge of this meeting.”



Councilor Lacewell stated, “Well, thank you for the information.”

Mayor Holman stated, “I would like to state because I think this might be an appropriate time, Councilors, we are really fortunate to have the P&Z committee members that we do. Especially, Luther Light, he’s been there a long time. I attended that meeting that, concerning the topic that we’re talking about. City Attorney is always there. That was an interesting meeting, but this chairperson is very intelligent and we need that type of decisions there because it’s a very touchy situation. He does a tremendous job. Actually, I think we should double his salary. (inaudible). What is two (2) times nothing, anyway?”

Luther Light stated, “It’s always zero (0) so.”

Mayor Holman stated, “But he’s been doing this for years, and not only smart, but he has so much experience now on planning. At one time, politically, I can recall, he may not even know this, but I was (inaudible) of him too much. But my how things can change. Thank you for your service to this city. You really have hung in there.”

Luther Light stated, “You’re right, I was not aware that you (inaudible). I appreciate the sentiments.”

Mayor Holman stated, “Ok.”

Luther Light stated, “You need me for anything else, Mr. Underwood?”

The City Attorney stated, “No, sir. Thank you for (inaudible).”

Luther Light stated, “You’re welcome.”

The City Attorney stated, “Luther also serves on the local school board. He’s a man of many talents.”

Mayor Holman stated, “Ahh, yes.”

Luther Light stated, “I get paid nothing for that too.”

The City Attorney stated, “He has a night job. So, since we kind of jumped ahead there with the city’s presentation. Let me go ahead and say some things that you need as a basic knowledge as we walk through this. The first thing is, is that the property is on a C-2. C-2 is the commercial zoning, ok. That commercial was zoned as C-2 in 2004 when the city acquired that property. So, the document that I just handed out to you will show you that the appellant got a deed, a special



limited warranty deed in 2014. So, that special limited warranty deed contained no warrants as to what was being given as far as that it wasn't subject to restricted covenants."

Mayor Holman stated, "Hold on just a second John. We need to have it quiet. The council could miss something that might be really important."

The City Attorney stated, "He received it by a special limited warranty deed. That means there was no covenants with this deed, there were no guarantees with this deed and it was subject to the zoning that was upon the property at that time. The state requires (inaudible) to become a C-2 zoning. And so, I think that's important that the property is zoned for conditional use for RV park and the, and if you looked at the easements that are on record, those easements are dated prior to the date that they acquired this property. So, any of you who have bought real property, know that whenever you acquire real property, you acquire real property subject to all easements and reservations of record. So, that property was acquired with easements of record. As to whether or not that would be something that would be used as a driveway to a residential home, it would be. But for the fact that the property was zoned C-2, which would mean that there would be a driveway which is thirty (30) feet wide, which is almost wide as the city streets is meant to be used for access to a commercial piece of property. Which there could not be any doubt. The last thing I want to let you know is that the easement of use, personably has the right to use that easement. It's called a dominant easement, it's the dominant estate, ok. The person, on whose property that the easement exists is serving it. So, whenever Lewicki, or the folks that bought Tract 2, whoever buys that piece of property, that easement, although it's a non-possessory easement is a right. That right to that easement. The right to use that easement for the purposes of the accessing ingress into a commercial piece of property transfers with that easement. And that's according to New Mexico Supreme Court. That easement is a (inaudible) to that piece of property. And so, Luther, in the legal way, what Luther was saying in the layman's way of why the Planning & Zoning Committee, feels that that piece of property, does in fact abut an arterial road, which would be US-70. So, with that, does the appellant want to talk about, do you want to say something."

The Planning Services Director stated, "Yes."

The City Attorney stated, "Go ahead Jennet."

The Planning Services Director stated, "And I do know, we just talked about it, the property was annexed to the city in 2004. So, when they were annexed to the city, they were annexed as commercial zone. So, the zone was never changed when we acquired it through the annex."

Councilor Baber stated, "All three (3) properties?"



The Planning Services Director stated, “Not just those three (3) properties it was all of Agua Fria. I did provide you with a little map of what the whole map that was annexed back in 2004.”

The City Attorney stated, “But the answer to your question is yes, all the tracts involved on that plat.”

The Planning Services Director stated, “Yes, but it was not just them.”

The City Attorney stated, “You can’t just (inaudible) zone to the whole thing. All that was acquired (inaudible).”

The Planning Services Director stated, “Yes, all that land on that side of the highway is commercial.”

Councilor Miller stated, “Is it on both sides (inaudible) both sides.”

The Planning Services Director stated, “Yes, I think the other side of the highway I think is that, that part is in the county.”

Councilor Baber stated, “Can’t quit (inaudible).”

Councilor Miller stated, “I think it’s on both sides because I’ve got friends that own property there and now, they’re in the city.”

The Planning Services Director stated, “Oh ok but I did provide you with a copy of the commercial of the zoning that it is right now and how it was when we, they got annexed as well. That’s all I wanted to say.”

Mayor Holman stated, “Ok, thank you Jenet.”

The City Attorney stated, “Is the appellant present?”

Melissa Martin stated, “Good afternoon, mayor and council members, my name is Melissa Martin and I am an attorney representing the Sorenson family.”

Mayor Holman stated, “Ok, we can hear you thank you.”

Melissa Martin stated, “Ok.”

The City Attorney stated, “Do you have some witnesses, you’d like to call?”



Melissa Martin stated, “You know, I had some things to go over with the council, if I may. I don’t necessarily have a line of witnesses but I did have a statement to make.”

The City Attorney stated, “That’s fine.”

Melissa Martin stated, “Ok, well council members, as I said, I am an attorney, I’m barred in the state of New Mexico. I practice with Scotthulse’s law firm. I am with offices in Las Cruces and El Paso. And, I’m representing the Sorenson’s in this matter. And as your zoning commissioner correctly stated, this issue really boils down to the word usage in the City of Ruidoso Downs ordinances that a recreational vehicle park shall abut and have access from major arterial streets. We see this as really having two (2) issues. The first of which, as the commissioner as well as the attorney did touch on, which is the, the question of abutting a major arterial roadway. Now, the code of ordinances, does not define the term ‘abut’ and in such a case the code of ordinance does state that will default to the customary definition of the word. So, Merriam Webster’s defines abut, ‘as to border on or to touch on an edge.’ Cambridge dictionary is, ‘next to or touches on one side.’ And Britannica dictionary says, ‘to touch along an edge.’ You know there is, it seems like the zoning commission has determined that because there is an easement present, that that means that the property also abuts a major arterial roadway. Now that’s contradicted by the plain language of your city ordinances, and I’ll go over that first. If this ordinance were just meant to say if there is some access to a major arterial roadway, there’s absolutely no need to include the term ‘abut and have access to.’ You know words have meaning, especially when it comes to city ordinances. And you can’t simply ignore the term ‘abuts and’ and simply say because there is access that you have some border of your property abutting the major arterial roadway. Now there’s a, there’s an argument that is my second point that’s been presented today that because there is an easement present, that, that automatically qualifies as the property abutting the major arterial roadway. If you follow that line of reasoning commissioners, then I would ask you to consider the fact that there are public easements, every street, public rights of way throughout the city of Ruidoso. And I would argue that any two (2) acre piece of commercial properties, zoned C-2, could find an argument. If you interpret this ‘abut and have access to’ in the way that the city attorney the zoning commission request. Any two (2) acre C-2 property can say, well I have and to abut to a major arterial roadway because I have a public access easement to it. I would, I would argue that ninety-five (95) percent of the C-2 land in Ruidoso could use that argument. If the, you know and frankly it seems that there’s a desire to interpret the statute in a way to allow what’s best for business, as the city sees it but that doesn’t give you know anyone the right to ignore the terms of the city ordinances that say, ‘abut and have access to.’ If it’s true, what are what you’re zoning commissioner stated that the intent of this language was really to keep commercial recreational parks away from residential, you know multiple residential neighborhoods, that could be written into your city ordinances, but we have to interpret the ordinances as they’re written. That carve out is not in there. And to treat one property owner differently based on, you know what you think the intent of this statute was really, is not the purpose, I would argue, of city ordinances. So, that’s the question of abuts. And the second issue,



which I think the zoning commissioner and the city attorney didn't touch upon but that was discussed at the zoning hearing, that is really quintessential to this discussion. And which I have elaborated on in the appeal that you all maybe have reviewed or will review after this hearing, is that every easement is not created equal. Just because there's an easement across the Sorenson property to this land lot parcel and its zoned C-2, that does not give the C, the land lot party ability to use that however he sees fit. Under New Mexico law, an easement should be construed to its express and specific terms and when expressed terms of an easement are ambiguous, as they are in this case, the intent of the parties should be determined from the granting instrument in conjunction with surrounding circumstances. Now, it's been almost twenty (20) years since this easement was put into place. An easement use, easement scope, the scope of use is not determined by zoning in the state of New Mexico. Again, it's determined by the prior use in surrounding circumstances. For twenty (20) years this easement has been exactly what the zoning commissioner stated in the introduction to this discussion. Which is that, this was a land locked parcel. It was subdivided and because it was land locked, an easement was granted to permit the property owner access to and from that land locked parcel. That does not mean that that land locked parcel can then use that easement for any use it sees fit. It is a very different circumstance to allow a commercial property owner and egress and ingress to their estate and then to open it up to unilaterally change the scope to ingress and egress to thousands of recreational vehicles per year. That is simply a change in the scope of the use of the easement. New Mexico law prohibits that. New Mexico states that easements should be construed very narrowly and you cannot just unilaterally to change the scope. And so, I encourage you to review the appeal that we submitted to you in writing and this will state the cases from the New Mexico Supreme Court supporting this argument, but. This property does not abut a major arterial roadway and rights to cross the Sorenson property does not mean that they have any title or interest to the Sorenson property. It is not the, the Excalibur oils property that abuts to the major arterial roadway, it's the Sorenson property and as well, the scope of the easement simply does not permit the use by thousands of recreational vehicles per year, across, to and from, across a residential piece of property. So, that's my statement, and I'm happy to take any questions if you have them."

Mayor Holman stated, "John, is that appropriate at this time?"

The City Attorney stated, "Sure."

Mayor Holman stated, "Councilors, questions?"

Councilor Proctor stated, "This is Terry Proctor, Council. Ma'am do you have the New Mexico state ordinance or the law that stipulates they can't use that as they proceed to use it for the purpose you just explained?"

Melissa Martin stated, "Was that a question for me council?"



Councilor Proctor stated, “Yes.”

Melissa Martin stated, “You know what, I do. I’m happy to send it to you again. I sent it to Jennet. It’s part of the appellants appeal petition.”

Councilor Lacewell stated, “Mayor.”

Mayor Holman stated, “I just have one question for Ms. Martin. This is Jody Lacewell I’m a city councilor. I noticed this property on the west part of the Sorenson is the (inaudible) and on the other side is the original Lewicki property and luckily for the Sorenson family, they purchased that little peninsula that hangs down for access to their own property.”

Melissa Martin stated, “Right.”

Councilor Lacewell stated, “It seems it could’ve been just as easy. I don’t know who owned. I guess the Lewicki family own that before. It seems to me that a more direct access that goes straight to the park and down to the highway would be a more logical way to do this than to expect the Sorensens to allow, like you said, hundreds of RVs in and out every day. I know the RV parks I’ve been to they don’t just go there and stay. They go in and out, they go to the track, they go to the grocery store, they go in and they go out and I don’t know, it seems like a lot to ask the Sorenson’s to absorb to haggle with that.”

Melissa Martin stated, “Yes, that’s. I’m sorry go ahead,”

Councilor Lacewell stated, “That wasn’t even a question, that was a statement.”

Melissa Martin stated, “But yes, Council member, I would agree with you, you know but staying true to my interpretation of the city ordinances. I would argue that even if the access easement was relocated to the Lewicki property, again, an easement does not give you the claim to abut a major arterial road. However, I did make that point in my presentation at the zoning commission. I know that the Lewicki’s, for whatever reason, are very adamant that they want this RV Park to go in despite, to my knowledge, not being associated with the party that purchased the land lot parcel that we’re discussing. However, I do agree that if the Lewicki’s are so eager to have it be placed there, that you know. Short of interpreting the statute or the city ordinance, as I believe it should be. The second-best option would be that the Lewicki’s grant their own easement across their own property. Rather than, as you said, as I said, having hundreds of campers, RV’s, whatever it is crossing through my client’s residential property. I would agree with that statement.”

Mayor Holman stated, “Any other questions, councilors?”



The City Attorney stated, “I want to clarify one thing. I think Councilor Proctor asked the attorney, Ms. Martin, if she could provide. Did you state that you have a state statute stating that an easement if it is unlimited in its terms, leading to a C-2 property, that that would be an ambiguous easement? Do you have a state statute to that effect?”

Melissa Martin stated, “That a, I’m not sure I, and I apologize if I stated it differently. I wouldn’t state that I provided you all as statute that specific. Would I provided you all is rather case law on this matter stating that when an easement use is not specifically set out, that yes. That ambiguous use would be. I’m sorry, you know if the scope of an easement is not ambiguous based on the document that grants the easement, then, yes, the surrounding use is what would interpret the scope of that easement. And yes, I should, you should have case law providing for that language in the appeal that I sent to you.”

The City Attorney stated, “The surrounding use is commercial, that’s what should define the scope of that easement, is it not?”

Melissa Martin stated, “No, it would be surrounding circumstances, and again I would argue that, you know, nowhere in the case law have, I seen that. Well, its zoned a C-2, so anything flies. I mean, you know that would essentially, be some sort of a public right of way. But no, and I, to the extent you would like me to provide a more pointed case law, I’m more than happy to do so, but no I’ve seen nothing in the case law in my time practicing in New Mexico states that just because something is zoned commercial, therefore, it’s free game. You know, it’s still, it goes back to the surrounding circumstances, the past use. If it’s been used for twenty (20) years, as an old dirt road to haul cattle down, its not suddenly going to be a commercial highway and that’s not a problem. You know, I mean, that’s what I mean, by the prior surrounding circumstances.”

The City Attorney stated, “So, Ms. Martin, there has been no testimony that there’s going to be hundreds of RVs daily crossing this piece of property is there?”

Melissa Martin stated, “Well, I don’t know that we’ve had anyone testify to as to how many recreational vehicles a day that will pass, but I, you know, I grew up camping as kid. I’m sure you all did to and my understanding is there has been testimony that I believe there will be forty-two (42) camping spots available at any given time. Forty-two (42) RV spots, so, you know, you interpret that as you will, but I would say it would equal thousands of in and out per year as I stated.”

The City Attorney stated, “And so, let me ask you one other question. You’re saying that the easement would be ambiguous because it had no limiting terms, if the easement, if you don’t deny that your people who acquired the property prior to 2014.”

Melissa Martin stated, “No, I don’t deny that.”



The City Attorney stated, “So if they acquired that property by Special Warranty Deed, which means they got no special warranty covenants with that deed, and if that property was zoned a C-2 at that time. And if that property had that easement across it, leading to a C-2 piece of property and if that easement has no limit in the language, then this easement may be used for personal use only. That means that, that easement is not ambiguous what so ever but rather leading to a C-2 piece of land that was a C-2 when your client acquired it.”

Melissa Martin stated, “Well again, I don’t think that you can. Again, it goes back to the surrounding circumstances, the prior use of the past twenty (20) years since the easement was established. And for the past twenty (20) years, you know. I know that the appellees have stated that, at that time this wasn’t intended to be an RV park way back when they subdivided the land. So again, the ambiguity is resolved by determining, how has this easement been utilized for the past twenty (20) years. And if its now, if the City Council now is stating that it can be utilized for a completely different purpose, be it commercial, residential, industrial, you still have to look at the surrounding circumstances. It doesn’t, being zoned as a certain way certainly does not give you. You know, I’ll give you (inaudible) circumstance. A residential, you know, a private easement in residential land. You know, utilizing a residential easement just for any way you see fit is just simply inadequate. Again, the easement should be used for the purpose in which it was granted and if those terms are ambiguous, it goes back to the prior use. And the prior use for the past twenty (20) years has been far from hauling RVs, campers, what not, in and out of that property. It’s completely different.”

Councilor Lacewell stated, “Mayor, may I address Ms. Martin again?”

Mayor Holman stated, “Yes.”

Councilor Lacewell stated, “Ms. Martin, this is Jody Lacewell again. So, I think as a council, we are excited that there would be a RV park back there. I don’t know that the Sorensens are unhappy about the RV park or just about the easement, but. If the Lewicki family is willing to move the easement over to their own property, would that make your client happy?”

Melissa Martin stated, “Well, you know Council, I would have to. I don’t want to speak to much for the Sorenson family. I, I certainly. I am very certain that would be far superior to placing this easement to an RV park, right across their property. I am certain that, that is the case. I would imagine that relocating that easement to the Lewicki property would a more appropriate resolution to this matter, in the Sorensens eyes. You know, I can’t say they’d be jumping up and down about it, but you know. And as I said, I think that the ordinance still speaks for itself. That this really isn’t an appropriate use of the term ‘abut.’ You know, but it would certainly be a better resolution than we’ve reached at this point.”



The City Attorney stated, “Let me remind the Council, that that’s not the issue before the council today. This is the appeal of the use of the easement leading to the C-2 property. Whether or not there can be another resolution is not the issue before you today.”

Councilor Lacewell stated, “So, this is all about an easement and not about a RV park?”

The City Attorney stated, “No, this is about an easement that exits to an RV park, to a C-2 piece of property. This is an appeal from a conditional use application in Planning & Zoning for the placement of an RV park in a C-2 piece of property.”

Councilor Miller stated, “Mayor, I have one (inaudible) to ask.”

Mayor Holman stated, “Yes, councilor.”

Councilor Miller stated, “I was on the council when this was annexed and this property. And I think whoever owned it at that time should have probably come to the public hearing if they didn’t like it being C-2 because it was annexed in to the City of Ruidoso Downs in 2004. And that was because we were giving them services already. Police service and we bought the water from Agua Fria, the well and that’s why we annexed in all this property. And I think that was probably the time they should’ve. That if they didn’t want it to be C-2, they wanted agriculture or whatever.”

Mayor Holman stated, “Yes, mam.”

Councilor Miller stated, “In 2004, the source engine owned the property. The Lewicki’s (inaudible).”

The City Attorney stated, “Can we wait till we get to that part.”

Councilor Miller stated, “Yeah, ok. It was just the thought that came to me.”

Melissa Martin stated, “And councilors that’s correct the Lew. The Sorensens did not own the property at that time. Otherwise, I’m sure they would’ve been mindful, you know, as they have been in this situation. But also, the easement itself still hadn’t been created. So, even if our client had owned it at that time, they likely wouldn’t of had an objection, but for this thirty (30) foot easement now crossing their land and bringing, you know, RVs into the, into their property.”

Councilor Miller stated, “I understand.”

(inaudible)



The City Attorney stated, “I’m asking for the applicant for the conditional use.”

(inaudible)

Alexandra Bobbit stated, “Hi, I’m Alexandra Bobbit and I will be representing Edgar Ontiveros today.”

Edgar Ontiveros stated, “Hi, my name is Edgar Ontiveros.”

