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Call to Order

- Mayor Pro tem Peggy Gutjahr called to order the city council regular business meeting at 6:00 pm.

Pledge of Allegiance

- Chris DeFillippo led the Pledge of Allegiance.

Roll Call

- Present: Mayor Pro tem Peggy Gutjahr, Councilors; Bill Brown, Joshua Ramsell and Jim Winters. Present: Municipal Clerk Lisa Adair, Finance Officer/Treasurer Stephanie Finch and City Attorney Chris DeFillippo.

Approval of Agenda

- Councilor Ramsell made a motion to approve the agenda for the July 28, 2020 Regular Council Meeting. The motion was second by Councilor Winters. Vote: Councilor Brown-yes; Councilor Ramsell-yes; Councilor Winters-yes and Councilor Gutjahr-yes. With a 4-0 vote the agenda for the city council regular business meeting was approved as presented.

Approval of Workshop Minutes, City Council Regular Business Meeting Minutes and Special workshop Minutes

- Councilor Brown moved to accept the Workshop Minutes of 7.14.2020, Regular Business Meeting Minutes of 7.14.2020, and Special Workshop Minutes of 7.15.2020. The motion was second by Councilor Winters. Vote: Councilor Ramsell-yes; Councilor Winters-yes; Councilor Brown-yes and Councilor Gutjahr-yes. With a 4-0 vote the minutes for the workshop and city council regular business meeting held on July 14, 2020 and the special workshop minutes held on July 15, 2020 were approved as written.

Public Comment

- No public comments

Discussion, Consideration, and Decision – Approval of Accounts Payable

- Finance Officer/Treasurer stated we went over Accounts Payable in the workshop and asked for questions.
- Councilor Ramsell stated that for people that might be watching this, the large purchase of \$162,908 and that is for the two new brush trucks for the Fire Department.
- Councilor Brown moved for the approval of Accounts Payable as presented. The motion was second by Councilor Winters. Vote: Councilor Ramsell-yes; Councilor Winters-yes; Councilor Brown-yes and Councilor Gutjahr-yes. With a 4-0 vote the Accounts Payable were approved.

Discussion, Consideration, and Decision Resolution 2020-XX BAR #02 (budget amendment)

- Finance Officer/Treasurer read into the minutes Resolution 2020-177 BAR #02. She then explained the adjustment: increase expenditures in the Fire Protection Fund by \$5,600 and increase expenditures in the other special revenues by \$4,200.
- Councilor Ramsell moved to pass Resolution 2020-177 BAR #02, budget amendment. The motion was second by Councilor Winters. Vote: Councilor Brown-yes; Councilor Ramsell-yes; Councilor

Winters-yes and Councilor Gutjahr-y. With a 4-0 vote Resolution 2020-177 BAR #02 (budget amendment) was passed, approved, adopted, and signed.

Discussion, Consideration, and Decision Resolution 2020-XX 2020 Final Quarter Finance Report

- Finance Officer/Treasurer read into the minutes Resolution 2020-178 Finance Quarter Finance Report.
- Councilor Brown said it was well gone over at our workshop, it appears to be fine and thank you for your hard work.
- Mayor Pro tem Gutjahr said our revenues up by 108% and expenditures were at 61%, so we did a good job this year and thank you.
- Councilor Ramsell moved to approve Resolution 2020-178 2020 Final Quarter Finance Report. The motion was second by Councilor Winters. Vote: Councilor Brown-yes; Councilor Winters-yes; Councilor Ramsell-yes and Councilor Gutjahr-yes. With a 4-0 vote Decision Resolution 2020-XX 2020 Final Quarter Finance Report was passed, approved, adopted, and signed.

Discussion, Consideration, and Decision Resolution 2020-XX Fiscal Year 2021 Operating Budget Adoption

- Finance officer/Treasurer Stephanie Finch read into the Resolution 2020-179 Fiscal Year 2021 Operating Budget Adoption.
- Councilor Ramsell said he thinks we spent a lot of time working this out and thanked the finance department for the work they did.
- Mayor Pro tem Gutjahr said it was an excellent description and thanked finance for helping them through the process.
- Councilor Ramsell moved to approve Resolution 2020-179 Fiscal Year 2021 Operating Budget Adoption. The motion was second by Councilor Brown. Vote: Councilor Winters-yes; Councilor Ramsell-yes; Councilor Brown-yes and Councilor Gutjahr-yes. With a 4-0 vote Resolution 2020-179 Fiscal Year 2021 Operating Budget Adoption was passed, approved, adopted, and signed.