Alexandra Bobbit stated, “And, John basically took the majority of my job from me. I had all this stuff ready. Then he started on. So, I unfortunately will be reiterating a couple of things that was stated. However, one of the key points and one of the key issues that we had is the fact that when the Sorensens purchased the property in 2014. It was very clearly, and I think we can all agree, that it was very clearly zoned C-2 at that time. And so, there was a very, and if they were not aware that their property was zoned C-2 that was a responsibility that they had as property owners to know that there was the ability, there was the possibility that there was going to be some form of commercial access. And so, to kind of now all of a sudden go back into this thing about how the easement is being used for something different. And, you know, and this changes everything. It doesn’t really because there has always been the ability for either the sellers or whoever is going to purchase the property around them for there to be some sort of business that would go in. Now, if anything, I would actually say that having an RV park go into that area would almost be more beneficial than having some type of property where, or some type of business that goes in that has constant in and out access. Like for instance, I think, like I’ll take Harvey Feed store. So, that one is straight off of the highway. That one has customers that come in and out, are continuously going, coming, leaving, so on and so forth. That is a very different type of traffic than you would have in a RV park. A RV park, while yes there can be RV’s moving in and out but typically for the most part, people are going in. There’s the river back there. The idea that this is kind of going to be an oasis for travelers. Should people decide to live back there, that’s going to be the same as if you are in a residential are. As if you are coming and going without this constant access of like a turn around. Again, where like Harvey’s Feed Store or the Lotzastuff place. And so, if anything, the idea that this is changing the scope of an easement that exists, we can kind of have it go both ways. So, for instance, if we’re looking at the RV park and if we’re going to argue that the area has this residential nature to it, then, if anything, an RV park is going to be one of the things that is going to lend to that residential nature. It’s going to be something that isn’t going to have this constant, continuous flow for whatever hours a place is open, but it’s going to be more of a leisurely pace. However, again, the easement doesn’t actually have any specifications. It doesn’t have any limitations or terms that it can’t be specified commercial traffic or it can’t be large vehicles. It doesn’t have any of that and actually we have walked and this has been supplied in your documents. And when you have a chance, I’m just going to be asking that you really review the Lewicki land division and grant easements. It now on looks like this is the one that basically kind of sets up where our easement



is, and. It's actually this really long road here and then it shows this kind of this short section here, and. This short section is really where we're really going to be addressing, because at that point that's where the easement is going to come all the way up and come into here. So, the idea that it's really taking over their property, really isn't true because this easement over here. That's probably your biggest, longest easement is the one that's not going to be in use. It's going to be this shorter section in here that then takes you straight onto my client's property. The next one that I'm going to be asking that you really review is going to be the, a replat of the Lewicki land Division Tract 2 and this one actually has the definition that we mentioned. And so, where it says 'Easement B' it's pretty clear at the fact that it states, and it's very small writing. I almost had to get a magnifying glass to stare at it, but it states the thirty (30) foot wide easement for access and utilities. So, for access and utilities. It is not specifying that it is utility only. It's not specifying that we are changing anything in the easement. We are still maintaining the access part of the access and utilities. And then, and so then going to, you know, the case law that was laid out. So, one of the things that when I was reviewing this case law was, yes, when it comes to the change. Like there was one of the cases that it was taking, I believe it was taking the case from being a utility type easement, and a water type easement, a drainage type easement and then someone was unilaterally changing that easement to become more than just water drainage but here we don't have that. We still have the same access. We still have the same definition of access. Access of course being, coming, going, egress, ingress. So, the scope of this easement is not being changed at all. It's still being maintained. And so, I really come back to the fact that when this property was purchased, it was purchased with this easement already there, and it was purchased as a C-2. And so, the Sorensons knew exactly what they were getting into. They knew exactly what type of purposes could go back to. They knew that those easements ran across their property. So, none of this is new. No one is trying to change anything. No one is trying to reinvent anything that has been here. We're not asking for anything additional. It's simply, they have asked to put in an RV, only to truly believe, that it is not necessarily the easement that is the issue here. We do truly believe that the Sorensons do have concerns over the fact that it's an RV park and what does that mean. What does that sound like, so on and so forth. And so, I just want to make sure that we have that clear when it comes to this idea that my client is unilaterally changing the scope of this easement. That is not what is happening here. When he bought the property, he bought the property with the easement and that it was all C-2. It was an idea that it was going to be C-2. And so, therefore, he is just following a long with what has been recorded, what has been deeded. And so, he has been acting accordingly and he has not been asking, or wishing to change the scope of any of that or to make any large unilateral changes. And that is just that he is continuing to follow the easement as recorded where it states access and utilities. And so, then it brings us to the idea of does this constitute abutment. And there was, you know, the idea given that if you have a, if you are up against a public roadway that then goes to the highway then that is. You know that then everyone can kind of think that they abut to a highway. And that's not what we're saying here because the large difference in this, is that this easement is not a road or any type of driveway, roadway anything that is actually, to my understanding, that's actually maintained by the City of Ruidoso Downs. This is an easement that is actually



made part of Mr. Ontiveros's property and what that means is that he is, as being the dominant servient in this easement is that it does create the point where he is the one that is maintaining the roadway. It is his roadway. It has been given to him. So, in being the dominant, that is still his land that takes you to the highway. And so, since it is his land, that takes you to the highway, as it has been granted to him in the grant of easement, that we've supplied for you, that he does in fact abut up to the highway. This isn't something where you know, you come out of here, and you come onto the public road and then you come down. That would not be abutment. Right, so that would not be something the he would then be able to claim, but by actually having the easement be part of his property. It's been deeded as being part of his property. He again, is the dominant servient of that. So, since he is the dominant servient, that is the one that has basically created a continuity between the large tracts of land down to. Which therefore makes that easement part of his property, therefore abutting to the highway. And so, so if anything, we go back to, let me make sure I am stating this correctly, from what was stated earlier, but that takes us back to the 'abut and.' And so, with the 'abut and have access' my client does meet that requirement. He does have that abutment and the access. He is following through with how the easement is stated, and so we are. You know, I know there's been this idea of the whole, well what if we move the easement and all that. And you know, while we do appreciate that. That is not something we have considered or looked at because as we know it's not considered to be part of the appeal process. And you know, and the one thing that (inaudible) on that is the fact that this is something that is recorded. And so, we, you know, the recording is very clear and so we are asking that council follow through on the recordings that have been provided to you and that council maintain what Planning & Zoning put in that Mr. Ontiveros be allowed to have his RV Park and be able to go ahead and operate that. Any questions?"

The City Attorney stated, "Questions?"

Mayor Holman stated, "Yes, I would like for the Council to be able to ask questions of this attorney if procedurally its ok."

The City Attorney stated, "I just thought we've done all a long so far and if I might just say if it appears that you're going to have any witnesses either, is that correct? The public will be allowed to testify, if they want. If the Lewicki's want to be part of that to testify, they may do so, but so far, we've just had arguments between Council and myself. Ms. Martin and Ms. Bobbit. And so, the reason I didn't swear any of the three of us in, so that you know, is that we're considered to be officers of the court and officers of the court aren't required to be sworn in. (inaudible) because we are (inaudible)."

Mayor Holman stated, "So, Councilors, councilor?"

Councilor Lacewell stated, "Thank you, Ms. Bobbit. On the replat, there's this funny little triangle that abuts up against the easement in letter B, its circled in letter B."



Alexandra Bobbit stated, “Yes.”

Councilor Lacewell stated, “What is that?”

Alexandra Bobbit stated, “Do you need to put him under oath if he’s going to answer that?”

The City Attorney stated, “Are you going to answer that?”

Alexandra Bobbit stated, “Yes.”

The City Attorney stated, “Can you raise your right hand, please. State your name.”

Edgar Ontiveros stated, “Edgar Ontiveros.”

The City Attorney stated, “Do you Edgar Ontiveros, solemnly swear to tell the truth, the whole truth, nothing but the truth under penalty of perjury?”

Edgar Ontiveros stated, “I do.”

The City Attorney stated, “You may answer the question.”

Edgar Ontiveros stated, “That’s just, that gives you the radius of the curve for the road, that’s it. It’s just a point.”

Councilor Lacewell stated, “Oh it’s just a measurement.”

Edgar Ontiveros stated, “Yes, mam.”

Councilor Lacewell stated, “Ok, thanks, thank you.”

Mayor Holman stated, “Any other councilors want to ask questions of the attorney?”

Councilor Proctor stated, “(inaudible) I’ll hold my questions off a little bit later. I’ve got a couple of good ones I’d like to ask.”

Mayor Holman stated, “Ok, sir.”

The City Attorney stated, “So with that, do you have any. I’ll allow any public comment and then I think probably allow the attorney to do a closing before we close and go to public comment (inaudible).”



Alexandra Bobbit stated, “And then, Mr. Underwood, if I may.”

The City Attorney stated, “Sure.”

Alexandra Bobbit stated, “Again, just to reiterate. Again, looking at the replat, how it kind of makes this ‘y’ shape and there’s a longer part of that ‘y’ over here, this is not to be used at all. And that is the one that takes up the majority of the Sorensens property. It is solely just this small section over here that would be the portion that would be used for the RV park. As the easement, as you can see, after that does extend onto my client’s property, ok”

The City Attorney stated, “So are you saying, as I’m looking at this, and its pointing North, the easement that goes off to the right.”

Alexandra Bobbit stated, “Is the one that would be used, yes.”

The City Attorney stated, “And are you wanting to put that (inaudible) language into granted business, what’s granted (inaudible).”

Alexandra Bobbit stated, “Yes, sir, your honor. Oh my God. Yes, John. It’s been a day. Do you want us to stay here or do you want us to move?”

The City Attorney stated, “I think you can move.”

Alexandra Bobbit stated, “Ok.”

Mayor Holman stated, “So, this part is still open to public.”

The City Attorney stated, “You can open it to the public now. And as I stated, anybody who comes up I will have you sworn in. And what I would like for you to limit your comments to, and I know it gets confusing sometimes, but really all we’re doing is discussing the right to use this easement for access to a C-2 and that’s what was granted by the Planning & Zoning Committee. And whether or not, the issue is whether or not that easement, which is a pertinent to this property purchased by the (inaudible) RV park can be considered to be an abutment. I think that’s more so that it’s more of a legal question, but it is an evidentiary question but if you want to address that, that’s fine. So, anybody want to.”

Melissa Martin stated, “Council, if I may, I just wanted to mention, and I apologize for not really, you know, I don’t do these everyday so I didn’t know quite the procedure but Ms. Sorenson did hope, at one point, to provide a short statement, if that might be possible at some point.”



The City Attorney stated, "Is it, who is it?"

Melissa Martin stated, "Ms. Sorenson. Miss Sara Sorenson."

The City Attorney stated, "Would you raise your right hand, please?"

Sara Sorenson stated, "Yes."

The City Attorney stated, "Do you solemnly swear to tell the truth, the whole truth, nothing but the truth under penalty of perjury?"

Sara Sorenson stated, "I do."

The City Attorney stated, "Would you state your name please."

Sara Sorenson stated, "Sara Sorenson."

The City Attorney stated, "And, Sara Sorenson, where do you reside?"

Sara Sorenson stated, "I reside in North Dakota."

The City Attorney stated, "And are you one of the owners of the property located, are you one of the appellants protesting the granting of this conditional use?"

Sara Sorenson stated, "I am."

The City Attorney stated, "Go ahead."

Sara Sorenson stated, "Well, so I wanted to say that we, my brothers and I grew up in North Dakota, but my dad moved to New Mexico, probably about fifteen (15) years ago. And he died last July. And so, but he lived predominantly in New Mexico. And this is kind of, this home that he has is kind of all that we have left of him, I guess. That and I have two (2) young kids. I have one here (inaudible) can you come? This is one. This is one of my children and this is the other one. And so, I have a big concern about the RV park because when we go to visit, New Mexico. There's essentially, you're turning this easement, essentially into a big highway through his property. Which is very dangerous for my children to go visit their grandpa, their grandpas place. It was never used as a commercial highway when my dad used it. I didn't feel unsafe at all when we went to visit. There was, basically, my dad used it and the neighbors, the Lewicki's, used this driveway. There wasn't many, many RV's going through this property. The second thing that I'd like to say is that, it would be acceptable, for me at least, that the Lewicki's who sold Mr. Olivera's the property, if they simply, they own the land next door. And if they said they were



willing to sell their land. At least at the last hearing for the right price, and if they do that, that's acceptable and that would provide. That would abut, provide land that abuts a major arterial roadway. So, the Lewicki's are certainly, free to do that. And that would be acceptable. They could sell their land and that provides, that meets the requirement of this statute or the ordinance that you have provided. We don't have, we're not contesting that it's a C-2. We contest that it doesn't meet the requirements of the ordinance. So that would be an acceptable solution for the Lewicki's to sell to Mr. Oliveras."

The City Attorney stated, "May I ask you a question?"

Sara Sorenson stated, "For the safety of our family and our property."

The City Attorney stated, "So, how often or how often have you resided in this home with your children, since your father's death."

Sara Sorenson stated, "Well, let's see, I've been to New Mexico several times since he died, but right now they are currently in school. So that makes it difficult to do that. So, are you asking, since he died?"

The City Attorney stated, "I was just wondering how often you use the home."

Sara Sorenson stated, "Well, my brothers use. I have three (3) other brothers and they are there occasionally to use the home with their children."

The City Attorney stated, "Does the condition of having the speed limit on that one (1). You understand it's just for that one (1) of the two (2) easements, having a speed limit of five (5) miles per hour. Does that calm any of your fears?"

Sara Sorenson stated, "No, there's. No, it does not. I mean there's going to be several large vehicles going in and out of there if there's forty-two (42) pieces. And that's not how the easement was used. The easement was never used with several large commercial vehicles. It would be my dad's vehicle going to his place, his residence. Or the Lewicki's using their vehicle to go to their residence. It was never used as a commercial. It was never used as a essentially a commercial highway going through his property, but certainly, if the Lewicki's want to sell their piece of land and turn that into a, you know, and turn that into a highway to the RV park, that's acceptable to us. That falls within the rules, from what we understand. But it does not, it is not within the rules to put a major arterial highway essentially through our private property."

The City Attorney stated, "And were you aware at the fact that the property, that the RV park is asking to be put into, was in fact on commercial, when you acquired the property."



Sara Sorenson stated, “Well I didn’t acquire, my father acquired the property. So, are you asking what he knew?”

The City Attorney stated, “No, I’m asking you what you know.”

Sara Sorenson stated, “Well, my acquiring of the property was after he died.”

Melissa Martin stated, “And I wouldn’t ask my client to speak to what a deceased, you know, party did or did not know. I mean that’s, that’s not my client’s purview.”

The City Attorney stated, “I wasn’t. I was asking her what she knew.”

Melissa Martin stated, “Well, she didn’t acquire the property. She inherited it so to be clear.”

The City Attorney stated, “So, when you inherited the property, were you aware of the fact that the property was C-2?”

Sara Sorenson stated, “The technical definition of C-2. No, I mean my dad died in July. So, are you wondering when I learned the technical zoning of it being C-2? Is that your question? I’m not sure.”

(inaudible)

Sara Sorenson stated, “I know that when my dad was alive, there was not. There was not many, many vehicles going through that driveway. It was just his vehicle and I don’t even remember seeing any other vehicle besides his vehicle use that.”

The City Attorney stated, “Right.”

Sara Sorenson stated, “I never felt. I didn’t feel unsafe. (inaudible). I’m sorry?”

The City Attorney stated, “I was just asking of how to your knowledge how it was zoned.”

Sara Sorenson stated, “How it was zoned, ok.”

The City Attorney stated, “Ok, I’ll move on. Public testimony, yes mam.:

Cassidy Meeks stated, “Hello everyone, I’m Cassidy Meeks. And I actually wasn’t going to speak today.”



The City Attorney stated, “Cassidy, can you raise your right hand, please? Do you solemnly swear to tell the truth, the whole truth, nothing but the truth under penalty of perjury?”

Cassidy Meeks stated, “I do.”

The City Attorney stated, “And, where do you reside?”

Cassidy Meeks stated, “I live here in Ruidoso Downs, at Slowplay RV Park. And that’s kind of the only reason I’m be speaking today. I’m actually, aside from being on the Fire Department here, I’m also a regional property manager for Cabin RV Resorts. So, I think my knowledge might help. Hopefully, clear up some fears that may be going on today. I have five (5) children of my own. We live in an RV park with one hundred forty (140) spaces. I also oversee another property in Ruidoso. As well as on occasion, different ones throughout the country. We have a fenced in property. We keep our speed limits at five (5) miles per hour. Again, I have five (5) of my own children who live on the property where RVs are coming in and out of and I’ve never had a fear of anything happening. I think, as long as the right rules are put into place, I think it can absolutely be very safe, even with children involved to live in an RV park. Or, (inaudible) where there is a traffic is light, but as long as its managed well. I do have park hosts that take the RVs to their spaces to make it a little bit safer. Make sure their maintaining that five (5) miles per hour speed limit. As well as there was a point brought up earlier on. I can’t recall exactly, the wording that was mentioned but about the amount of RVs that are going to be coming in and out. So, as I stated, I have over one hundred forty (140) spaces in my RV park alone. That being said, I have never, even on our busiest day, which is typically on Labor Day, I’ve never exceeded forty (40) RVs in a day and that is with one hundred forty (140) spaces. With the RV park in question, with them having forty (40) some odd spaces, I would not, in my estimation being in this business for well over five (5) years now, I wouldn’t assume that there would be a huge level of in and out traffic for an RV park of that size. Again, I just hope that it kind of helps with some of the fears. I think as long as the park is well managed, and well looked after and there’s certain rules put in place, I think it is very safe. We live in a stucco house on the actual RV park in the middle of it. There are RVs in and out and as long as its managed well, I think it can be very safe for children. So, I don’t really see that being a huge concern. As parents are watching their children and RV hosts are paying attention and making sure that they’re doing what they need to be.”

The City Attorney stated, “Questions?”

Mayor Holman stated, “Questions? Yes.”

Councilor Lacewell stated, “Cassidy, thank you for your service.”

Melissa Martin stated, “I have a question.”



Cassidy Meeks stated, "Sure."

Mayor Holman stated, "Just a minute, we have a City Councilor that has a question now."

Melissa Martin stated, "I apologize."

Councilor Lacewell stated, "Can I yield to Ms. Martin and come back to my question?"

Mayor Holman stated, "Ok, Ms. Martin, go ahead."

Melissa Martin stated, "Thank you, council. I have a couple of questions. One, I would like to ask where your RV park is located and if it abuts a major arterial roadway?"

Cassidy Meeks stated, "It does. It is, the address is actually is 26514 US highway 70."

Melissa Martin stated, "Ok, so it does meet the requirements that the RV park abuts the highway, unlike this situation, ok."

Cassidy Meeks stated, "Yes, mam, that is correct."

Melissa Martin stated, "Ok, and would you agree, I hear that you have a larger RV park and therefore a larger capacity, but would you agree with my calculations that even if ten (10) RVs were to go in and out a day, for three hundred sixty-five (365) days, that would result in about three thousand six hundred (3,600) entries and exits per year?"

Cassidy Meeks stated, "I do agree to that."

Melissa Martin stated, "Ok, alright thank you mam. Nothing further."

Mayor Holman stated, "Councilor Lacewell."

Councilor Lacewell stated, "Thank you. So, I just live on a street without an easement and if I just look at the traffic that goes by my house every day and there's only, how many people on our street, not even a dozen, and yet cars, cars, cars. So, I'm also thinking of how many times I leave my home and drive down the street, go to Walmart, come back and oh (inaudible) come back and so I'm in and out a lot. And I would think that the people in the RV park are not going to go down there. Although, it does look like utopia down there, I probably would go down there and stay, but some are going to have to stay. They probably have to come out get groceries, go to the restaurants or whatever, which would result in traffic. And your driveway on your RV park, do these (inaudible). What are these RVs? Do they drive past your driveway or your home with your children around, to get to their (inaudible)?"



Cassidy Meeks stated, “So, they do. My, I actually live right in the center of the RV park. My home is a stucco home, right on the corner, so people pass this direction as well as this direction. Across the street from me are RV spaces, behind me are RV spaces, and all around there are RV spaces. Right next.”

(inaudible)

Mayor Holman called for a brief recess and reconvened the meeting.

The City Attorney stated, “Ok, we’re resuming. Ms. Martin and Ms. Sorenson back, so.”

Brian Roberts stated, “I’ll salute back around, I’m Brian Roberts and I’m on the zoning commission (inaudible) and resident here. My point is that, in looking at the, I’m very familiar with the zoning ordinance. I’m somewhat familiar with the rest of our ordinances and it has been mentioned that it says ‘shall abut and have access to’ but 10.06 (A) of the overall ordinances states the word ‘and’ implies the word ‘or’ and vice versa. I’m paraphrasing, but John is that essentially what is says. So that means by that clause in the beginning of our ordinances for the City of Ruidoso Downs, that that phrase can be read, shall abut or have access to. So, my point is, is that an awful lot of the argument has been based on the word ‘and’ but substituting the word ‘or’ it informs why our decision went the way it was. It wasn’t for deliberately, or at least my decision, I can’t speak to anyone else’s but my decision on this vote was informed by 10.06 (A). And the other point that I would make, is that as a C-2, there are a number of businesses that would not require a zoning to make an approval. For instance, you could have a marijuana grow, you could have a shooting range, there are a lot of businesses allowed under C-2 that would be full commercial businesses that might be much more objectionable than an RV park. Now that is my opinion and everybody has got an opinion. But I want to make the point that, that ordinance can be read, ‘shall abut or have access to’ that’s all I had to say.”

The City Attorney stated, “Questions? Well, look at you.”

Brian Roberts stated, “Ok.”

Councilor Lacewell stated, “I have (inaudible). The question isn’t to you, Mr. Roberts, thank you. But John, legally, if it said ‘or’ would it, well then it would automatically be implied ‘and’?”

The City Attorney stated, “It’s and/or is what it does. So, if you say ‘or’ its and/or. If it says ‘and’ it says and/or. So, the use of either one of those two (2) means and/or.”

Melissa Martin stated, “Council, may I comment and read the entirety of that statement?”



The City Attorney stated, “Of the ordinance?”

Melissa Martin stated, “Of the definition.”

The City Attorney stated, “Yes, mam.”

Melissa Martin stated, “It says ‘and’ or ‘or’ is the title. Either, conjunction shall include the other as an ‘and/or’ if the sense requires it. So that’s, that’s not a blanket, that every ‘and’ or ‘or’ used in the entirety of the Ruidoso Downs Code of Ordinances means and/or that, you know, simply defies the logic of legal reasoning. If you can’t have an exclusive or an inclusive term in your entire laws on the record. So, I would just like to point that out”

The City Attorney stated, “And I think what Mr. Roberts is testifying to, that as a member of the Commission, that’s the way that he interpreted that particular provision.”