Discussion, Consideration, and Decision Mayor/Council with City Manager form of Government

- Mayor Pro tem Gutjahr said we had multiple conversations and had a mini workshop with Randy Van Vleck from the NM Municipal League who helped lay out the aspects of each type of position and asked what the Council's thoughts were regarding the matter.
- Councilor Ramsell said the two main forms of government was having a City Manager vs. and Administrator, and basically having an administrator is an extension of the Mayor to manage the City, having a Manager allows the Manager to run the day to day and removes politics from the operation of the City and prevents fear from staff losing positions with political changes, and he feels going with a City Manager form of government is in the best interest of the residents and staff.
- Councilor Winters said he agrees with Councilor Ramsell and is in favor of a City Manager for of Government.
- Councilor Brown said he digresses; we have had ample opportunities to try the City Manager form without success and his opinion is it is time to have a different form of government.
- Mayor Pro tem Gutjahr said she concurs with Councilor Ramsell and Winters. She then stated in with a City Manager position, the Manager works with the whole Council, and we are a new City that is still learning so we have had problems in the past, but with lessons learned and setting expectations early on with a new Manager, we should not experience the same issues.
- Councilor Ramsell moved to keep and move forward with a Mayor/Council with City Manager form of Government. The motion was second by Councilor Winters. Vote: Councilor Brown-no;

Councilor Ramsell-yes; Councilor Winters-yes and Councilor Gutjahr-yes. With a 3-1 vote Council approved the form of government for the City will remain Mayor/Council with Manager.

Council Reports

- Councilor Winters said we had a good discussion today on several items, we are proposing an extra workshop to help remedy some of our overload. We have several large projects that need to move forward.
- Councilor Ramsell said we have ENDWI stickers to put on City vehicles and also regarding City vehicles possible down the road looking at having a State lease option to reduce cost and maintenance on the vehicles.
- Councilor Brown said the census 2020 takers have not been assigned for our area and he is working on getting a Census 2020 banner to be flown in front of City Hall.
- Mayor Pro tem Gutjahr asked what our latest statics for our City is.
- Councilor Ramsell said we are at 69.8% still holding at number 2. Bosque Farms is leading the way just at 75% in the whole State.
- Mayor Pro tem Gutjahr said Councilor Winters brought up we will be having a special workshop one of the things we will be working on is the zip code issue. Another concern has been regarding the ATV's up and down the river area and we are going to bring that up at VALEO (Valencia County Local Elected Officials), we meet quarterly and we think this may be one of the issues.

Adjourn

- Councilor Brown moved to adjourn. The motion was second by Councilor Ramsell. With a 4-0 vote the City Council regular business meeting was adjourned at 6:29 pm.

Procurement Protest Hearing

- **Motion and roll call vote to open the Protest Hearing**
- Councilor Ramsell moved with a roll call vote to open a Protest Hearing concerning AC Disposal Protest of City of Rio Communities request for proposal number 2019-0102 Solid Waste Collection Services. Councilor Winters second the motion. Vote: Councilor Brown-yes; Councilor Winters-yes; Councilor Ramsell-yes and Councilor Gutjahr-yes. With a 4-0 vote @ 6:30 pm.

AC Disposal Protest of City of Rio Communities Request for Proposal, NO. 2019-0102 Solid Waste Collection Services