Brian Roberts stated, “Yes.”

The City Attorney stated, “Any other comments?”

Mayor Holman stated, “Yes.”

The City Attorney stated, “Will you come forward? Raise your right hand and state your name, please?”

Thomas John Lewicki stated, “Thomas John Lewicki.”

The City Attorney stated, “Do you, Thomas John Lewicki, promise to tell the truth, the whole truth, nothing but the truth under penalty of perjury?”

Thomas John Lewicki stated, “Yes.”

The City Attorney stated, “You may be seated.”

Thomas John Lewicki stated, “Ok, I’m the builder and developer of this property. Ok and I had applied all of the subdivision rules, of course. I at one time was sole owner of all of it, ok. Back in 2004 it was going to be a bunch of (inaudible) ok. This is 2004. This is when it was approved as a subdivision, back then. Ok. It will always be whoever owns the property, on that property, whether it be two (2) people, or three (3) people, or one (1) person. It’s going to have the same access the thirty (30) foot easement. Utility and obtain road to that property. Ok, that is end of story, ok. That’s the way it was built. It’s the way it was designed. The only way it was designed was the drainage and everything else on the property. I think everybody needs to visit the



property. Get a visual and see what it's all about. It's the most beautiful oasis there is down there. It could only be a beautiful RV park. And I'm here at Omar and Edgar's behalf because I wouldn't have the money or the youth to do anymore developing. I have two (2) acres, is all I can do right now and that's all I wanted. Now I think it's fair to this man, he paid good money for that property. It's a very beautiful piece of property. I think he deserves to have that property down the way that he wants because it's all dreams. We all have a dream in life and we have to pursue those dreams. Fred Sorenson was a very good friend of mine. When that man purchased that property, I gave him water. He did not have any water or any access to electricity to anything. I gave him all of that because I own the property. I developed that water and electricity to him. I give him the water until he put his own well in. Fred was well aware the subdivision requirements and the subdivision rule. Ok, that easement that thirty (30) foot easement is for the three (3) property owners that own it. Myself, Sorensens, and Edgar and Omar, ok, they own it. It's the same thing, ok, and it wouldn't be a smart thing. You got a thirty (30) foot easement for that. The Harveys got their thirty (30) foot easement for their trucks to come in and you want me to give up more property of my two (2) acres and put another thirty (30) foot. That's ninety (90) foot of road. Does that make any sense to anybody here? Those roads were built together. I think the thirty (30) foot is plenty. Ok, for everybody to enjoy it. Another thing is the time that Fred bought that property was I believe for 2008 maybe. I don't exactly remember ok. I've never seen his kids there until he passed. Fred passed, it's the only time I seen anybody from that side of the family and you know we went and introduced ourselves. It was like, we were like taboo to them. I have no idea what I ever did to my neighbors that."

The City Attorney stated, "Tom, I don't want to get in to personnel."

Thomas John Lewicki stated, "Ok, but what I'm saying is Fred knew the subdivision requirements. He knew that easement was an easement. And he owned it properly, they only inherited the property. And so, as far as that goes I have every document you want and the dates of when all this was (inaudible) done, ok. It's all on record. And I don't understand, if there's one thing I can't stand, is lawlessness and corruption. And I feel there is a lot of lawlessness and corruption going on here and I hope everybody gets a handle on it."

(inaudible)

Thomas John Lewicki stated, "Thank you."

Mayor Holman stated, "Ok, let's have questions for this, ok."

Councilor Lacewell stated, "So Mr. Sorenson, to the best of your knowledge, purchased the property in 2008, 08?"

Thomas John Lewicki stated, "Well, I'm not sure. I know (inaudible)."



The City Attorney stated, "I think I told you the deed was in 2014."

Councilor Lacewell stated, "14, he bought it in 14?"

The City Attorney stated, "Right."

(inaudible)

Thomas John Lewicki stated, "Eight (8) years, eight (8) years, I'm sorry. Well you take eight (8) from fourteen (14) what do you got, 2007?"

The City Attorney stated, "Well, he purchased the property in 2014."

Councilor Lacewell stated, "So that's ten (10), ten (10) years."

(inaudible)

Thomas John Lewicki stated, "(inaudible) and I'm forgetting how many years."

The City Attorney stated, "The property was annexed in 2004."

Thomas John Lewicki stated, "It was annexed in 2004."

The City Attorney stated, "Yes."

Thomas John Lewicki stated, "As commercial."

The City Attorney stated, "Right."

Thomas John Lewicki stated, "As it was here. You see, actually his house was supposed to be the office. Ok, and so all there is just like you said, there's a little peninsula there and a peninsula where his part is, everywhere else is easement. I gave that up when I owned it. Thirty (30) foot all through the whole thing, so I could do this subdivision back then, but the village couldn't produce me water. Ok, now we have the water. We got a six (6) inch line there. Ok, and Omar and Edgar, they have the water, they have the water rights. All they need is to pump that water and put that water down there and I just, you know. They got a beautiful design and even better than what I was going to do it. And, I'm just here for their support."

Mayor Holman stated, "Is there any other councilors that have questions at this time?"

Melissa Martin stated, "I do council."



Mayor Holman stated, “Just a moment, Councilor Lacewell.

Councilor Lacewell stated, “I’m waiting for Joey.”

Mayor Holman stated, “Joey, Joey hadn’t testified yet.”

Councilor Lacewell stated, “Oh, I’m sorry Joey.”

(inaudible)

The City Attorney stated, “I’ll let him as soon as Tom finishes his testimony.”

Councilor Lacewell stated, “I’ll wait for my question then.”

Mayor Holman stated, “Ok, and thank you sir.”

Thomas John Lewicki stated, “Your welcome and thank you.”

The City Clerk stated, “We have one more question.”

Mayor Holman stated, “Yes.”

Melissa Martin stated, “Council, and I apologize, when you say councilor, I think you’re talking to me. So, I apologize for budding in on y’all, that we’re all council here. So, I do apologize but Mr. Lewicki, now would you be. Would you enjoy having the RVs crossing across your property and is that something you would want on your personal property?”

Thomas John Lewicki stated, “Of course.”

Melissa Martin stated, “Ok, and but yet you’re not willing to grant an easement or sell your own property to grant the. Excuse me, I’m still talking. The, to, as you said, to fulfill the dreams of the owners of Excalibur.”

Thomas John Lewicki stated, “I already did. I granted all easements. I was the sole property owner. I put these easements in.”

Melissa Martin stated, “Right, but they don’t have an access point to the highway through your property, correct?”

Thomas John Lewicki stated, “Yes, they do. They go right to the highway.”



Melissa Martin stated, “Ok, they access the.”

Thomas John Lewicki stated, “Have you been to the property, mam?”

Melissa Martin stated, “Council, you’re not answering my question. You’re being combative. If you don’t mind, I’m just asking you a question. Whether there’s access to the highway purely through your property.”

Thomas John Lewicki stated, “Yes. To the highway, yes.”

Melissa Martin stated, “Ok, so all RVs can avoid the Sorenson property and get to and from the highway from your property?”

Thomas John Lewicki stated, “Yes. Actually, well it all depends if they open up the other. They only wanted one (1) easement. They have two (2) easements.”

Melissa Martin stated, “Sir, you’re still not answering my question.”

Thomas John Lewicki stated, “The Sorenson property is a peninsula. It’s on the top of a hill and it’s cut into the hill. So, the property anywhere else is nothing but an easement. It can’t be used as anything else.”

Melissa Martin stated, “I’m sorry you. Ok, we’ll assume your not answering the question. So, and would you agree that the property that you sold to Excalibur, the title you granted to the buyers that no two portions of that land touches and abuts the highway. That they do not own title to any land abutting the highway. Is that right?”

Thomas John Lewicki stated, “They do own it. It’s the easement. It goes to the highway.”

Melissa Martin stated, “They hold title to the easement?”

Thomas John Lewicki stated, “Yes.”

Melissa Martin stated, “They hold legal title to the easement.”

Thomas John Lewicki stated, “I am, they are, and so are the Sorensens.”

Melissa Martin stated, “Ok well I think that’s where some of the confusion is.”

Thomas John Lewicki stated, “(inaudible) subdivision.”



Melissa Martin stated, “And I think that’s where some of the confusion in this matter comes from because sir, I will tell you. They do not own title to the easement land. They do not own title to that land.”

Thomas John Lewicki stated, “Yes they do.”

Melissa Martin stated, “Nothing further. Thank you.”

Thomas John Lewicki stated, “I’ll let you guys argue it out but I’m not qualified.”

(Inaudible)

The City Attorney stated, “You have a question for Mr. Lewicki?”

Alexandra Bobbit stated, “Yes. So, just to kind of clarify. So, I pulled out this, in the back of the replat of the Lewicki Land Division Tract 2. If anyone feels like following along. And so, just to clarify because I think there is just a little misunderstanding. Tract 1 here is the, the Tract 1 here and just to be aware, the large document he is looking at is the same document.”

Thomas John Lewicki stated, “I can’t see the small print.”

The City Attorney stated, “Is that the one that says Replat of Lewicki Subdivision?”

Alexandra Bobbit stated, “Land Division Tract 2.”

The City Attorney stated, “Ok.”

Alexandra Bobbit stated, “And so, Tract 1, who owns Tract 1?”

Thomas John Lewicki stated, “The Sorensens.”

Alexandra Bobbit stated, “Ok, and who owns Tract 2A?”

Thomas John Lewicki stated, “Stephanie and I.”

Alexandra Bobbit stated, “Ok, and so the easement, as we see this one shows notations as to degrees and inches and stuff like that. And so, what we’re looking at one. From Tract 1, that’s where it says in large letters, it says 1.61’, that section that’s running between. Is that the easement that we’re talking about?”

Thomas John Lewicki stated, “Yes.”



Alexandra Bobbit stated, “And is that on your property?”

Thomas John Lewicki stated, “Yes, it is.”

Alexandra Bobbit stated, “So, the RVs will be passing on your property as well in order to go onto Ontiveros?”

Thomas John Lewicki stated, “Yes.”

Alexandra Bobbit stated, “Ok.”

Thomas John Lewicki stated, “And they could use this one too because its recorded.”

Alexandra Bobbit stated, “Well, yeah, but we, we’ve talked about that that would not be utilized. So, we have one small section here and then we have one small section that comes across.”

Thomas John Lewicki stated, “Ok, can I ask you a question.”

Alexandra Bobbit stated, “No.”

Thomas John Lewicki stated, “Ok.”

Alexandra Bobbit stated, “No questions to me. I only get to ask questions. And so, here the RVs will come through Sorenson and they will come through your property?”

Thomas John Lewicki stated, “Yes.”

Alexandra Bobbit stated, “And, do you have an issue with the RV going through your property?”

Thomas John Lewicki stated, “No.”

Alexandra Bobbit stated, “Ok, no further questions.”

The City Attorney stated, “Are we done?”

Thomas John Lewicki stated, “Anybody wants any questions? Thank you all.”

Mayor Holman stated, “Thank you for your input and.”

The City Attorney stated, “Joey?”



The Public Works Director stated, "I'm good, unless you need something."

Melissa Martin stated, "Council will there be a time for closing arguments?"

The City Attorney stated, "Can you wait for just a second?"

Melissa Martin stated, "Yes, sir."

The City Attorney stated, "Councilor Lacewell has a question of the Director of the Parks."

The Public Works Director stated, "Parks and Rec.'s sure. That works too."

The City Attorney stated, "Parks and Rec.'s. I seen it on tv."

Mayor Holman stated, "Public Works Director."

The Public Works Director stated, "Whatever you want to call me, I'm fine."

The City Attorney stated, "I'll call you sir. Do you solemnly swear to tell the truth, the whole truth, nothing but the truth under penalty of perjury?"

The Public Works Director stated, "Yes, sir. I do."

The City Attorney stated, "State your name."

The Public Works Director stated, "Joe Jarvis, Public Works Director."

Councilor Lacewell stated, "Thank you Mr. Jarvis. I was wondering about the well. So, if Mr. Sorenson bought the property in 2014. How was he authorized to put in the well?"

The Public Works Director stated, "I don't know, because we have a city ordinance that states that's not allowed. That was before my time as a director. I don't know. Mr. Lewicki might be able to answer that. I'm not sure."

Councilor Lacewell stated, "Could that be something that Jennet could research about the, how they were able to get a permit for a well in 2014?"

The City Attorney stated, "It would probably be the OSE."

The Public Works Director stated, "The Office of the State Engineer. We don't issue those permits. You'd have to go to the state to draw a well permit."



Councilor Lacewell stated, “Well, but you can deny it because we tried to put in a well.”

The Public Works Director stated, “We do not have a. Well, our ordinance says if there’s water available or sewer within, I believe two hundred (200) feet, then you must connect and can’t put a well and lalala. I’ve never seen anything that says we can deny it because the permit doesn’t come to us. The well driller gets a permit, goes to the state, comes back does the work and doesn’t give us the word until it’s (inaudible).”

Councilor Lacewell stated, “I can testify that the (inaudible).”

The Public Works Director stated, “If it’s (inaudible) yes.”

Councilor Lacewell stated, “So, then the question would need to go back to Mr. Lewicki.”

The Public Works Director stated, “Maybe. He might know about it because he was the one who has the original well that starts and has the water.”

Councilor Lacewell stated, “Alright, thank you.”

The City Attorney stated, “Any questions of Mr. sir. You’re excused.”

Mayor Holman stated, “Well, just a second. Councilor Proctor.”

Councilor Proctor stated, “The water supply to the RV park.”

The Public Works Director stated, “Yes sir. RVs use very little water.”

Councilor Proctor stated, “Ok, but comes from the city.”

The Public Works Director stated, “Yes sir.”

Councilor Proctor stated, “Ok, thank you.”

Mayor Holman stated, “Joey.”

The Public Works Director stated, “Yes sir.”

Mayor Holman stated, “I have never heard you say ‘I don’t know’ before. You have always have an answer and its correct. I finally heard you say ‘I don’t know.’”



The Public Works Director stated, "Because I can speak a lot on this. I have walked Mr. Lewicki's property. There is no place to put an easement on the East side. It's impossible because there's property that have houses that are built to both fence lines. So, that isn't going to work. The easement is the easement and John you might look in to the easement situation over at where Riverbend was built because it's an easement just like this and that RV park was built in 2003 or 4."

Mayor Holman stated, "That was meant as a back door compliment."

The Public Works Director stated, "Well, you know, I always got something to say, just ask it."

The City Attorney stated, "A back door testimony."

Mayor Holman stated, "He is awfully good."

The City Attorney stated, "Do you have a question for Mr. Lewicki?"

Councilor Lacewell stated, "Oh, can he. (inaudible)."

Thomas John Lewicki stated, "I can come back up there."

Councilor Lacewell stated, "What's the story on the well in 2014?"

The City Attorney stated, "You're still under oath."

Thomas John Lewicki stated, "Yeah, Mr. Sorenson put a well in down there."

Councilor Lacewell stated, "In 2014?"

Thomas John Lewicki stated, "Yeah."

The Public Works Director stated, "You didn't have water in there (inaudible)."

Thomas John Lewicki stated, "We didn't have water for him there, but I mean, I would've gave him water. It was, you know, already piped into the house. But he wanted to do his own well and at the. Actually, the Sorenson's bought Drapers property also. So, they have one (1), two (2), three (3). They have three (3) homes on the East side of me. Plus, he owns a two hundred fifty (250) (inaudible) that I built him over in Arabella and plus has two (2) or three (3) ranches down in the valley. So, they have a lot of ranches for their kids to go to, if they're afraid of the RVs, I guess, I don't know. You know, they have other properties."



Mayor Holman stated, "Councilor Lacewell."

Councilor Lacewell stated, "Thank you, sir. So, is your personal home also on a well?"

Thomas John Lewicki stated, "Yes."

Councilor Lacewell stated, "Ok, thank you."

Thomas John Lewicki stated, "Yes that's been there since the '50's. It hasn't changed any level at all. And, it's been the same as it's always been."

Councilor Lacewell stated, "Thank you."

Thomas John Lewicki stated, "It's a running stream that runs through there and it's great water."

Councilor Lacewell stated, "Do you sell it?"

Thomas John Lewicki stated, "Thank you, any other questions?"

Mayor Holman stated, "Thank you again. It's still open to public."

The City Attorney stated, "Anybody else?"

Mayor Holman stated, "Ok, we'll close it."

The City Attorney stated, "Ms. Martin are you wanting to give a closing statement?"

Melissa Martin stated, "Yes, council. I sure do. And, you know, I hate cheesy closing statements, but I think in this context its very applicable. That old phrase, the road to hell is paved with good intentions and the reason I say that is because your zoning commissioner came up here today and articulated that his assessment of the language of the code of ordinances. The meaning behind this limited, this limiting language was to prevent the placement of RV parks that cut through residential neighborhoods with multiple families using them. That sort of thing. And I would implore you to consider that by determining that abutting, or rather having an easement to a major arterial roadway is enough to qualify as abutting and having to a major arterial roadway. You're doing exactly what you're trying to prevent. The next party that comes is going to say 'no, I have a public easement. I go down. I go from my property down avenue a. I cut over to avenue b. I cut over to avenue c and there, I'm at the highway.' That a public easement is a right of access just as the easement we're looking at here. And so, I would truly implore you to consider the ramifications of considering any easement access to a highway to be sufficient to be an RV park. As an attorney, I would be all over that with my next client saying that absolutely,



you qualify for a recreational RV park on your two (2) acres parcel up the road. Through this residential neighborhood. We will now be the City Council who is rewriting the city ordinances and determining who abuts and who doesn't by using, you know. There's no fair way to interpret, giving one (1) party. Saying you abut because you have an easement but not giving it to the next party that has a public easement. That's the way it's going to play out, then I would make that legal argument all day long. This property does not abut a major arterial roadway. And as your zoning commissioner stated, this is exactly why this language is in there. Is so that you don't have, you know RV park access cutting through properties with children, or neighborhoods, or the like. And maybe it's unfortunate, as one of the zoning commissioners stated in their hearing, it may be unfortunate that theirs the term 'abuts and has access to' but that's the way the code is written. And it's not for me or you to simply rewrite it, as we see fit. So, I would implore you to look at that language and consider what it's going to mean for the community when you just disregard one of those two terms. And consider that fully before you make a decision to allow this because I think that you're opening pandora's box. Now considering the easement, I will close by giving you some language straight from the New Mexico's Supreme Court. That loves quoting to them because there's no higher authority to them in the state of New Mexico. And what they say is 'a preference exists in New Mexico to narrowly construe the rights created by an easement' that's in Walker v. United States from 1981. They continue that the New Mexico Supreme Court has noted that "the law is jealous of easement claims and the burden is on the party asserting such a claim to prove it clearly." Now I would consider whether Excalibur, in this case, has clearly proven simply because this property is zoned C-2, that you are permitted as the City of Ruidoso, to permit RVs, campers, trailers, what have you, in and out of this property. And that, that is sufficient and that is agreeable in scope to what has gone on that property for the past twenty (20) years. I like to listen to the Supreme Court in New Mexico. It say's to consider these easements narrowly and I would encourage you to do the same. Thank you so much."

The City Attorney stated, "Thank you. Ms. Bobbit."

Melissa Martin stated, "I'm sorry, was there a question for me in there?"

Mayor Holman stated, "No."

Melissa Martin stated, "Thank you."

Alexandra Bobbit stated, "I did enjoy, the road to hell is paved with good intentions, because we're not looking at intentions here. We're looking at fact and the idea that we are using public roadways to be something that we are then attacking you on it. Claiming that well, if you grant this deal with this easement but then any house, that is up against a public roadway, is up against an avenue or a road or, you know, a city owned property will give everyone the ability to put in RVs and RVs will be everywhere. How dare they. That's not what we have here. We don't, that



doesn't exist. And so, when someone is trying to make you feel like you are rewriting ordinances, or you're rewriting things. That's not what you're doing. In this situation, it is abundantly clear, that you are being asked to uphold the ordinance. And if whatever way it is that you decide to make that decision, obviously we want it to be made in ours, but we do want to make sure that the facts are very clear. And it's not, you know there's this claim, this legal argument that can be made all day. It's, again, it's not legal, it's a factual argument. When you are granted an easement, you own that property. When you live on a home that is on avenue a, that connects to avenue b, that connects to avenue c, you don't own those roadways. Avenue a is not yours. Avenue b is not yours. You pay taxes on them but they are not yours to maintain. They are not to be considered your property. You don't have deeds to those properties. You don't have deeds to those roads. I, you know, with my home, my home abuts up to a public roadway. I don't have any deed that tells me that I own my road way. This situation is one where there is ownership of a roadway. The City of Ruidoso Downs does not own it. It is owned by my client. He is the dominant. This is again where the dominant servient really comes into play because the property, the property of the Sorenson's and the property of the Lewicki's that has been granted to now my client's property. And so, he maintains. He is the one that takes care of that road. That's not going to be a responsibility of the City of Ruidoso Downs. And so, to kind of put this idea of fear in you that all of a sudden resident, all residential neighborhoods will have RVs in them because that's what you're setting up. You're not setting up that precedent. You are following through with the ordinance that you've been provided. And if you make the decision that a privately owned easement is considered to be abutting up against a highway and that someone owns that easement, so therefore, that is considered to be abutting and access. If you make that decision then that is what is upholding here. It's not that you're reworking or rewriting. And so, obviously we implore you to understand or to ask or to find that the privately owned easement, that is maintained by my client, that is deeded to my client, that is considered to be part of my client's property, that that is property of his abuts to a major highway, and therefore allows access. And again, when it comes to the RVs, and again this idea that their being thrown up everywhere. It's very clearly stated in the ordinances in Section 155.083 that, 'in order for there to be recreational vehicle park development, they have to get a conditional use permit.' So, all RVs have to come before the City of Ruidoso Downs. Either the Planning & Zoning Commission and then, if appealed, obviously to you, but it has to come before the city. And it has to be agreed to, voted on by the Planning & Zoning Commission that you all have in place. And if not agreed to, brought to you by appeal. So, the City of Ruidoso Downs, in their ordinances, has themselves that you have to approve every single RV park. You don't necessarily have to approve every business that goes in. I know you have to get business permits and whatnot but it's very. And then even with that recreational vehicle, it goes into a whole list of guidelines as to what has to happen here. That is has to be twenty-seven (27) foot road and you have a thirty (30) foot road situation. You know, where your setbacks are. And that again, this is only something that could happen in a C-2. This is not something that could happen in a residential. And so, I just want to make it very clear that the idea that now, all of a sudden, if you do pass this, you're looking at tons of lawsuits or tons of asks for RVs. And all of a sudden,



you'll have to grant them because of the precedents you set. It's not, it is not the same as the situation you have before you. And so, I just wanted to make sure we got that really, really clear. And so, again, we're just asking that you uphold the ordinance as written. Finding that the easement itself is owned by my client. Therefore, making his property, as deeded, and therefore does abut and have access. When we're talking about New Mexico state law and Supreme Court and all of that. Again, you know, here it's interesting because, you know. If you're in court, then we make arguments about well New Mexico Supreme Court said this and that. And then we'll have judges that will find other cases or finds mixes in terms of what is clear. You know, clearly stated, and then the judges will render their opinion. Here, we, and it does state, I have the case where it does state that there is a preference exists and narrowly construe it is the burden of the party to prove clearly. Now, interestingly enough, when I was looking at the cases that supplied that information, there are several of the cases that were listed in your case of appeal. That when you look them up have negative treatment. And what that means, is that a holding those cases that did say these things were actually found in other cases to not be followed because they were not considered to be. Well that they'd be that the Supreme Court. Bless you. That the Supreme Court wanted to follow or they thought there needed to be an exception to that. And so, when you, when you are reading your appeal packet, you see the listing of the cases and you see what referencing them. One, again, those cases are very different than the situation we have here. And I'm not expecting everyone. I got the cases if you want to read forty (40) plus pages of case law. I will more than happily give it you. However, I urge you to read that with caution just because again not all the cases are just fully accepted. New Mexico has found that the cases that are referenced are negatively treated later. So, not completely followed. And, and then, additionally that's not. That's not something that necessarily dictates the end all be all, right. And it's also something that, without knowing the extent of the cases. Like one of the cases, is a water drainage case, which is not applicable in this matter. Another one is about how a roadway was square and the court turned it into a non-square roadway. And so, it was an easement, they made it from being a box to being a curve, like a roadway does. And what I found actually interesting is the majority of these cases actually found in favor of the people that had the easement. And so, just something a grain of salt to kind of take with that when you are reading. But either way, even if we do follow those things, the preference that you narrowly construe is then that you have to narrowly construe. Which means, that where it states easement b on the replat, where it says access and utilities, you have to narrowly construe that. Which means, if the easement is allowing access in and out, then the easement is doing its job. That is the construction of the easement. That is the purpose of the easement. My client needs that as the easement is being used for access in and access out. So, if you're narrowly construing, he does meet that requirement. And then on the burden of the party to prove, the clear, a clear reference of the easement, we have C-2 property, we have an easement on C-2 property, the easement is allowing access. And so, my client today, has shown that burden of the fact that the easement is for access and it's for utilities. And so, even, even if you, you know, if you read it and your like, you know I do want to follow this rule, you know, the law the way that they have listed it. Then, my client does meet those two burdens. Those two pure burdens that they have set forth. And so, again, we



are asking, that you, that you are not rewriting. That you are taking the ordinance and applying it, as it is written. And that, in the fact that my client privately owns, and has title to, is deeded the easement that is considered to be part of his property. It's considered to be abutment. And you know, and actually you know. One of the really good points that I heard was, what other business would you want in there. It's not going to sit, right? It's a C-2 property. Someone is going to put a business on there. If it's not an RV park, like you're not ok with the RV park, in your mind, your worst-case scenario. Are you ok with your worst-case scenario business being in that area? Whether it be a marijuana shop, or it be a shooting range. Whether it be, whatever your mind can conjure, right. And so, is an RV park compared to your worst thought of business being on that property. Which one is sounding better? And so, you know, I can say my client, in the EPO packet has submitted what the structure, what the layout of the RV park will be. It has passed the conditional use permit as it was required to do. You know, my client, like we've heard of their business, Oasis. We're just trying to create something that can kind of you know, obviously make a profit for Oasis, but also to come to Ruidoso, Ruidoso Downs, Lincoln County in general and have somewhere beautiful that they can set up and relax. If they, you know, even if its long-term residence. Maybe as we've heard earlier, maybe have some families there. Maybe having, you know, families that stay for an extended summer, etc. So, while there could be the idea of having, you know, are hesitant to RV parks could think about the beauty they could bring as well. And so, my client did want to make sure that we thank everybody for letting us to be here today. For hearing us out. We know that you do not have an easy decision before you. You've been attacked with a lot of information. And so, we ask, obviously, that you find it in our favor and grant the RV park. Thank you."

Councilor Lacewell stated, "Before you go, Mayor (inaudible). I have a piece of property and we bought four (4) acres behind it and it came with an easement. And it would have been right, literally, just right on the property line. So, we moved the easement to the end of the property. And with the people that we bought it from. I don't remember a term like legal title to an easement that somebody has access across my property. So, in the future, we needed an easement and I know it's there. Where in the, we have seventy-seven (77) pages of documents. And I'm sure that theirs a title somewhere. A deed that say's their legal title to the easement. And I'm wondering if you could help me find it on the title?"

Alexandra Bobbit stated, "Sure. So that on is titled the grant of easement and let me see if I have. A giant stack of paperwork. Let me see if I have a page number on this."

Melissa Martin stated, "And council, if I may at some point comment on this as well, because I think it's critical to this discussion and frankly a misstatement of the law."

The City Attorney stated, "At a certain point, we're going to have to."



Melissa Martin stated, “Yes, I understand that sir and I really think this is a clear misstatement of the law, and it needs to be clarified. And I want that to be on the record please.”

Alexandra Bobbit stated, “I would like to say it’s on page sixteen (16) but can I? Is it ok if I approach?”

The City Attorney stated, “Go ahead.”

Alexandra Bobbit stated, “And let me show you what it looks like. This will make.”

Councilor Lacewell stated, “Ok.”

Alexandra Bobbit stated, “So, it’s the one that looks like this.”

Councilor Lacewell stated, “Oh, its on one of those.”

Alexandra Bobbit stated, “And then it says in grant easement, so.”

Councilor Lacewell stated, “Ok, I’ll look for that one. Ok, alright, sure.”

The City Attorney stated, “Ms. Martin.”

Melissa Martin stated, “Yes, council. I just like to clarify and I mean no disrespect to opposing counsel but this is a very fundamental concept in property law and I’m concerned that this hearing has gone so sideways that we are now alleging that there is ownership rights of associated with an easement. That he owns title to this property. And I would like to very clearly state pursuant to the laws of New Mexico, ‘an easement is a right to use another person’s property for specific, a specific purpose, but it does not equate to ownership of the land.’ And it is a nonpossessory right. So, I want to be clear that, that is exactly what makes an easement, an easement rather than property owned by Excalibur. Yes, the easement right is conveyed under the deed, but that does not mean he has title to that land. He has a right. That is fundamental to this discussion that he owns no title to the property that abuts the highway. So, I want to make that very clear. That is a fundamental principal of property law and I would. I’m sure the city attorney would agree with me on that. But there is a difference between a right and title ownership of that land.”

The City Attorney stated, “Ok, my turn. And I’ll be quick. This is a nonpossessory right, but I would argue that, and this is under City of Rio Rancho versus Amrep southwest, 150 New Mexico 428, ‘that an easement is a portent. It passes with the land to which it which it is a portent. And to which it is created to serve the dominant estate.’ So, it’s a nonpossessory right, but it’s a right that passes with that piece of property. It’s an indisputable right that goes with that



piece of property. So, the argument that there's, that this ambiguous, in my opinion, begs the question, because it's so non ambiguous as clear as the nose on your face. It says a thirty (30) foot wide easement for access and utilities. So often times, we run across easements that says for use by, for personal use only. Some of them say, for commercial use only. Some of them say, for no commercial use. Ok, but there is no such limiting language on this grant of easement. It's an easement that says its for access. So on, it's a, council, it's the city's argument that when one piece of land, with an easement on it, that is zoned for C-2, it's used for that piece of property. And I believe that it grants an abutment to the arterial road. I would, I guess, on the other side of the point say, the wonderful thing here is that it's a conditional use and it has to be granted because the unconditional uses that can go into this parcel next month. When the current owner sells it, if this doesn't go through, our automobile, boat, recreational vehicles and sales, automobile upholstery shops, churches, entertainment, essential utilities, hospitals, medical clinics, metal working and machine shops, hotels, motels, cabins, bed and breakfasts, and other such lodging establishments, radio and television studio, rental stores, restaurants, bars, package liquor sells, retail sales services, schools, structural services, (inaudible) small engine repair, (inaudible) shops, and pawn shops. None of those require a conditional use. It's one of the beautiful parts of the city code is that the conditional use gives this council the right to grant use of that property, with certain conditions. Now what the Planning Commission did was grant use of that piece of property, based upon abutting being the right of an easement that goes with that piece of property when it's transferred of record. Whenever he transfers it, that easement goes with it. It's a right. It's a nonpossessory right but it's a right. So, so this was limited to a five (5) mile per hour speed limit. And I don't know how far you can spit councilor, but if you can spit on it, that's fine. But it doesn't matter, it was bought with that easement. The easement was placed on there prior to the protestants, the absence of the appellants, acquirement of property to it. So, they acquire. Whenever you acquire property, you acquire it as it comes to you. And so, that property came to them as a C-2 with all the rights it inherits within our planning code. And the applicant has filed an application for conditional use, the Planning Commission heard that application and granted that application. And, and the appellant have the perfect right to appeal that to this commission and that is what they have done. But I would ask the Council uphold the decision of the Planning Commission and grant conditional use. I might say that you have been inundated with a lot of information today. And if the Council wants, I understand to withhold a certain period of time at which to render a decision. If you feel that's necessary. Or if you wish to go ahead and render a decision today, that's fine too."

Melissa Martin stated, "And council If I may respond. I'd just say that, you know."

The City Attorney stated, "You've responded over and over again. Time for an argument is over."

(inaudible)



Mayor Holman stated, "Councilor Proctor, you have the floor."

Councilor Proctor stated, "Thank you, mayor. Well, when did your client start seeking purchase of this property? When did you start looking at the property sir?"

The City Attorney stated, "If I may remind you, you're sworn in."

Edgar Ontiveros stated, "Last year. Sometime last year. Probably, July forward."

Councilor Proctor stated, "In 2023."

Edgar Ontiveros stated, "Yes, sir."

Councilor Proctor stated, "Ok, thank you."

Mayor Holman stated, "Ok, yes councilor."

Councilor Lacewell stated, "I'd like to address the other councilors. I know that Councilor Miller and I have seen this property. And I would also like to see it. I also want to study the ordinances that we have. The terminology to the words like, 'and' and 'or.' And so, personally, I'd like to postpone the vote on this until the next City Council meeting and I was just wondering what their input would be."

Mayor Holman stated, "Yes, sir."

Edgar Ontiveros stated, "One quick comment to your question of when I bought the property in the ads, and everywhere that it was posted. It was posted for RV use and so it was heavily, you know."

Councilor Proctor stated, "I understand. I was just curious sir. When your interest come for that property to put an RV park in there. That's all."

Edgar Ontiveros stated, "Ok, thank you."

Melissa Martin stated, "Council, for the record, I'd just like to say that there was more I'd like to address the city attorney's statements. And I was unable to do so, but I would like it, the record to reflect that request was denied."

The City Attorney stated, "Well, can, how long will it take?"

Melissa Martin stated, "Just one moment. Just one moment."



The City Attorney stated, “Go ahead.”

Melissa Martin stated, “I just want to state that I’m looking at City of Rio Rancho v. Armrep southwest and I would state. In response to your claim, over and over again, that the zoning controls, the zoning controls. I have seen no case law presented to state that the zoning of a piece of property is the manifest intent of the parties. And the case that you, so up-ly cited, states ‘it sets forth the principal that an easement should be construed according to its express and specific terms as a manifestation of the intent of the parties.’ Now, again, I have seen. There’s this rush to say that because the property is zoned a certain either residential or commercial, that apparently in Ruidoso that means that anything that falls under those zoning ordinances flies on an easement. And I would just strongly, you know, strongly oppose that notion. That’s not, that’s not how New Mexico interprets easements. It’s not. I can tell you, from looking at the case law when you look at a residential easement. There’s a lot that goes into determining the scope. Not just the zoning of that property. Thank you.”

The City Attorney stated, “So, as long as you have a (inaudible). I think that manifesting is stated by the easement itself. It says it’s a thirty (30) foot wide easement with access and utilities. I don’t see any limiting language in that residential.”

Melissa Martin stated, “Which is why it would go to the surrounding circumstances, thank you.”

The City Attorney stated, “Which is C-2 zoning.”

Councilor Lacewell stated, “Mayor, would it be ok for me to make a motion?”

Mayor Holman stated, “Yes, it sure would.”

Councilor Lacewell stated, “I move that we postpone the vote on this issue until the next city council meeting.”

Councilor Baber seconded and upon a roll call vote of all voting “aye” the motion passed.

The City Attorney stated, “I do want to say that if any of counsel want to present a written document to the Council, you’re free to do so. You’ll need to give the opposing counsel a copy of that and that needs to be done.”

Councilor Proctor stated, “I thought it said forty-five (45) days.”

The City Attorney stated, “That’s the decision. So, March the eleventh. So, if you want to present something to Council by March the fourth for them to review, that’s fine.”



NEW BUSINESS

Councilor Lacewell moved to address item D before all items under New Business. Councilor Proctor seconded and upon a roll call vote of all voting “aye” the motion passed.

D. Discussion and Possible Action on Approval of the Law Enforcement Retention Fund Grant.

Councilor Lacewell moved to discuss the Law Enforcement Retention Fund Grant. Councilor Proctor seconded and upon a roll call vote of all voting “aye” the motion passed.

The Deputy Police Chief presented and requested for approval of the grant.

Councilor Lacewell moved to approve Law Enforcement Retention Fund Grant. Councilor Proctor seconded and upon a roll call vote of all voting “aye” the motion passed.

A. Discussion and Possible Action on Approval of Agreement for the All American Park Paving and Drainage Project.

Councilor Lacewell moved to discuss the Approval of Agreement for the All American Park Paving and Drainage Project. Councilor Baber seconded and upon a roll call vote of all voting “aye” the motion passed.

The Public Works Director presented and requested for approval of the Agreement.

Councilor Baber moved to approve the Agreement for the All American Park Paving and Drainage Project. Councilor Proctor seconded and upon a roll call vote of all voting “aye” the motion passed.

B. Discussion and Possible Action on Approval of Change Order No. 1 to La Luz Dirt and Paving LLC to correct quantity's of basecourse on the Colonias CiF 5789 project in the amount of \$30,548.44.

Councilor Lacewell moved to discuss the Approval of Change Order No. 1 to La Luz Dirt and Paving LLC to correct quantity's of basecourse on the Colonias CiF 5789 project in the amount of \$30,548.44. Councilor Baber seconded and upon a roll call vote of all voting “aye” the motion passed.

The Public Works Director presented and requested for approval of Change Order No. 1.

Councilor Proctor moved to approve Change Order No. 1 to La Luz Dirt and Paving LLC to correct quantity's of basecourse on the Colonias CiF 5789 project in the amount of \$30,548.44. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.



C. Discussion and Possible Action on Approval of Resolution 2024-07, a Resolution Authorizing the Submittal of an Application for the 2024-2025 New Mexico Department of Transportation Municipal Arterial Program Funds for Street and Drainage Improvements within Ruidoso Downs, New Mexico.

Councilor Baber moved to discuss the Approval of Change Order No. 1 to La Luz Dirt and Paving LLC to correct quantity's of basecourse on the Colonias CiF 5789 project in the amount of \$30,548.44. Councilor Lacewell seconded and upon a roll call vote of all voting “aye” the motion passed.

The Public Works Director presented and requested for approval of Resolution 2024-07.

Councilor Baber moved to approve Resolution 2024-07, a Resolution Authorizing the Submittal of an Application for the 2024-2025 New Mexico Department of Transportation Municipal Arterial Program Funds for Street and Drainage Improvements within Ruidoso Downs, New Mexico. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.

E. Discussion and Possible Action on Approval of the Creation of a Temporary Multi-Jurisdictional Hazard Mitigation Plan Advisory Committee.

Councilor Lacewell moved to discuss the Creation of a Temporary Multi- Jurisdictional Hazard Mitigation Plan Advisory Committee. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.

Councilor Baber presented on the findings of the Multi- Jurisdictional Hazard Mitigation Plan.

Councilor Baber moved to have a public hearing on the Multi- Jurisdictional Hazard Mitigation Plan at the next regular council meeting. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.

F. Discussion and Possible Action on Approval of Ruidoso Downs Beautification Committee Amended By-Laws.

Councilor Miller requested additional time to produce the Amended By-Laws and requested this be postponed.

Councilor Lacewell moved to postpone the Ruidoso Downs Beautification Committee Amended By-Laws to the April 22nd Regular City Council Meeting. Councilor Baber seconded and upon a roll call vote of all voting “aye” the motion passed.



G. Discussion and Possible Action on Approval of the City of Ruidoso Downs Certificate of Records Destruction 2024-001.

Councilor Lacewell moved to discuss the Approval of the City of Ruidoso Downs Certificate of Records Destruction 2024-001. Councilor Baber seconded and upon a roll call vote of all voting “aye” the motion passed.

The City Clerk presented the Certificate of Records Destruction 2024-001.

Councilor Lacewell moved to approve the City of Ruidoso Downs Certificate of Records Destruction 2024-001 with the audio/video recordings to be destroyed 2 years after the meeting date. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.

H. Discussion and Possible Action on Approval of Resolution 2024-06, A Resolution Establishing the City of Ruidoso Downs Governing Regular Council Meetings and Workshop Meetings.

Councilor Lacewell moved to discuss the Approval of Resolution 2024-06, A Resolution Establishing the City of Ruidoso Downs Governing Regular Council Meetings and Workshop Meetings. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.

Mayor Holman presented Resolution 2024-06.

Councilor Lacewell moved to approve the Resolution 2024-06, A Resolution Establishing the City of Ruidoso Downs Governing Regular Council Meetings and Workshop Meetings. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.

ADJOURNMENT

There being no further business to come before the Governing Body, Mayor Holman adjourned the regular meeting at 5:32 p.m.

MINUTES ARE DRAFT UNTIL APPROVED ON:

Passed and Approved on this 25th day of March 2024.

APPROVED:

Dean Holman, Mayor

ATTEST:

Alejandra L. Giron, MMC
City Clerk/Treasurer



AGENDA MEMORANDUM

CITY OF RUIDOSO DOWNS

APPROVAL OF GOVERNING BODY MINUTES -

To: Mayor Holman and Councilors

Presenter(s): City Clerk/Treasurer

Meeting Date: April 22, 2024

Re: *March 25, 2024, Regular Meeting Minutes

Item Summary:

The Governing Body met in a Regular Session on March 25, 2024, Regular Meeting Minutes, and the minutes attached are the product of the proceedings.

Financial Impact:

This item has no financial impact.

Recommendations:

To approve, March 25, 2024, Regular Meeting Minutes.

ATTACHMENTS:

Description

Draft Minutes March 25, 2024, Regular Meeting Minutes

**CITY OF RUIDOSO DOWNS
GOVERNING BODY, REGULAR MEETING
123 DOWNS DRIVE, RUIDOSO DOWNS, NEW MEXICO 88346
MARCH 25, 2024**

The City of Ruidoso Downs Council met in a regular session on Monday, March 25, 2024. Mayor Holman called the regular meeting to order at 5:30 p.m. and asked Councilor Miller to lead in the Pledge of Allegiance.

ROLL CALL

Present: Councilor Proctor, Councilor Baber, Councilor Miller, Councilor Lacewell

Meeting Participants:

John Underwood, City Attorney
Alejandra L. Giron, City Clerk/Treasurer
Lori Plant, Municipal Judge
Joey Jarvis, Public Works Director
Joe Commander, Police Chief
Robert Knight, Deputy Police Chief
Jennet Recendez, Planning Services Director
Heath Keck, Fire Chief

Meeting Participants via Phone:

Mary Castaneda, Finance Director

APPROVAL OF AGENDA

Councilor Lacewell moved to approve the agenda with the removal of item A and item C under New Business. Councilor Baber seconded and upon a roll call vote of all voting "aye" the motion passed.

APPROVAL OF CONSENT AGENDA

(All matters listed under Item 5 will be enacted by one motion.)

A. *Approval of Fiscal Year 2025 Budget Process.

B. *Approval of Personnel Recommendation to Hire Miguel Gallegos-Flores for the Position of Street Maintenance Worker for the Public Works Department.

C. *APPROVAL OF GOVERNING BODY MINUTES

- *March 11, 2024, Workshop Meeting Minutes
- *February 26, 2024, Regular Meeting Minutes
- *February 12, 2024, Regular Meeting Minutes
- *January 22, 2024, Regular Meeting Minutes
- *January 8, 2024, Regular Meeting Minutes
- *December 11, 2023, Regular Meeting Minutes



Councilor Lacewell moved to approve consent agenda with the removal of the December 11, 2023, Regular Meeting Minutes and the February 26, 2024, Regular Meeting Minutes for discussion. Councilor Miller seconded and upon a roll call vote of all voting “aye” the motion passed.

PUBLIC INPUT

Bonnie Richardson made comments.

COUNCILORS COMMENTS

Councilor Lacewell moved to have her comments be verbatim. Councilor Proctor seconded and upon a roll call vote of all voting “aye” the motion passed.

Councilor Lacewell stated, See Exhibit A.

Councilor Miller made comments.

MAYORS COMMENTS

Mayor Holman made comments.

A. Monthly Reports and Presentations

The Finance Director stood for questions on the financial reports that were provided in the packet for the month of February.

The Public Works Director presented on the operations of the Public Works Department for the month of February.

The Deputy Police Chief presented on the operations of the Police Department for the month of February.

The Planning Services Director presented on the operations of the Planning & Zoning Department for the month of February.

The Fire Chief presented on the operations of the Fire Department for the month of February.

The Municipal Judge presented on the operations of the Court for the month of February.

PUBLIC HEARING

A. Adoption of Resolution 2024-03, a Resolution of the City of Ruidoso Downs adopting the 2023 Lincoln County Multi- Jurisdictional Hazard Mitigation Plan Update.



Mayor Holman stated, "And that would be our."

Councilor Proctor stated, "Hazard Mitigation plan."

Mayor Holman stated, "John, can you help me out on this. I noticed that was a public hearing."

The City Attorney stated, "What happened with the committee?"

Councilor Baber stated, "We decided not to have a committee. And we were going to call Wendy and see what was happening. And everything has been approved in this book. Every other county has approved it. This is the only one that hasn't."

The City Attorney stated, "Right."

Councilor Baber stated, "In order to make them changes, you got to do it on the next ref because if you do it now then it's going to have to go back to FEMA. You know the other one. Homeland security, and then it would have to be passed through everybody else again. So, they said the best thing they can do is pass this. If you want to make changes, put them in the next one."

Mayor Holman stated, "Ok. Yeah, I remember you got railroaded. I mean you volunteered to do that for me."

Councilor Baber stated, "But that."

(inaudible)

The City Attorney stated, "But, I think that accurately brings it up to speed for me. So, as far as I'm concerned, we're ready for a motion."

The City Clerk stated, "You don't want to open it up to the Public?"

The City Attorney stated, "Do you want to have a public hearing, sure."

The City Clerk stated, "That's what they requested for at the last."

The City Attorney stated, "I apologize."

Councilor Baber stated, "Did we not have it at the Workshop?"

(Inaudible)



Councilor Proctor stated, "On that there. Councilor Lacewell used to work for the shop, the government department he worked for."

Councilor Lacewell stated, "BLM."

Councilor Proctor stated, "BLM, and he was familiar with a lot of this stuff. So, I leave with you, the one that I had of the two, now three that I've got but anyway. He went in and found a lot of areas that needed to be added to it. So, what I would like to suggest is that we can auxiliary that into our safety program, have it written up, have it implemented. Then when this HMP comes around again, we can put that in it and we'll be covered all the way around."

The hearing was opened to the Public at 6:34 p.m.

The City Attorney stated, "Can you say your name again for the record?"

Bonnie Richardson stated, "Bonnie Richardson. I have a recent mail from Ruidoso, the Village of Ruidoso to Ruidoso landowners and it says tools management standard 42-80 and it has five, five things on here about fuel management to reduce the dangers of fire. And so, I would like for the council to have this to see where, at least we're on board with Ruidoso. And, what they're saying is that they raised the standards for fuel management in their area which lowered our home owner's insurance cost. And, boy, we're all for that because we've seen those interest costs spiraled on this year."

Councilor Proctor stated, "Well, that's because of all the forest fires Bonnie, up in northern New Mexico, the ones that we've had here, the ones that had that control burn behind the banks of the ski run in that whole area. So, I know what you're talking about but its going to be awhile before we (inaudible)."

Bonnie Richardson stated, "So, if a fire ever starts that side of Walmart, we're sunk, (inaudible) because the wind blows this way. And, I have copies for everybody."

Mayor Holman stated, "What Bonnie is referring to is the southwest coming from the direction of the reservation."

Beth Miller stated, "Beth Miller, resident of Ruidoso Downs for twenty-eight (28) years. What I read through that, whatever it was three hundred and sixty-four pages or whatever, it was but what I got out of it was that you might want to consider. They mandate that you cut certain trees and there are some people who have feelings about being told what to do on their property because like sometimes a tree will provide shade for afternoon sun or it may be, you know. You might want to just consider that as you're looking at what you're going to pass or what you're not going to pass. And, they actually in their statements, concluded in this they will fine you, fine



them until they become compliant. So, you may not wish to become compliant. Something to consider.”

Councilor Miller stated, “I asked Wendy, that presented it to us, the migration plan, and she said that’s something your council would have to do. Ruidoso has done that, they make people. My friend Marilyn she bought that house. They walked around and marked which trees that she needed to get out of there, out of her yard, but that comes from this council. That’s not part of the mitigation plan.”

Beth Miller stated, “The WWI, the Wildland Interface?”

Councilor Miller stated, “No, our council, right here will have to make that.”

Beth Miller stated, “If you adopt it though in its totality then it has that kind. It has the ability to bind you, just saying. I don’t know if you.”

(inaudible)

Councilor Baber stated, “They’re not going to come in city to city and be doing that to everyone.”

Councilor Miller stated, “No, they won’t. It’s a very costly thing.”

Councilor Baber stated, “They’re just trying to tell you clean up your yard and it won’t burn up.”

Beth Miller stated, “But if they have that capability though W.G., can, I believe. John, what do you think?”

The City Attorney stated, “My, I also would comingle with what she told me. She said, unless there is local enforcement, there’s no problem.”

Councilor Baber stated, “Yeah.”

Councilor Miller stated, “We would have to enforce that.”

Beth Miller stated, “Should you make a clause or an amendment?”

Councilor Baber stated, “In five years.”

Beth Miller stated, “Ok.”



Councilor Baber stated, “No, I’m serious. They redo it every five years.”

Beth Miller stated, “Then I’ll do my best. Can you make a clause within this government?”

The City Attorney stated, “Not unless you take it back to every municipality and county that.”

Beth Miller stated, “So, you have to go by it.”

The City Attorney stated, “Yes.”

Councilor Baber stated, “Yeah, but your local authorities are the ones that are going to be.”

The Fire Chief stated, “No, they’re just suggestions is what they’re saying. They want the city to give them, to give the city the option to adopt. So, it’s not that they can come in.”

Beth Miller stated, “Have you read it?”

The Fire Chief stated, “Yes, I’ve read it. So, basically, it’s just a suggestion that the city wants to adopt that ordinance, then they can make it an ordinance and then enforce it. Otherwise, it’s just a suggestion at that point. There’s nothing. There’s no enforcement on it or anything of that matter.”

Councilor Baber stated, “They’re not going to come in and cut all them trees down.”

The Fire Chief stated, “No.”

Beth Miller stated, “No, but they can fine you is what I’m saying.”

Councilor Baber stated, “No, they’re not.”

Beth Miller stated, “All the people are, ok, thank you Joey.”

The Public Works Director stated, “All the people do that right now.”

Beth Miller stated, “Right.”

Bonnie Richardson stated. “I’m sorry, at fifteen hundred dollars to cut down a tree, this is something that needs a lot of thought. Also, these people who rake up pine needles and branches and pile them outside their yard, we’ve got to have better garbage pickup.”



Councilor Baber stated, “If they will put them where, I’ve done. I’m here at all these meetings and I’ve got pictures. If people would put that stuff where it’s supposed to go, they will be glad to pick it up but they. I’ve got pictures where they’ve got a red lined mark right there ‘put it there’ and you see them putting it down there. They’re not going to pick it up like that.”

Mayor Holman stated, “And what happens so often and I’m glad that you’ve been working on this. They’ll stack it too close to a fence and so that grapple that they have, they’re not going to pick that up if they think they’re going to damage that fence. And, you tell people you know, not to do that. And, most of them don’t know. It doesn’t get picked up because it’s too close to a fence or something that would cause the Greentree Solid Waste a problem. If they damage something, so they just don’t pick it up. It needs to be, as the Councilor said, it needs to be where their specifications otherwise they’re not going to pick it up.”

Councilor Baber stated, “And the other good news is hoss back there got him a brand-new grappling truck.”

Mayor Holman stated, “The question is, is hoss going to use it.”

Councilor Baber stated, “I bet hoss will find somebody.”

The Public Works Director stated, “Code Enforcement can do their part and get all these people, then I can come behind and clean up the mess. Me and Jim have a pretty good plan started. Anybody of the residents that can call Greentree and they will tell you where to put your brush and they’ll also go out there and mark it on the road.”

The hearing was closed to the Public at 6:43 p.m.

Councilor Proctor moved to adopt Resolution 2024-03. Councilor Baber seconded and upon a roll call vote of all voting “aye” the motion passed.

UNFINISHED BUSINESS

A. Determination of Sara Sorenson, on behalf of herself, Will Sorenson, Charlie Sorenson, and Mike Sorenson Appeal of The Planning Commission Approval of P & Z Case 2023-11, Approving Conditional Use to allow for a Recreational Vehicle Park at the Property located in a C-2 Zoning District.

The City Attorney stated, “So, we had, I appreciate very much whoever did this verbatim of the last hearing on, what was it, February the twenty-sixth of last month. The council requested that we postpone the decision until today’s date. Which is fine. You’ll probably note, in reviewing the decision to be render today. No sooner than the fifteen (15) days from the day of the public notice the City Council shall hear the appeal and render a decision within forty-five (45) days.



So, it can't be postponed for an additional period past the fifteenth day. It has to be done at a regular council meeting. So, in making your decision, the City Council shall study the record of the action of the appeal. If it was postponed, the City Council shall make a decision of the appeal at the next regularly scheduled meeting. And, the things that the City Council may do is reverse the order. That would be the order of the Commission granting the conditional use of the RV park. To side in favor of the appellant. Which in this case would actually be the same thing and make any change in any order or primary decision or determination. And, the only change that the condition of the Commission put on it was the five (5) miles an hour speed limit while using that particular easement. And that the easement, so, I think it's been debated and discussed and discussed and rediscussed. And, papers have been presented by both the city, the appellant, and the applicants attorneys, Council has received all of those. I just need to tell you all, if we can't make a decision by majority vote then the decision of the planning commission stands. So, the city, on behalf of the City Council shall issue a written notice of this decision to all concerned. So, after you all make this decision, Alejandra will be tasked with writing this decision out. And in this decision, I would request that whoever makes the motion, that in their motion, you state the facts as, that the decision has been based on. It says, 'the facts of the matter is determined by the City Council, the reasons for it's decision, and any conditions applied to the decision.' So, those are the things that you may make a simple motion and be supplemented by an additional motion. If you prefer of stating the reasons for the decision and so forth and so on, but I don't. The time for debate has ended and of course the decision of this council is subject to appeal to the district court by whoever feels aggrieved by this decision. So, it just allows a due process to take place."

Councilor Baber stated, "So, if they don't like our decision, they can just go to court?"

The City Attorney stated, "That's correct."

Councilor Miller moved to uphold the Planning Commission's decision. Councilor Proctor seconded and upon a roll call vote of the following, the motion failed. Aye: Councilor Miller. Nay: Councilor Lacewell, Councilor Proctor, Councilor Baber.

The City Attorney stated, "Do we have another motion?"

Mayor Holman stated, "Doesn't seem to be one."

Councilor Lacewell stated, "And what would the purpose of that be?"

The City Attorney stated, "That would be to reverse the order. To deny the order, but I appreciate the fact that a positive motion was made, but what I've got to have is, I have got to have reasons made of the record for you denying, for the decision."



Councilor Proctor stated, “Oh ok. I’ve got that right there.”

Councilor Baber stated, “So, we didn’t just kill it then?”

The City Attorney stated, “You killed it but, but in this. Normally, but what the ordinance says is that ‘the city council by majority vote may reverse any order the side in favor of the appellant or make any change in the order.’ So, as I read that, I was basically implying the order that was entered by the Planning Commission. And so, what I’m asking next is for a motion stating you’re the reasons for your denial of that motion. What facts you have to, what you based your decision to deny that, upholding that Planning Commission order on.”

Councilor Proctor moved to reverse the Planning Commission’s decision and stated, “Ok, my reason is city statute 155-08-1, Item 1, General Requirements. Access Minimum area recreational vehicle parks shall abut and have. The word, ‘shall’ is mandatory. Abut and have access from major arterial streets. Access. It doesn’t say anything anywhere in the other seven (7) items in this general request or requirements that says nothing about easements at all. So, the reason I’m going that way with it. It takes somebody that’s got more savvy than what we have right here. To battle this out, sort of speak.”

The City Attorney stated, “So, you’re basing it upon.”

Councilor Proctor stated, “The city ordinance right here on what I just gave.”

The City Attorney stated, “155 goes 108-1, requiring abut to a major arterial road.”

Councilor Proctor stated, “Yup.”

Councilor Baber seconded and upon a roll call vote of the following, the motion passed. Aye: Councilor Lacewell, Councilor Proctor, Councilor Baber. Nay: Councilor Miller.

B. Discussion and Possible Action on approval of a Pay Raise for all Police Department Personnel After Restructuring of Police Department Personnel.

Councilor Proctor moved to approve the Pay Raise for Officers Malone, Officer Becker, and Officer Hankshaw and the two (2) vacant officer positions. Councilor Lacewell seconded and upon a roll call vote of all voting “aye” the motion passed.

Discussion on the December 11, 2023, Regular Meeting Minutes.



Councilor Lacewell moved to approve the December 11, 2023 Regular Meeting Minutes. Councilor Proctor seconded and upon a roll call vote of the following, the motion passed. Nay: Councilor Baber. Aye: Councilor Miller, Councilor Proctor, Councilor Lacewell.

Discussion on the February 26, 2024, Regular Meeting Minutes.

Councilor Lacewell moved to have the February 26, 2024, Regular Meeting Minutes be rewritten and corrected specifically to Mr. Lewicki's statement about the corrupt government. Councilor Miller seconded and upon a roll call vote of all voting "aye" the motion passed.

NEW BUSINESS

B. Discussion and Possible Action on approval of Submittal of the NMDFA Grant Application for Law Enforcement Protection Funds.

Councilor Proctor moved to approve the Submittal of the NMDFA Grant Application for Law Enforcement Protection Funds. Councilor Lacewell seconded and upon a roll call vote of all voting "aye" the motion passed.

D. Discussion Possible Action on the Appointment of Mayor Pro-Tem, Judy Miller to the Consolidated Joint Dispatch Board.

Councilor Proctor moved to approve the Appointment of Mayor Pro-Tem, Judy Miller to the Consolidated Joint Dispatch Board. Councilor Baber seconded and upon a roll call vote of all voting "aye" the motion passed.

ADJOURNMENT

There being no further business to come before the Governing Body, Mayor Holman adjourned the regular meeting at 7:14 p.m.

MINUTES ARE DRAFT UNTIL APPROVED ON:

Passed and Approved on this 22nd day of April 2024.

APPROVED:

ATTEST:

Dean Holman, Mayor

Alejandra L. Giron, MMC
City Clerk/Treasurer



EXHIBIT A

(City Clerk: Please see that my comments are verbatim and included "for the record" in the minutes for this meeting. March 25, 2024)

To the Citizens of Ruidoso Downs:

Thank you for attending today.

Here a summary of the most important issues we've dealt this year:

On January 8, 2024, this City Council did not confirm four individuals working for the city who are being paid by the citizens of Ruidoso Downs. In effect, those individuals were fired. Collectively you (and we) are paying over \$26,000 a month in wages just to these 4 people. If we were paying the appropriate employees and appointed officials it would reduce that wasted amount of money by nearly \$10,000 a month.

The mayor intentionally failed to comply with the laws of New Mexico when he failed to present four names to replace those four people at the January 22nd city council meeting. NM Statute § 3-11-5 (A) says in part, "If the governing body fails to confirm any person as an appointive official or employee of the municipality, the mayor at the next regular meeting of the governing body **shall** submit the name of another person to fill the appointed office or to be employed by the municipality.

By knowingly and willfully breaking this law, he is costing the city of Ruidoso Downs nearly \$10,000 a month, and this is the 3rd month of his premeditated and willful noncompliance. (Nearly \$30,000)

NM Statute § 3-11-4 – says that the mayor is the chief executive officer and SHALL:

C. perform other duties, compatible with his office, which the governing body may require.

*The Governing Body has directed and we require Mayor Holman to obey NM Statute § 3-11-5, yet he refuses to do it. Now he is breaking more than 2 state laws.

In the NM Constitution article III § 1 it says:

"The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others..."

With total agenda control, only this mayor can determine what is on the agenda.

The mayor's status as presiding officer does not confer any power to determine rules of procedure which the NM state statutes say the City Council SHALL determine.

Mayor Holman has usurped the position of the Legislative Branch with total agenda control causing conflict and dysfunction which is a threat to local democracy and civil discussion. The legislative powers of the City Council are extremely diminished by the improper legislative control of this mayor and his Executive Branch over the City Council.

Last year a mediator was sent here by the NM State Municipal League to educate the Executive Branch how to conduct itself and cease attempting to control the Judicial Branch. That expensive and competent mediator made very little headway into the problem because this mayor decided that the findings and remedies given were only suggestions. He was also told to let the Judge on the agenda when she asked to be on the agenda, but he has refused to let her on the agenda for over 13 months. She has to show up as a citizen during citizen's comments to address the Governing Body.

Now this Executive Branch is assuming powers of the Legislative Branch. This mayor refuses to let the Governing Body put anything on the agenda as demonstrated by these denied requests to be on the agenda; all of these are for this year.

Mayor Holman is breaking state laws, local laws and even personnel policies, appearing as if he believes he is above the laws and regulations established for you and me and the rest of society.

AGENDA MEMORANDUM

CITY OF RUIDOSO DOWNS

APPROVAL OF GOVERNING BODY MINUTES -

To: Mayor Holman and Councilors

Presenter(s): City Clerk/Treasurer

Meeting Date: April 22, 2024

Re: *April 8, 2024, Workshop Meeting Minutes

Item Summary:

The Governing Body met in a Workshop meeting on April 8, 2024, and the minutes attached are the product of the proceedings.

Financial Impact:

This item has no financial impact.

Recommendations:

To approve, April 8, 2024, Workshop Meeting Minutes.

ATTACHMENTS:

Description

April 8, 2024, Workshop Meeting Minutes

**CITY OF RUIDOSO DOWNS
GOVERNING BODY, WORKSHOP MEETING
123 DOWNS DRIVE, RUIDOSO DOWNS, NEW MEXICO 88346
APRIL 8, 2024**

The City of Ruidoso Downs Council met in a workshop meeting on Monday, April 8, 2024. Mayor Holman called the workshop meeting to order at 3:00 p.m. and lead in the Pledge of Allegiance.

ROLL CALL

Present: Councilor Proctor, Councilor Baber, Councilor Miller, Councilor Lacewell

Meeting Participants:

Alejandra L. Giron, City Clerk/Treasurer
Joe Commander, Police Chief

NON-ACTION ITEM(S)

Mayor Holman removed Item B from discussion.

A. Discussion on Change Order No. 1 for the All American Park Drainage Improvement Project in the amount of \$55,899.56.

No discussion was held on Item A.

ADJOURNMENT

There being no further business to come before the Governing Body, Mayor Holman adjourned the workshop meeting at 3:09 p.m.

MINUTES ARE DRAFT UNTIL APPROVED ON:

Passed and Approved on this 22nd day of April 2024.

APPROVED:

Dean Holman, Mayor

ATTEST:

Alejandra L. Giron, MMC
City Clerk/Treasurer



AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - A.

To: Mayor Holman and Councilors

Presenter(s): Finance Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Adoption of Resolution 2024-08, a Resolution Approving the Budget Adjustment Requests for the Third Quarter of the 2024 Fiscal Year.

Item Summary:

These budget adjustment requests will accurately reflect the revenues and expenditures of the city. It is the recommendation and is in the best interest of the city and is recommended that the Governing Body approve the proposed Resolution.

Financial Impact:

See the attached for the budget adjustments financial impact.

Recommendations:

To approve, Adoption of Resolution 2024-08, a Resolution Approving the Budget Adjustment Requests for the Third Quarter of the 2024 Fiscal Year.

ATTACHMENTS:

Description

Resolution 2024-08

3rd.Qtr. Budget Adj. FY 24

**CITY OF RUIDOSO DOWNS
RESOLUTION 2024-08**

**A RESOLUTION APPROVING THE BUDGET ADJUSTMENT REQUESTS
FOR THE THIRD QUARTER OF THE 2024 FISCAL YEAR**

WHEREAS, the New Mexico Department of Finance and Administration requires that budget changes affecting the net revenues or expenses of a department or fund be approved by the Council; and

WHEREAS, these changes in revenues and expenses must be reported as part of the fiscal year 2024 quarterly report; and

WHEREAS, the purpose of these budget adjustment requests is to accurately reflect the revenues and expenditures of the City of Ruidoso Downs; and

WHEREAS, the City of Ruidoso Downs Governing Body reviewed the requests for adjustments to the 2024 Budget; and

WHEREAS, it was determined that the proposed budget adjustments would be beneficial for the citizens of the City of Ruidoso Downs; and

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Ruidoso Downs to the Third Quarter of the fiscal year 2024 budget adjustments attached as part of this action and respectfully request approval from the Local Government Division of the Department of Finance and Administration.

PASSED, APPROVED, and ADOPTED this 22nd day of April 2024 in regular session by the City of Ruidoso Downs Governing Body, at Ruidoso Downs, Lincoln County, New Mexico.

Dean Holman, Mayor

(SEAL)

ATTEST: _____
Alejandra L. Giron, MMC
City Clerk/Treasurer

Report Criteria:

Date	Reference Number	Payee or Description	Account Number	Account Title	Debit Amount	Credit Amount
BUDGET ENTRIES JOURNAL (BUDGET)						
01/31/2024	1 BUD ADJ		28-30-37152	NM COOP MAP L200619	.00	260,000.00-
01/31/2024	2 BUD ADJ		28-40-44067	NM MAP L200619	260,000.00	
01/31/2024	3 BUD ADJ		10-36-36600	FED Grant-HZ5053.44	.00	920,000.00-
01/31/2024	4 BUD ADJ		10-80-49010	FED Grant-HZ5053.44	920,000.00	
Total 124:					1,180,000.00	1,180,000.00-

Date	Reference Number	Payee or Description	Account Number	Account Title	Debit Amount	Credit Amount
BUDGET ENTRIES JOURNAL (BUDGET) (continued)						
02/28/2024	1 BUD ADJ		34-40-47380	ZIA TRANSIT ALAMOGORDO	56,430.00	
02/28/2024	2 BUD ADJ		34-40-47375	City Promo Advertisement	50,000.00	
02/29/2024	3 BUD ADJ		10-42-41040	Part-time Positions-Courts	1,040.00	
02/29/2024	4 BUD ADJ		10-42-42050	Insurance	52,195.00	
Total 224:					159,665.00	.00

Date	Reference Number	Payee or Description	Account Number	Account Title	Debit Amount	Credit Amount
BUDGET ENTRIES JOURNAL (BUDGET) (continued)						
03/05/2024	1 BUD ADJ		10-62-48050	Cap Out-Equipment	16,500.00	
03/05/2024	2 BUD ADJ		10-62-48035	Cap Out-Cameras	.00	16,500.00-
03/06/2024	3 BUD ADJ		10-72-46010	Materials & Supplies	.00	1,500.00-
03/06/2024	4 BUD ADJ		10-72-44040	Equipment Maintenance & Repair	1,500.00	
03/07/2024	5 BUD ADJ		29-40-44030	Vehicle Maintenance & Repair	.00	4,000.00-
03/07/2024	6 BUD ADJ		29-40-43010	Travel-Mileage and Per Diem	.00	2,500.00-
03/07/2024	7 BUD ADJ		29-40-46040	Uniforms	.00	1,000.00-
03/07/2024	8 BUD ADJ		29-40-47090	Insurance	.00	1,154.00-
03/07/2024	9 BUD ADJ		29-40-46020	Training	.00	950.00-
03/07/2024	10 BUD ADJ		29-40-44040	Equipment Maintenance & Repair	8,000.00	
03/07/2024	11 BUD ADJ		29-40-46010	Materials & Supplies	1,604.00	
03/07/2024	12 BUD ADJ		10-73-41040	Part-time fire employees	.00	23,601.00-
03/07/2024	13 BUD ADJ		10-73-41050	Overtime-Fire	7,000.00	
03/07/2024	14 BUD ADJ		10-73-42050	Insurance	11,501.00	
03/07/2024	15 BUD ADJ		10-73-44010	Building Maintenance & Repair	3,000.00	
03/07/2024	16 BUD ADJ		10-73-46010	Materials & Supplies	1,500.00	
03/07/2024	17 BUD ADJ		10-73-46050	Telephone & Communications	600.00	
03/01/2024	18 BUD ADJ		26-40-46030	Safety Equipment-EMS	8,000.00	
03/07/2024	19 BUD ADJ		20-30-36058	LERF PD DFA	.00	3,550.00-
03/07/2024	20 BUD ADJ		20-40-47012	LERF PD SALARIES	3,550.00	
03/31/2024	21 BUD ADJ		28-30-36400	Interest Income	.00	5,500.00-
03/31/2024	22 BUD ADJ		58-30-36400	Interest Income	.00	3,000.00-
Total BUDGET ENTRIES JOURNAL (BUDGET):					1,402,420.00	1,243,255.00-
References: 22 Transactions: 30						
Total 324:					62,755.00	63,255.00-
*** Journal is out of balance: \$159,165.00 ***						
Grand Totals:					1,402,420.00	1,243,255.00-

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - B.

To: Mayor Holman and Councilors

Presenter(s): Fire Chief

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval of the Purchase of a 2023 NFPA 1906 Compliant Brush Truck through a NM Statewide Price Agreement in the amount of \$270,498.00.

Item Summary:

411 Equipment, LLC is offering a 2023 NFPA 1906 Compliant brush truck mounted on a four door Ford F550 4x4 diesel engine.

Financial Impact:

The quoted price of \$270,498.00 is through CES Contract #2020-31B-C105-ALL with a discount of \$15,000.00. This price also includes delivery and training.

Recommendations:

To approve, Purchase of a 2023 NFPA 1906 Compliant Brush Truck through a NM Statewide Price Agreement in the amount of \$270,498.00.

ATTACHMENTS:

Description

411 Equipment Quote April 12, 2024



Equipment, LLC

1815 4th Street NW, Albuquerque, NM 87102
(505) 280-9143 Phone

April 12, 2024

City of Ruidoso Downs
Fire Department
Heath Keck, Fire Chief
122 Downs Dr,
Ruidoso Downs, NM, 88346

Dear Chief Heath Keck,

I would like to offer the city a new 2023 NFPA 1906 Compliant brush truck mounted on a four door Ford F550 4x4 diesel engine chassis via our CES Contract #2020-31B-C105-ALL. The price for a unit built as per the attached specifications would be \$270,498.00.

Ford F550 XL 4x4 4 Door Standard Brush with Aluminum Body	\$243,179
84" Cab to Axle	5,425
LED light(2)	8,500
Diesel Engine Driven Water Pump	14,820
Upgrade to 400 Gallon Water Tank	420
Decals	2,000
Loose Equipment	<u>11,154</u>
Total	\$285,498
<u>Discount</u>	<u>-15,000</u>
Grand Total	\$270,498

This price is for my stock unit, and it is available for immediate delivery. The price also includes delivery and training. I will have several brush trucks available in 2024 for delivery as soon as May of 2024. Those units will not have the discount.

I have attached a copy of our contract and specifications. Please give me a call if you have any questions.

Thank you for the opportunity,

Alexis Longoria
411 Equipment
Sales/ Customer Service

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - C.

To: Mayor Holman and Councilors

Presenter(s): Public Works Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval of Change Order No. 1 for the All-American Park Drainage Improvement Project in the Amount of \$55,899.56 including NMGRT.

Item Summary:

Change Order No. 1 will allow us to use the remaining funds to do earthwork and install curbing for the north baseball field parking lot. The city will still need to find funds to place basecourse and asphalt to complete the parking lot. This change order will be covered by grant funds.

Approx. 45k in Asphalt, and 6k in Basecourse to complete.

Financial Impact:

Recommendations:

To approve, Change Order No. 1 for the All American Park Drainage Improvement Project in the Amount of \$55,899.56 including NMGRT.

ATTACHMENTS:

Description

01_All_American_Park_-_Change_Order_No._1_to_Owner_03-27-2024

Contract Change Order			
No.		1	
Contractor: Renegade Construction, LLC 200 Crawford Blvd. Las Cruces, NM 88007		Project: All American Park Drainage Improvements	
Owner: City of Ruidoso Downs 123 Downs Drive Ruidoso Downs, NM 88346		CSLFRF 23-ZH5053-44	
Date of Issue: 03 / 27 / 2023		Effective Date: Date of Owner's Signature	
The Contractor is hereby directed to make the following changes in the Contract Documents			
Amount (w/o GRT)	Description		
\$52,151.19	Additive Bid Schedule I: North Parking Lot Earthwork, Concrete and work related thereto, excludes preparation		
	of parking lot subgrade, base course and asphalt.		
\$52,151.19	Sub Total		
\$55,899.56	Including NMGR @ 7.1875%		
Reason for Change Order			
Incorporate earthwork and concrete for Additive Bid Schedule I: North Parking Lot into the project			
Attachments: (List documents supporting change and justifying cost and time)			
Change Order Detail Sheet			
Change in Contract Price:		Change in Contract Times:	
Original Contract Price (w/ GRT):		Original Contract Times: Calendar Days <input checked="" type="checkbox"/> Working Days <input type="checkbox"/>	
\$778,381.67		Substantial Completion (days):	
		74	
Increase or Decrease from Previously Approved Change Orders:		Ready for Final Payment (days):	
		74	
Increase:		Increase or Decrease from Previously Approved Change Orders:	
\$0.00		Substantial Completion (days):	
Decrease:		Ready for Final Payment (days):	
\$0.00		0 increase	
Contract Price Prior to this Change Order:		Contract Times Prior to This Change Order:	
\$778,381.67		Substantial Completion (days):	
		74	
Increase or Decrease of this Change Order:		Increase or Decrease of this Change Order:	
Increase:		Substantial Completion (days):	
\$55,899.56		Ready for Final Payment (days):	
Decrease:		0	
\$0.00		0	
Contract Price with all Approved Change Orders:		Contract Times with all Approved Change Orders:	
\$834,281.23		Substantial Completion (days):	
		Ready for Final Payment (days):	
		74	
RECOMMENDED: DENNIS ENGINEERING COMPANY		ACCEPTED: City of Ruidoso Downs	
By:		By:	
Date:		Date:	
ACCEPTED: Renegade Construction, LLC		APPROVED BY FUNDING AGENCY: (if applicable)	
By:		By: N/A	
Date:		Date:	

Change Order Detail Sheet									
City of Ruidoso Downs- All American Park Drainage Improvements						Change Order No. 1			
Base Bid Schedule I: Main Parking Lot									
Item	Description	Unit	Contract Quantity	Unit Price	Extended Amount	Adjusted Contract Quantity	Quantity Change	Cost Change	To-Date Amount
203000	UNCLASSIFIED EXCAVATION	LS	1	\$23,183.47	\$23,183.47				\$23,183.47
207000	SUBGRADE PREPARATION	SY	7,510	\$3.50	\$26,285.00				\$26,285.00
304010	BASE COURSE 4", IN PLACE	CY	10	\$159.69	\$1,596.90				\$1,596.90
304020	BASE COURSE 6", IN PLACE	CY	1,240	\$100.30	\$124,372.00				\$124,372.00
423270	3" HOT MIX ASPHALT (HMA) SUPERPAVE, SP-IV, INCLUDING BITUMINOUS MATERIAL	SY	7,510	\$37.04	\$278,170.40				\$278,170.40
601110	REMOVAL OF SURFACING BY COLD MILLING, INCLUDING HAUL TO SITE FOR EXCESS SOIL	SY	1,399	\$4.93	\$6,897.07				\$6,897.07
602060	RIPRAP CLASS G	SY	4	\$87.34	\$349.36				\$349.36
603000	TEMPORARY EROSION AND SEDIMENT CONTROL	LS	1	\$6,023.42	\$6,023.42				\$6,023.42
608004	CONCRETE THICKENED EDGE SIDEWALK, 4"	SY	230	\$96.90	\$22,287.00				\$22,287.00
608106	CONCRETE DRIVEPAD, 6"	SY	30	\$123.99	\$3,719.70				\$3,719.70
609100	CONCRETE PARKING BLOCK, WITH REBAR ANCHORS, COMPLETE IN-PLACE	EA	31	\$121.14	\$3,755.34				\$3,755.34
609318	CONCRETE APRON CURB AND GUTTER, TYPE "F" 6" X 24"	LF	10	\$48.02	\$480.20				\$480.20
609424	CONCRETE BARRIER CURB AND GUTTER, TYPE "B" 6" X 24"	LF	1,250	\$36.67	\$45,837.50				\$45,837.50
609624	CONCRETE VALLEY GUTTER, 6" X 24"	LF	310	\$41.39	\$12,830.90				\$12,830.90
609706	CONCRETE LAYDOWN CURB AND GUTTER, TYPE "E" 6" X 24"	LF	40	\$48.02	\$1,920.80				\$1,920.80
618000	TEMPORARY TRAFFIC CONTROL AND MANAGEMENT	LS	1	\$2,124.56	\$2,124.56				\$2,124.56
621000	MOBILIZATION	LS	1	\$22,672.71	\$22,672.71				\$22,672.71
662400	MANHOLE ADJUSTMENT	EA	2	\$556.21	\$1,112.42				\$1,112.42
701000	ALUMINUM PANEL SIGN	SF	16	\$32.23	\$515.68				\$515.68
701100	STEEL POST AND BASE POST FOR PANEL SIGNS	LF	88	\$36.82	\$3,240.16				\$3,240.16
704000	REFLECTORIZED PAINTED MARKINGS	LS	1	\$13,257.65	\$13,257.65				\$13,257.65
704310	REFLECTORIZED THERMOPLASTIC ARROW	EA	35	\$564.70	\$19,764.50				\$19,764.50
704530	REFLECTORIZED THERMOPLASTIC HANDICAPPED SYMBOL	EA	12	\$602.34	\$7,228.08				\$7,228.08
801000	CONSTRUCTION STAKING BY CONTRACTOR	LS	1	\$10,643.14	\$10,643.14				\$10,643.14
901000	CONTRACTORS QUALITY CONTROL CONSTRUCTION TESTING	ALL	1	\$24,387.27	\$24,387.27				\$24,387.27
Sub-Total: Base Bid Schedule I: Main Parking Lot					\$662,655.23	Net Change:		\$0.00	\$662,655.23
Gross Receipt Tax @				7.1875%	\$47,628.34				\$47,628.34
Total: Base Bid Schedule I: Main Parking Lot					\$710,283.57				\$710,283.57

Change Order Detail Sheet									
City of Ruidoso Downs- All American Park Drainage Improvements						Change Order No. 1			
Additive Bid Schedule I: North Parking Lot									
Item	Description	Unit	Contract Quantity	Unit Price	Extended Amount	Adjusted Contract Quantity	Quantity Change	Cost Change	To-Date Amount
203000	UNCLASSIFIED EXCAVATION	LS		\$6,359.54	\$0.00	1	1	\$6,359.54	\$6,359.54
207000	SUBGRADE PREPARATION	SY		\$3.56	\$0.00				\$0.00
304010	BASE COURSE 6", IN PLACE	CY		\$100.30	\$0.00				\$0.00
423270	3" HOT MIX ASPHALT (HMA) SUPERPAVE, SP-IV, INCLUDING BITUMINOUS MATERIAL	SY		\$37.04	\$0.00				\$0.00
601110	REMOVAL OF SURFACING BY COLD MILLING, INCLUDING HAUL TO SITE FOR EXCESS SOIL	SY		\$4.93	\$0.00	466	466	\$2,297.38	\$2,297.38
602060	RIPRAP CLASS G	SY		\$87.34	\$0.00	8	8	\$698.72	\$698.72
608004	CONCRETE THICKENED EDGE SIDEWALK, 4"	SY		\$96.90	\$0.00	210	210	\$20,349.00	\$20,349.00
608106	CONCRETE DRIVEPAD, 6"	SY		\$123.99	\$0.00	10	10	\$1,239.90	\$1,239.90
609318	CONCRETE APRON CURB AND GUTTER, TYPE "F" 6" X 24"	LF		\$36.19	\$0.00	160	160	\$5,790.40	\$5,790.40
609424	CONCRETE BARRIER CURB AND GUTTER, TYPE "B" 6" X 24"	LF		\$35.99	\$0.00	150	150	\$5,398.50	\$5,398.50
609624	CONCRETE VALLEY GUTTER, 6" X 24"	LF		\$41.39	\$0.00	80	80	\$3,311.20	\$3,311.20
704000	REFLECTORIZED PAINTED MARKINGS	LS		\$752.93	\$0.00				\$0.00
801000	CONSTRUCTION STAKING BY CONTRACTOR	LS		\$3,547.71	\$0.00	1	1	\$3,547.71	\$3,547.71
901000	CONTRACTORS QUALITY CONTROL CONSTRUCTION TESTING	ALL		\$12,784.69	\$0.00	0.24708	0.24708	\$3,158.84	\$3,158.84
Sub-Total: Additive Bid Schedule I: North Parking Lot						Net Change: \$52,151.19			\$52,151.19
Gross Receipt Tax @ 7.1875%									\$3,748.37
Total: Additive Bid Schedule I: North Parking Lot									\$55,899.56

Change Order Detail Sheet									
City of Ruidoso Downs- All American Park Drainage Improvements						Change Order No. 1			
Additive Bid Schedule II: West Parking Lot									
Item	Description	Unit	Contract Quantity	Unit Price	Extended Amount	Adjusted Contract Quantity	Quantity Change	Cost Change	To-Date Amount
203000	UNCLASSIFIED EXCAVATION	LS	1	\$2,217.22	\$2,217.22				\$2,217.22
207000	SUBGRADE PREPARATION	SY	690	\$3.56	\$2,456.40				\$2,456.40
304010	BASE COURSE 6", IN PLACE	CY	120	\$100.30	\$12,036.00				\$12,036.00
423270	3" HOT MIX ASPHALT (HMA) SUPERPAVE, SP-IV, INCLUDING BITUMINOUS MATERIAL	SY	690	\$37.04	\$25,557.60				\$25,557.60
602060	RIPRAP CLASS G	SY	4	\$87.34	\$349.36				\$349.36
609318	CONCRETE APRON CURB AND GUTTER, TYPE "F" 6" X 24"	LF	20	\$36.19	\$723.80				\$723.80
609424	CONCRETE BARRIER CURB AND GUTTER, TYPE "B" 6" X 24"	LF	300	\$35.99	\$10,797.00				\$10,797.00
704000	REFLECTORIZED PAINTED MARKINGS	LS	1	\$752.93	\$752.93				\$752.93
704530	REFLECTORIZED THERMO PLASTIC HANDICAPPED SYMBOL	EA	1	\$602.34	\$602.34				\$602.34
801000	CONSTRUCTION STAKING BY CONTRACTOR	LS	1	\$2,128.63	\$2,128.63				\$2,128.63
901000	CONTRACTORS QUALITY CONTROL CONSTRUCTION TESTING	ALL	1	\$5,910.47	\$5,910.47				\$5,910.47
Sub-Total: Additive Bid Schedule II: West Parking Lot					\$63,531.75	Net Change: \$0.00			\$63,531.75
Gross Receipt Tax @ 7.1875%					\$4,566.34				\$4,566.34
Total: Additive Bid Schedule II: West Parking Lot					\$68,098.09				\$68,098.09

Change Order Subtotal \$52,151.19

Current Contract Amount Subtotal		\$726,186.98	Revised Contract Amount Subtotal	\$778,338.17
Gross Receipt Tax @ 7.1875%		\$52,194.69	Gross Receipt Tax @ 7.1875%	\$55,943.06
Current Contract Amount Total		\$778,381.67	Revised Contract Amount Total	\$834,281.23

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - D.

To: Mayor Holman and Councilors

Presenter(s): Public Works Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval on Award to White Sands Construction Proposal Utilizing NM Statewide Price Agreement for Milling and Haul off on Reservoir Dr. Paving Project in the Amount of \$39,311.15 including NMGRT.

Item Summary:

This proposal is for milling and haul off of asphalt from Reservoir Dr. paving project in the amount of \$39,311.15 which will be paid for with NMDOT grant funds.

Financial Impact:

Recommendations:

To approve, Award to White Sands Construction Proposal Utilizing NM Statewide Price Agreement for Milling and Haul off on Reservoir Dr. Paving Project in the Amount of \$39,311.15 including NMGRT.

ATTACHMENTS:

Description

White Sands Const. Reservoir Milling Proposal 04.10.2024

Building Tomorrows Future Today....



PHONE: 575-437-7816

FAX: 575-437-0984

PO BOX 1745, ALAMOGORDO, NM 88311

LIC. 50235

April 9, 2024

Joe Jarvis
Public Works Director

Ruidoso Downs - Reservoir Drive - Updated

Prices Below are to be honored from Statewide Price Agreement #30-00000-23-00070 - Contractor (CO)

As Per Scope of Work Below:

1 - Superintendent Regular Hours Worked, projects under \$60,000 - \$100.00 x 80 =	\$8,000.00
13 - Diagnosis, Project Estimates, Troubleshooting, Other - \$110.00 x 2 =	\$220.00

Sub-Contractors:

La Luz Dirt & Paving	\$27,736.00
Sub-Total =	\$35,956.00
NMGRT as of January 1, 2024 @ 7.1875% =	\$2,584.34
Bond =	\$770.81
<u>Grand Total with NMGRT =</u>	\$39,311.15

The above prices includes the following:

1. Supervision
2. Payment & Performance Bonds
3. Mill & Remove Existing Asphalt. (Approx 3,467 SY)


The following is not included:

1. SWPPP Plan & Implementations
2. Materials Testing
3. Permits
4. Design
5. Public Safety Impact Fees
6. Temp Fence
7. Traffic Control Plan or Implementation
8. Builders Risk Insurance
9. Allowances of any Kind
10. NMGR Increase
11. Special Inspections
12. Anything Not Mentioned Above
13. Concrete Work of Any Kind
14. HMA Placement or Materials of Any Kind
15. Wage Rates

This quote is valid for 20 days from today's date.

Thank you for this opportunity. We look forward to working with you in the near future. Please do not hesitate to contact White Sands Construction, Inc. for all of your future construction requirements.

Sincerely,
White Sands Construction, Inc.



Catlin Curry
Executive V.P./ Estimator
(575) 437-7816 ext. 1 or Cell - 575-430-4146

Sign and Date to Accept Below:

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - E.

To: Mayor Holman and Councilors

Presenter(s): Public Works Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval on Award to White Sands Construction Proposal Utilizing NM Statewide Price Agreement for Upstairs Restroom Partitions Upgrade at the HMAW in the Amount of \$13,562.97 including NMGRT.

Item Summary:

This proposal is to replace and upgrade the upstairs restroom partitions to meet ADA compliance. The proposal is thru a NM statewide price agreement and will be paid for with NEU funds.

Financial Impact:

Recommendations:

To approve, Award to White Sands Construction Proposal Utilizing NM Statewide Price Agreement for Upstairs Restroom Partitions Upgrade at the HMAW in the Amount of \$13,562.97 including NMGRT.

ATTACHMENTS:

Description

White Sands Upstairs Bathroom Partition Upgrade Proposal 04.11.2024

Building Tomorrows Future Today....



PHONE: 575-437-7816

FAX: 575-437-0984

PO BOX 1745, ALAMOGORDO, NM 88311

LIC. 50235

April 11, 2024

Joe Jarvis
Public Works Director

Ruidoso Downs - The Hubbard Museum of the American West Upstairs Restroom Partitions
26301 US-70
Ruidoso Downs, NM 88346

Prices Below are to be honored from Statewide Price Agreement #30-00000-23-00070

Contractor (CO)

As Per Scope of Work Below:

Item 1 - GC Superintendent, Regular Hours Worked, projects under \$60,000 - \$100.00 x 40 =	\$4,000.00
Item 3 - GC Journeyman, Regular Hours Worked, projects under \$60,000 - \$60.00 x 40 =	\$2,400.00
Item 5 - GC Laborer, Regular Hours Worked, projects under \$60,000 - \$45.00 x 40 =	\$1,800.00
Item 13 - Diagnosis, Project Estimates, Troubleshooting, Other - \$110.00 x 2 =	\$220.00
Material	\$4,233.50
 Sub-Total =	 \$12,653.50
NMGRT as of January 1, 2024 @ 7.1875% =	<u>\$909.47</u>
<u>Grand Total with NMGRT =</u>	<u>\$13,562.97</u>

The above price includes the following:

1. Supervision of Area of Work
2. Remove & Dispose of existing partitions in upstairs restrooms
3. Provide and install new steel painted partitions in upstairs restrooms
 - a. New partition layout to meet ADA compliance requirements
4. Patching sheetrock and painting as necessary

The following is not included:

1. Builders Risk Insurance
2. Payment & Performance Bond
3. Permits of any Kind
4. NMGR Increase
5. Allowances of any Kind
6. Anything Not Mentioned Above
7. Use Owners Water & Electricity at No Charge

This quote is valid for 30 days from today's date.

Thank you for this opportunity. We look forward to working with you in the near future. Please do not hesitate to contact White Sands Construction, Inc. for all of your future construction requirements.

Sincerely,
White Sands Construction, Inc.



Zeke Greer
Project Manager
(575) 437-7816 ext. 3 or Cell - 575-430-9990

Sign and Date to Accept Below:

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - F.

To: Mayor Holman and Councilors

Presenter(s): Public Works Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval on Award to White Sands Construction for Entry Drain Trench Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$26,647.63 including NMGRT.

Item Summary:

This project is to replace the concrete drain at the museum entry and install a new trench grate.

Financial Impact:

Proposal will be paid with NEU funds.

Recommendations:

To approve, Award to White Sands Construction for Entry Drain Trench Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$26,647.63 including NMGRT.

ATTACHMENTS:

Description

Museum Entry Drain Proposal

Building Tomorrows Future Today....



PHONE: 575-437-7816

FAX: 575-437-0984

PO BOX 1745, ALAMOGORDO, NM 88311

LIC. 50235

April 15, 2024

Joe Jarvis
Public Works Director

Ruidoso Downs - The Hubbard Museum of the American West - UPDATED Entry Trench Drain Replacement
26301 US-70
Ruidoso Downs, NM 88346

Prices Below are to be honored from Statewide Price Agreement #30-00000-23-00070

Contractor (CO)

As Per Scope of Work Below:

Item 1 - GC Superintendent, Regular Hours Worked, projects under \$60,000 - \$100.00 x 80 =	\$8,000.00
Item 3 - GC Journeyman, Regular Hours Worked, projects under \$60,000 - \$60.00 x 80 =	\$4,800.00
Item 5 - GC Laborer, Regular Hours Worked, projects under \$60,000 - \$45.00 x 80 =	\$3,600.00
Item 13 - Diagnosis, Project Estimates, Troubleshooting, Other - \$110.00 x 2 =	\$220.00
Materials/Dumpsters/Misc.	\$3,481.70

Sub-Contractors:

Darnold Plumbing	\$4,271.60
Sub-Total =	\$24,373.30
NMGRT as of January 1, 2024 @ 7.1875% =	<u>\$1,751.83</u>
Bond	\$522.50

<u>Grand Total with NMGRT =</u>	\$26,647.63
--	--------------------

The above price includes the following:

1. Supervision of Area of Work
2. Saw-cut and Remove 3' x 15' wide of Concrete Max in Front of Entry Doors
3. Furnish & Install New 5" Wide Poly Grate Trench Drain tied to Existing Piping
4. Replace Concrete Around New Trench Grate

The following is not included:

1. Builders Risk Insurance
2. Scale wages
3. Permits of any Kind
4. NMGR Increase
5. Allowances of any Kind
6. Anything Not Mentioned Above
7. Replacement of Drainage Piping of Any Kind
8. Use Owners Water & Electricity at No Charge

This quote is valid for 30 days from today's date.

Thank you for this opportunity. We look forward to working with you in the near future. Please do not hesitate to contact White Sands Construction, Inc. for all your future construction requirements.

Sincerely,
White Sands Construction, Inc.



Zeke Greer
Project Manager
(575) 437-7816 ext. 3 or Cell - 575-430-9990

Sign and Date to Accept Below:

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - G.

To: Mayor Holman and Councilors

Presenter(s): Public Works Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval of Pay Raises for all Public Works Employees After Restructuring of Public Works Personnel.

Item Summary:

I would like to eliminate the Maintenance Tech I position and move the \$14.50 hr. budgeted salary over to wage increase for all of Public Works. There has only been 1 application in the past year for this position and we have learned to function without it.

The transfer of money for a wage increase will get our employees a better living wage and help to retain and possibly hire employees in the future. The attachment I have provide details how the money will be broken up.

Financial Impact:

See Attachment.

Recommendations:

To approve, Pay Raises for all Public Works Employees After Restructuring of Public Works Personnel.

ATTACHMENTS:

Description

Wage increase Memorandum 04.10.2024



The City of
RUIDOSO DOWNS
PUBLIC WORKS DEPARTMENT

Public Works Director: Joe Jarvis

Interoffice Memorandum

Date: April 10th, 2024

To: City Council

From: Joe Jarvis

Re: Discussion and Possible Action: TO REMOVE THE CURRENTLY FUND MAINTENCE POSITION AND RAISE ALL PUBLIC WORKS EMPLOYEE POSTIONS ACCORDINGLY.

I am requesting to remove a currently budgeted \$14.50 hr. Maintenance Position we have unfilled and move that money over to give raises in all public works department employees. With the state of the economy and the relative low wages we pay compared to other municipality's I would like to raise public works salaries to retain employees and hopefully get new employees in the future. I have discussed this with HR and Finance.

The following below is the position, current hourly, and the amount I would like to increase it by:

- ❖ Streets Foreman: \$19.63 + \$1.50
- ❖ Streets Maintenance Worker x 2: \$16.00 + \$1.00 each
- ❖ Streets Equipment Operator: \$18.99 + \$1.00
- ❖ Mechanic: \$16.50 + \$2.50
- ❖ Senior Maintenance Tech / Electrician: \$28.73 + \$.25
- ❖ Parks Foreman: \$16.87 + \$1.75
- ❖ Parks / Building Maintenance laborer: \$15.16 + \$1.00
- ❖ Lead Water Operator: \$20.74 + \$.50
- ❖ Water / Wastewater Operator II x 2: \$16.70 + \$1.00 each
- ❖ PW Director: \$36.53 + \$.25
- ❖ PW Deputy Director: \$30.25 + \$.25
- ❖ PW Administrative Assistant: \$16.50 + \$1.50

Total amount of increases per hour: \$14.50

Thank you for your consideration of this proposal.

Mayor: Dean Holman

City Councilors: ~ Judy R. Miller ~ Terence Proctor ~ W.G.Baber ~ Jodie Lacewell
P.O. Box 348 Ruidoso Downs, NM 88346 ~ 102 Mystery Dr. ~ (575) 378-6162 ~ Fax 378-6163
jjarvis@ruidosodowns.us

c:\program files (x86)\neevia.com\docconverterpro\temp\nvdc\7d6606e9-0b3a-4222-baf1-1cf7c7166f4f\ruidoso
downs.2411.1.memo_on_position_elimination_and_raises_for_pw_04.10.2024.docx

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - H.

To: Mayor Holman and Councilors

Presenter(s): Public Works Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval on Award to White Sands Construction for Front Door Replacement and ADA Upgrade at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$57,888.80 including NMGRT.

Item Summary:

This proposal is to replace museum doors with new ADA compliant electric openers. To include stucco repair around the door frames that are rotten.

Financial Impact:

Funds for this proposal will come from NEU funds.

Recommendations:

To approve, Award to White Sands Construction for Front Door Replacement and ADA Upgrade at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$57,888.80 including NMGRT.

ATTACHMENTS:

Description

White Sands Proposal for Museum Entry Door Replacement.

Building Tomorrows Future Today....



PHONE: 575-437-7816

FAX: 575-437-0984

PO BOX 1745, ALAMOGORDO, NM 88311

LIC. 50235

April 15, 2024

Joe Jarvis
Public Works Director

Ruidoso Downs - The Hubbard Museum of the American West - Front Door Replacement and Stucco Repairs
26301 US-70
Ruidoso Downs, NM 88346

Prices Below are to be honored from Statewide Price Agreement #30-00000-23-00070

Contractor (CO)

As Per Scope of Work Below:

Item 1 - GC Superintendent, Regular Hours Worked, projects under \$60,000 - \$100.00 x 80 =	\$8,000.00
Item 3 - GC Journeyman, Regular Hours Worked, projects under \$60,000 - \$60.00 x 80 =	\$4,800.00
Item 5 - GC Laborer, Regular Hours Worked, projects under \$60,000 - \$45.00 x 80 =	\$3,600.00
Item 13 - Diagnosis, Project Estimates, Troubleshooting, Other - \$110.00 x 2 =	\$220.00
Material	\$18,938.08

Sub Contractors

Ochoa's Stucco	\$3,000.00
Mountain Electric	\$2,420.00
White Mountain Glass	\$11,970.00
Sub-Total =	\$52,948.08
NMGRT as of January 1, 2024 @ 7.1875% =	<u>\$3,805.64</u>
Bond	\$1,135.07

<u>Grand Total with NMGRT =</u>	\$57,888.80
--	--------------------

The above price includes the following:

1. Supervision of Area of Work
2. Remove & Dispose of existing front doors (2 sets)
3. Remove and reinstall cast letting at entry way wall
4. Remove existing stucco finish from exterior entry way wall
5. Reframe as necessary any rotted wood in and around door frames or trim
6. Provide electricity to each door for new ADA operators
7. Provide and install new ADA door operator – 1 at each door (1-entrance/1-exit)
8. Install new EXIT sign in vestibule at exit door
9. Provide and install new solid wood doors and frames (prefinished-stained) – To match existing as closely as possible (8 week lead time for new doors and frames)
10. New 3-part stucco on exterior entry way wall – Including new foam pop outs around doors
11. Patch and paint drywall from corner to corner above doors for electrical

The following is not included:

1. Builders Risk Insurance
2. Scale wages
3. Permits of any Kind
4. NMGR Increase
5. Allowances of any Kind
6. Anything Not Mentioned Above
7. Use Owners Water & Electricity at No Charge
8. Drywall/paint of any kind except mentioned above

This quote is valid for 30 days from today's date.

Thank you for this opportunity. We look forward to working with you in the near future. Please do not hesitate to contact White Sands Construction, Inc. for all your future construction requirements.

Sincerely,
White Sands Construction, Inc.



Zeke Greer
Project Manager
(575) 437-7816 ext. 3 or Cell - 575-430-9990

Sign and Date to Accept Below:

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - I.

To: Mayor Holman and Councilors

Presenter(s): Public Works Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval on Award to White Sands Construction for Southwest Sidewalk Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$24,592.90 including NMGRT.

Item Summary:

This proposal is to remove approx. 110' of sidewalk, compact the subgrade, install handrail and pour new sidewalk with 2 door ramps.

Financial Impact:

This proposal will be paid for with NUE fund.

Recommendations:

To approve, Award to White Sands Construction for Southwest Sidewalk Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$24,592.90 including NMGRT

ATTACHMENTS:

Description

White Sands Proposal for Sidewalk Replacement at Museum

Building Tomorrows Future Today....



PHONE: 575-437-7816

FAX: 575-437-0984

PO BOX 1745, ALAMOGORDO, NM 88311

LIC. 50235

April 15, 2024

Joe Jarvis
Public Works Director

Ruidoso Downs - The Hubbard Museum of the American West – UPDATED Southwest Sidewalk Replacement
26301 US-70
Ruidoso Downs, NM 88346

Prices Below are to be honored from Statewide Price Agreement #30-00000-23-00070

Contractor (CO)

As Per Scope of Work Below:

Item 1 - GC Superintendent, Regular Hours Worked, projects under \$60,000 - \$100.00 x 40 = **\$4,000.00**

Item 13 - Diagnosis, Project Estimates, Troubleshooting, Other - \$110.00 x 2 = **\$220.00**

Sub-Contractors:

Squared Away Construction **\$15,723.81**

Roy's Welding **\$925.00**

GDA Contractors **\$3,000.00**

Sub-Total = **\$22,943.81**

NMGRT as of January 1, 2024 @ 7.1875% = **\$1,649.09**

Grand Total with NMGRT = \$24,592.90

The above price includes the following:

1. Supervision of Area of Work
2. Demo and remove existing sidewalk: 110' x 5'6"
3. Demo and remove existing steel handrail
4. Remove existing sheet metal cap throughout
5. Install onsite engineered fill in void below existing sidewalk
6. Form, place, and pour new sidewalk: 100' x 5'6" x 6" thick
 - a. 3,000 psi concrete
 - b. Install new weld plates for new handrail
 - c. Includes (2) new ADA ramps – 1 at existing door and 1 at new location as directed by the owner
7. Joint sealants at joint between existing curb and the building and between existing curb and new sidewalk
8. Provide and install new 1 ¼" sch. 40 steel handrail (5'6" x 48" tall) painted black

The following is not included:

1. Builders Risk Insurance
2. Payment & Performance Bond
3. Scale Wages
4. Permits of any Kind
5. NMGR Increase
6. Allowances of any Kind
7. Anything Not Mentioned Above
8. Use Owners Water & Electricity at No Charge

This quote is valid for 30 days from today's date.

Thank you for this opportunity. We look forward to working with you in the near future. Please do not hesitate to contact White Sands Construction, Inc. for all of your future construction requirements.

Sincerely,
White Sands Construction, Inc.



Zeke Greer
Project Manager
(575) 437-7816 ext. 3 or Cell - 575-430-9990

Sign and Date to Accept Below:

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - J.

To: Mayor Holman and Councilors

Presenter(s): Public Works Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval on Award to White Sands Construction for Entry way Handrail Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$23,591.97 including NMGRT.

Item Summary:

This proposal is to replace all of the handrail from the lower parking lot to the main entry and from the upper parking lot to the main entry of the museum.

Financial Impact:

Proposal will be paid with NEU funds.

Recommendations:

To approve, Award to White Sands Construction for Entry way Handrail Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$23,591.97 including NMGRT.

ATTACHMENTS:

Description

Handrail Proposal for Museum

Building Tomorrows Future Today....



PHONE: 575-437-7816

FAX: 575-437-0984

PO BOX 1745, ALAMOGORDO, NM 88311

LIC. 50235

April 15, 2024

Joe Jarvis
Public Works Director

Ruidoso Downs - The Hubbard Museum of the American West - Handrail Replacement
26301 US-70
Ruidoso Downs, NM 88346

Prices Below are to be honored from Statewide Price Agreement #30-00000-23-00070
Contractor (CO)

As Per Scope of Work Below:

Item 1 - GC Superintendent, Regular Hours Worked, projects under \$60,000 - \$100.00 x 40 =	\$4,000.00
Item 3 - GC Journeyman, Regular Hours Worked, projects under \$60,000 - \$60.00 x 40 =	\$2,400.00
Item 5 - GC Laborer, Regular Hours Worked, projects under \$60,000 - \$45.00 x 40 =	\$1,800.00
Item 13 - Diagnosis, Project Estimates, Troubleshooting, Other - \$110.00 x 2 =	\$220.00
Materials	\$750.00
<u>Sub Contractors</u>	
Roy's Welding	\$12,840.00
Sub-Total =	\$22,010.00
NMGRT as of January 1, 2024 @ 7.1875% =	<u>\$1,581.97</u>
<u>Grand Total with NMGRT =</u>	\$23,591.97

The above price includes the following:

1. Supervision of Area of Work
2. Remove & Dispose of existing handrail along walkway to the front door
3. Remove & Dispose of existing double handrail and supports on entry stairs
4. Provide and install new steel painted handrails to match existing length and layout– New rails to be anchored into existing concrete curb
5. Provide and install new steel painted stair handrails to match length and layout – New rails to be anchored into existing concrete stairs
6. Prep and paint existing wall mounted wall rails to remain

The following is not included:

1. Builders Risk Insurance
2. Wage rates
3. Payment & Performance Bond
4. Permits of any Kind
5. NMGRT Increases
6. Allowances of any Kind
7. Anything Not Mentioned Above
8. Use Owners Water & Electricity at No Charge

This quote is valid for 30 days from today's date.

Thank you for this opportunity. We look forward to working with you in the near future. Please do not hesitate to contact White Sands Construction, Inc. for all of your future construction requirements.

Sincerely,
White Sands Construction, Inc.



Zeke Greer
Project Manager
(575) 437-7816 ext. 3 or Cell - 575-430-9990

Sign and Date to Accept Below:

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - K.

To: Mayor Holman and Councilors

Presenter(s): Public Works Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval on Award to White Sands Construction for Canopy Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$27,921.27 including NMGRT.

Item Summary:

This proposal is for the Awning Replacement over the stairs to the museum entry.

Financial Impact:

Proposal will be paid with NEU funds.

Recommendations:

To approve, Award to White Sands Construction for Canopy Replacement at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$27,921.27 including NMGRT.

ATTACHMENTS:

Description

White Sands Proposal for Awning Replacement

Building Tomorrows Future Today....



PHONE: 575-437-7816

FAX: 575-437-0984

PO BOX 1745, ALAMOGORDO, NM 88311

LIC. 50235

April 1, 2024

Joe Jarvis
Public Works Director

Ruidoso Downs - The Hubbard Museum of the American West Entry Canopy Fabric Replacement
26301 US-70
Ruidoso Downs, NM 88346

Prices Below are to be honored from Statewide Price Agreement #30-00000-23-00070

Contractor (CO)

As Per Scope of Work Below:

Item 1 - GC Superintendent, Regular Hours Worked, projects under \$60,000 - \$100.00 x 60 = **\$6,000.00**

Item 13 - Diagnosis, Project Estimates, Troubleshooting, Other - \$110.00 x 2 = **\$220.00**

Sub-Contractors:

Santa Fe Awning **\$19,829.00**

Sub-Total = **\$26,049.00**

NMGRT as of January 1, 2024 @ 7.1875% = **\$1,872.27**

Grand Total with NMGRT = \$27,921.27

The above price includes the following:

1. Supervision of Area of Work
2. Remove & Replace Entry Canopy at Hubbard Museum with Sunbrella Ivy

The following is not included:

1. Builders Risk Insurance
2. Payment & Performance Bond
3. Permits of any Kind
4. NMGR Increase
5. Allowances of any Kind
6. Anything Not Mentioned Above
7. Frame Repairs or Painting
8. Use Owners Water & Electricity at No Charge

This quote is valid for 30 days from today's date.

Thank you for this opportunity. We look forward to working with you in the near future. Please do not hesitate to contact White Sands Construction, Inc. for all of your future construction requirements.

Sincerely,
White Sands Construction, Inc.



Zeke Greer
Project Manager
(575) 437-7816 ext. 3 or Cell - 575-430-9990

Sign and Date to Accept Below:

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - L.

To: Mayor Holman and Councilors

Presenter(s): Public Works Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval on Award to White Sands Construction for Lower Parking Lot Entry Doors at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$25,824.04 including NMGRT.

Item Summary:

Proposal is to replace lower parking lot entry doors and upgrade to ADA compliant openers.

Financial Impact:

Proposal will be paid with NEU Funds.

Recommendations:

To approve, Award to White Sands Const. for Lower Parking Lot Entry Doors at the HMAW Utilizing NM Statewide Price Agreement in the Amount of \$25,824.04 including NMGRT.

ATTACHMENTS:

Description

White Sands Lower Parking Lot Door Replacement

Building Tomorrows Future Today....



PHONE: 575-437-7816

FAX: 575-437-0984

PO BOX 1745, ALAMOGORDO, NM 88311

LIC. 50235

April 15, 2024

Joe Jarvis
Public Works Director

Ruidoso Downs - The Hubbard Museum of the American West – Lower Parking Lot Door Replacement
26301 US-70
Ruidoso Downs, NM 88346

Prices Below are to be honored from Statewide Price Agreement #30-00000-23-00070

Contractor (CO)

As Per Scope of Work Below:

Item 1 - GC Superintendent, Regular Hours Worked, projects under \$60,000 - \$100.00 x 40 =	\$4,000.00
Item 3 - GC Journeyman, Regular Hours Worked, projects under \$60,000 - \$60.00 x 40 =	\$2,400.00
Item 5 - GC Laborer, Regular Hours Worked, projects under \$60,000 - \$45.00 x 40 =	\$1,800.00
Item 13 - Diagnosis, Project Estimates, Troubleshooting, Other - \$110.00 x 2 =	\$220.00
Material	\$750.00

Sub Contractors

Mountain Electric	\$1,200.00
White Mountain Glass	\$13,250.00
Sub-Total =	\$23,620.00
NMGRT as of January 1, 2024 @ 7.1875% =	<u>\$1,697.69</u>
<u>Bond</u>	\$506.35

<u>Grand Total with NMGRT =</u>	\$25,824.04
--	--------------------

The above price includes the following:

1. Supervision of Area of Work
2. Remove & Dispose of existing lower parking lot doors (1 set)
3. Provide electricity to each door for new ADA operators
4. Provide and install new ADA door operator – 1 at each door (1-entrance/1-exit)
5. Provide and install new aluminum store front door and hardware
6. Patch and paint drywall from corner to corner above doors for electrical

The following is not included:

1. Lower Show Room Door Repairs: Drop doors and service panic devices and rods to try and fix (service only, no parts) **\$1,000.00**
2. Lower Show Room Door Replacement (if door repairs so not work): Replace door leifs can be priced out separately if repairs do not work.
3. Builders Risk Insurance
4. Wage Rates
5. Permits of any Kind
6. NMGRT Increases
7. Allowances of any Kind
8. Anything Not Mentioned Above
9. Use Owners Water & Electricity at No Charge
10. Drywall/paint of any kind except mentioned above

This quote is valid for 30 days from today's date.

Thank you for this opportunity. We look forward to working with you in the near future. Please do not hesitate to contact White Sands Construction, Inc. for all your future construction requirements.

Sincerely,
White Sands Construction, Inc.



Zeke Greer
Project Manager
(575) 437-7816 ext. 3 or Cell - 575-430-9990

Sign and Date to Accept Below:

AGENDA MEMORANDUM
CITY OF RUIDOSO DOWNS

NEW BUSINESS - M.

To: Mayor Holman and Councilors

Presenter(s): Public Works Director

Meeting Date: April 22, 2024

Re: Discussion and Possible Action on Approval of Agreement with Dennis Engineering Co. for Task Order 2024-01 Design Phase and Construction Phase Services of the Tractor Supply Waterline Extension in the amount of \$26,000.00 exclusive of NMGRT.

Item Summary:

This Agreement with Dennis Engineering Co. for Task Order 2024-01 is for the engineering services during the Design Phase and the Construction Phase for the Tractor Supply Waterline Extension in the amount of \$26,000.00 exclusive of NMGRT.

Financial Impact:

This Task Order will be funded with NEU funds.

Recommendations:

To approve, Task Order 2024-01 Design Phase and Construction Phase Services of the Tractor Supply Waterline Extension in the amount of \$26,000.00 exclusive of NMGRT.

ATTACHMENTS:

Description

Task Order No. 2024-01

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES
between the City of Ruidoso Downs and
DENNIS ENGINEERING COMPANY
TASK ORDER NO. 2024-01

TASK DESCRIPTION: Tractor Supply Waterline Extension

TASK FUNDING: Local Funds"

I. SCOPE OF SERVICES TO BE PROVIDED:

ATTACHMENTS applicable to this Task Order.

- ☐ Attachment I – Insurance
- ☐ Attachment II - Engineering Services During the Planning Phase
- ☒ Attachment III - Engineering Services During the Design Phase
- ☒ Attachment IV - Engineering Services During the Construction Phase
- ☐ Attachment V - Engineering Services During the Operation Phase

I. SCOPE OF BASIC SERVICES:

Design Phase Services as identified in Attachment III.

Construction Phase Services as identified in Attachment IV.

Ia. PAYMENT TO ENGINEER – COMPENSATION FOR BASIC SERVICES:

Design Phase services in the amount of Sixteen Thousand and No./100 Dollars (\$16,000.00).

Construction Phase services in the amount of Eleven Thousand and No/ 100 Dollars (\$11,000.00).

II. SCOPE OF ADDITIONAL SERVICES TO BE PROVIDED (IF ANY):

None identified this Task Order.

IIb. PAYMENT TO ENGINEER – COMPENSATION FOR ADDITIONAL SERVICES:

None identified this Task Order.

III. ANTICIPATED SCHEDULE OF EVENTS:

Refer to Attachment III for Design Phase and Attachment IV for Construction Phase.

All other articles of the June 14, 2022 AGREEMENT FOR ENGINEERING SERVICES remain the same.

IV. SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS TASK ORDER:

Special Provisions or Modifications applicable to this Task Order.

None identified this Task Order

OWNER and ENGINEER have caused this Agreement to be amended through this task order by representatives duly authorized to act, all as of the effective date of _____, _____ 20 24.

OWNER:

City of Ruidoso Downs

BY: _____

NAME: _____

TITLE: _____

DATE: _____

ATTEST

BY: _____

ENGINEER:

DENNIS ENGINEERING COMPANY

BY: Tappan J. Mahoney, PE

NAME: Tappan J. Mahoney, PE

TITLE: President

DATE: April 15, 2024

ATTEST

BY: Gary Bremer, PE

Attachment III

Agreement for Services

This is ATTACHMENT III, consisting of 2 pages, referred to in and part of the Task Order 2024-01 between City of Ruidoso Downs (OWNER) and DENNIS ENGINEERING COMPANY (ENGINEER) for Professional Services dated [REDACTED].

Initialed by: Owner [REDACTED] Engineer TJM

Design Services Scope of Work, Cost Proposal and Compensation for Engineering Services during the Design Phase

Upon this Agreement becoming effective, ENGINEER shall perform the services described below:

PART 2 – ENGINEER’S SERVICES

B.2.01 *Project background and scope:*

- A. Develop design drawings, technical specifications and bid schedule from conceptual plan to cross US Highway 70 with a bored casing and HDPE carrier pipe to provide a 6-inch water distribution line and service connection for the proposed Tractor Supply.

B.2.02 *Design Phase*

A. Scope of Work

1. Prepare technical specifications based on the NM Specifications for Public Works Const, 2006 Ed., incorporating changes or additions to the standard specifications through supplemental specifications, for the Tractor Supply Waterline Extension "Project" showing the scope, extent and character of the work to be performed and furnished by the Contractor.
2. Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities, for the Project.
3. Develop 95-percent design drawings, during the design phase and submit for the OWNER's and permitting agency comments. The major activities under this task will be to develop 95-percent design documents for the Project and will include the following items
 - a. Conduct bi-monthly design team meetings with Engineer, Principal, and Project Manager.
 - b. Conduct progress meetings at Owner's office to review design at approximate 60% and 90%.
 - c. Provide quality control review of drawings, for all phases of the project.
 - d. Prepare Opinion of Probable Construction Costs, for review by Owner
4. Develop final design drawings to be used to obtain comments from the OWNER and for the ENGINEER's quality control review prior to developing a set of bidding documents for construction of the Project and for development of a final opinion of probable construction cost.
 - a. Conduct a final design team meeting with Engineer and Project Manager
 - b. Conduct progress meetings at Owner's office to review design prior to agency review and request for advertisement for bids.

- c. Provide quality control review of contract documents, specifications and drawings.
 - d. Prepare Opinion of Probable Construction Costs, for review by Owner and Agency.
 - e. Assist Owner with an application to install utilities within public rights of way. A PCE for environmental is anticipated and environmental documentation is not accounted for in the scope of work.
5. Furnish three (3) copies of the above documents, Drawings and Specifications and review them with OWNER.
6. ENGINEER's services under the Design Phase will be considered complete as the earlier of (1) the date when the submittals have been accepted by OWNER or (2) thirty days after the date when such submittals are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the portion of the Project designed or specified by ENGINEER, in such approval is to be obtained during the Design Phase.
7. Assumptions
- a. All utility relocations, if any, will be required by others.
 - a. Land acquisition will be the responsibility of the Owner.
 - b. Full size drawings (paper dimensions) will measure 24-inch by 36-inch width half-size as 12-inch by 18-inch. All drawings prepared for OWNER's review will be made on half-size drawings.
 - c. All environmental and/or archaeological documentation efforts will be coordinated and completed by others unless specific tasks of the Engineer are identified under Additional Services.

B. Compensation for Design Phase Services

1. Owner shall pay Engineer for Design Services, Sixteen Thousand and No/100 Dollars (\$16,000.00), Lump Sum Method of Payment, exclusive of NMGR.
2. Assumptions
- a. The project is funded through local funds. Should other funds become available or be used to finance the project, the scope of services and Engineer's fees may be modified.

C. Progress Schedule for Completing Design Phase Services

1. Deliverables
- a. A copy of the 95% design drawings will be submitted to the OWNER for review and comment, within seventy five (75) calendar days of authorization to begin services.
 - b. A copy of the final design drawings, contract documents and specifications will be submitted to the OWNER for review and comment, within thirty (30) calendar days of receiving Owner comments of the 95% design drawings.
2. Assumptions
- a. Owner will submit written review comments to ENGINEER within 30 calendar days after receipt of 95% design drawings.

Attachment IV

Agreement for Services

This is ATTACHMENT IV, consisting of 8 pages, referred to in and part of the Agreement between the City of Ruidoso Downs (OWNER) and dennis ENGINEERING company (ENGINEER) for Professional Services dated [REDACTED].

Initialed by: Owner [REDACTED] Engineer TJM

Construction Services Scope of Work, Cost Proposal and Compensation for Engineering Services during the Construction Phase

Upon OWNER's acceptance of ENGINEER's Drawings, Specifications and other Design Phase documentation (including the most recent opinion of probable construction cost), and upon written authorization to proceed, ENGINEER shall perform the services described below:

PART 3 – CONSTRUCCION PHASE SERVICES

C.3.01 Bidding and Negotiations

A. Scope of Work

1. General Assistance with Bidding and Negotiations
 - a. Assist OWNER in review of contractor bids solicited through existing contract by Owner.
 - b. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 - c. Consult with OWNER as to the acceptability of subcontractors, suppliers and other persons and entities proposed by Contractor for those portions of the work as to which such acceptability is required by the Bidding Documents.
 - d. Prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals.
 - e. Attend the preconstruction construction conference, prepare minutes and assist OWNER with compiling contract for execution and in assembling and awarding contracts for construction.
 - f. The Bidding or Negotiating Phase will terminate and the Services to be performed or furnished thereunder will be considered complete upon completion of the pre-construction meeting or upon cessation of negotiations with prospective Contractors.
2. Assumptions
 - a. Two (2) addenda are anticipated to provide clarification or additional information following the pre-bid showing.
 - b. A pre-construction meeting will be held prior to start of construction. The ENGINEER will prepare an agenda, handouts and meeting minutes.

C.3.02 Construction Observation

A. Scope of Work

1. General Administration of Construction Contract
 - a. ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard Form of Agreement between Owner and Engineer for Professional Services. The extent

and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided herein. All of OWNER's instructions to Contractor shall be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with contractor to extent provided in the Agreement except as otherwise provided in writing.

2. Visits to Site and Observation of Construction

In connection with observation of the work of Contractor while in progress:

- a. ENGINEER shall make site visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. In addition, ENGINEER shall provide the services of a Periodic Project Representative at the site to assist ENGINEER and to provide more continuous observations of such work. The furnishing of such Periodic Project Representative services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in paragraph C.3.02. Such visits and observations by ENGINEER and the Periodic Project Representative are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgement as assisted by the Periodic Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if such work is proceeding with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in paragraph C.3.02.A.2 and other express or general limitations in this Agreement and elsewhere.
- b. The purpose of ENGINEER's visits to and representation by the Periodic Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not during such visits or as a result of such observation of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinance, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
- c. Duties, Responsibilities and Authority of the Periodic Project Representative are set forth in paragraph C.3.02.A.3.

3. Periodic Project Representative (PR)

- a. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the project representative, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing

the Work, or responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

b. The duties and responsibilities of the PR are as follows:

- 1) *General:* PR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding PR's actions. PR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. PR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. PR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
- 2) *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
- 3) *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 4) *Liaison:*
 - a) Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b) Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
 - c) Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
- 5) *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- 6) *Shop Drawings and Samples:*
 - a) Record date of receipt of Samples and approved Shop Drawings.
 - b) Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of samples for examination.
 - c) Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which PR believes that the submittal has not been approved by Engineer.
- 7) *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with PR's correspondence, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
- 8) *Review of Work and Rejection of Defective Work:*
 - a) Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b) Report to Engineer whenever PR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of

work in progress that PR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9) Inspections, Tests, and System Startups:

- a) Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- b) Document whether tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c) Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10) *Records:*

- a) Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b) Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c) Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d) Maintain records for use in preparing Project documentation.

11) *Reports:*

- a) Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b) Draft and review with Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c) Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d) Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12) *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward correspondence to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13) *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14) Completion:

- a) Participate in a Substantial Completion (pre-final) inspection, and assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b) Observe Contractor-arranged inspections required by Laws and Regulations applicable to the Work, including but not limited to those performed by public agencies having jurisdiction over the Work.
- c) Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- d) Observe whether all items on the final list have been completed or corrected and transmit comments to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

c. Project Representative shall not:

- 1) Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2) Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
- 3) Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 4) Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
- 5) Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
- 6) Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
- 7) Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 8) Authorize Owner to occupy the Project in whole or in part.

4. Defective Work

- a. During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

5. Clarifications and Interpretations: Field Orders

- a. ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarification and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

6. Change Orders and Work Change Directives

- a. ENGINEER shall review and transmit Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.

7. Shop Drawings

- a. ENGINEER shall review Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

8. Substitutes

- a. ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. However, services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitute which is appropriate for the Project or an excessive number of substitutes will only be performed pursuant to an amendment to this Agreement for additional compensation.

9. Inspections and Tests

- a. ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

10. Disagreement between Owner and Contractor

- a. ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

11. Applications for Payment

- a. Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:
 - 1) ENGINEER shall determine the amounts that ENGINEER deems Contractor be paid. Such decision regarding payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the written correspondence), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's written correspondence regarding payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph C.3.02.11.a.1) are expressly subject to the limitations set forth in paragraph C.3.02.11.a.2) and other express or general limitations in this Agreement and elsewhere.
 - 2) By submitting correspondence related to payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither

ENGINEER's review of Contractor's work for the purposes of payments nor ENGINEER's correspondence regarding any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

12. Contractor's Completion Documents

- a. ENGINEER shall receive, review and transmit to OWNER with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under paragraph C.3.02.7 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

13. Substantial Completion

- a. Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by CONTRACTOR, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

14. Final Notice of Acceptability of the Work

- a. ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may provide comment, in writing, regarding final payment to the Contractor. Accompanying the written correspondence for final payment, ENGINEER shall indicate that the work is acceptable (subject to the provisions of paragraph C.3.02.11.a.2) to the best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

15. Limitation of Responsibility

- a. ENGINEER shall not be responsible for the acts or omission of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

16. Assumptions

- a. Fifteen (15) submittals will be viewed by the ENGINEER, each as an original and one revised submittal. For review beyond a revised submittal (i.e. 3rd revision of submittal) the ENGINEER will be reimbursed for the additional time not included in budget. OWNER may elect to bill the Construction Contractor for this additional time.
- b. Two (2) RFI's will be responded to by the ENGINEER. ENGINEER will be reimbursed for the additional time and expenses associated with responding to RFI's that are incomplete, that is apparent from field operations, that can be reasonably inferred from the contract documents or are with the intent

to create conflicting information. Owner may elect to bill the construction CONTRACTOR for this additional time.

- c. One (1) change orders will be prepared by the ENGINEER for the OWNER's approval.
- d. One (1) single-day site visits will be conducted by the ENGINEER based on a construction period of thirty (30)-calendar days to achieve final completion.
- e. The ENGINEER's PR will be located on-site periodically for the Project, which is assumed to be thirty (30)-calendar days, for contractor to achieve substantial completion and forty five (45)-calendar days.
- f. OWNER will provide on-site facilities for the ENGINEER's PR to include a desk, chair and access to the internet.
- g. OWNER will conduct labor standards interviews, as may be required.
- h. Prepare record documentation for the NMDOT utility permit.

17. Deliverables

- a. Minutes of progress and other meetings.
- b. Copies of RFI's, written response, pay applications, change orders, and project related correspondence.
- c. PR daily log reports with photographs accompanying the daily reports, as applicable, will be maintained in the construction project files to be turned over to the OWNER upon completion of the construction, if requested in writing by the OWNER.
- d. Closeout documents required by the construction contract.

B. Compensation for Construction Phase Services

- 1. Owner shall pay Engineer for Construction Phase Services, Eleven Thousand and No/100 Dollars (\$11,000.00), Lump Sum Method of Payment, exclusive of NMGR.
- 2. Assumptions
 - a. The project is funded with local funds. Should other funds become available or be used to finance the project, the scope of services and Engineer's fees may be modified.

C. Progress Schedule for Completing Construction Phase Services

- 1. Assumed duration of construction is thirty (30)-calendar days, for contractor to achieve substantial completion and forty five (45)-calendar days, for contractor to achieve final completion from the contract notice to proceed.