- Mayor Pro tem Gutjahr asked everyone to state their names for the record.
- Present: Tibo Chavez attorney for AC disposal, Charles Montoya owner of AC Disposal
- Present: Councilor Bill Brown, Mayor Pro tem Peggy Gutjahr, Councilor Joshua Ramsell, Councilor Jim Winters, City Attorney Chris DeFillippo, Procurement Officer Angela Valadez, Municipal Clerk Lisa Adair
- Present: Clara Garcia of the Valencia News Bulletin, Crystal Castillo, and Deputy Juan Sandoval.
- Procurement Officer Angela Valadez gave a statement: Good afternoon, my name is Angela Valadez. I am the Chief Procurement Officer of the City of Rio Communities. This is a public hearing regarding AC Disposal's procurement protest of the City of Rio Communities Request for Proposal, NO. 2019-0102 Solid Waste Collection Services. This hearing will be held in

accordance to the City of Rio Communities Procurement Protest Policy and New Mexico Statutes annotated, Sections 13-1-28 through 13-1-199, also known as the Procurement Code. As has been described to AC Disposal, through legal council and prior communication, this is not an evidentiary hearing. Instead, the purpose of this hearing is to allow AC Disposal the opportunity to present any evidence it may have supporting its procurement protest, initially provided to the City on March 12, 2020. As such this hearing shall not be viewed as contentious but rather as simply an opportunity for AC Disposal to bring any, and all evidence regarding this matter to light for the City's review. Seeing as the City does not possess the power to subpoena witnesses, any individual testifying, testifying on behalf of AC Disposal will be solely on a voluntary basis. Additional witnesses may not be called for any form of cross-examination during this hearing. This hearing will be recorded, and final written minutes will subsequently be created. Following the completion of this hearing, I will be providing AC Disposal a final written decision within a reasonable amount of time, describing the City's final determination regarding this protest. Mr. Chavez, please proceed with your presentation.

- Mr. Chavez stated: Thank you. I have a couple of preliminaries before we get into the details. So, one of the preliminaries is what, uh, procedures and evidence would be admissible, there is somewhat of a contradiction in the opening statement that was just provided, that this is not an evidentiary hearing but at the same time we are required to produce evidence, so I present that by nature, this has to be an evidentiary hearing and we are required, as, um, to present any and all evidence. We requested by email on Thursday, July 16, 2020, three things: one a neutral hearing officer, we requested a neutral hearing officer indicating in our email that, as hearing officer Angela Valadez was an evaluator of the bidding, and, uh, would be also a requested witness for the proceeding today, so for those two reasons we have requested a neutral hearing officer. Second, we requested issuance of subpoenas for the following individuals: Gordon Reeves, Angela Valadez, Lisa Adair, Stephanie Finch, Peggy Gutjahr and Leisa Haynes. We wanted to be able to, under oath to ask questions of those witnesses, pertinent to this protest. The third item requested was the complete unedited file of Leisa Haynes, we specifically said that should include documents, records and notes of her communications and meetings with representatives of Universal Waste, the other bidder in this solid waste process, and the specific reasons for placing her on administrative leave followed by termination of her employment. Each of those requests were denied. The City indicating by responses given to us Thursday, July 3, 2020 that the City is not required to appoint a neutral hearing officer, the City, on the second item, does not possess power to subpoena, and three, the City cannot provide the unedited personnel file of current or past employees. So, each of them were denied when we send a responsive email to Mr. DeFillippo on behalf of the City on Thursday, July the 23rd of 2020. So, those three email communications are part of what we are submitting this evening. For the benefit of the hearing officer, we have put together exhibits numbered one through ten, and if I may, I would like to present the original to you. I have a copy for Council, you're welcome. Before I ask Mr. Montoya to give some testimony after being sworn in, I would like to make a very short opening statement. The opening statement is in regard to two primary reasons for the relief requested. The relief we are requesting is two-fold: one that the contract with Universal Waste be terminated, and two that the matter for solid waste procurement be rebid. The two primary reasons are these: One, that there were violation of the procurement code, and two that the bid evaluation process is invalid, it is flawed because of the arbitrariness when it is required to be something objective and, in particular, two of the items

are incapable of being objective and we will go into these specific reasons. With regard to the very first item, or reason for our request, there was a termination of the City of Rio Communities City Manager after she was suspended. We have as part of our exhibits, two News Bulletin articles. One of them with regard to suspension of Leisa Haynes, the other one with regard to her termination. The second article deals specifically with Leisa Haynes' responses to Clara Garcia of the News Bulletin with regards to the meetings she had, and she admits her mistakes to the News Bulletin, which is part of exhibit two, that she not only had meetings, but she had lunch with Universal Waste representatives during the bid and negotiation process which is contrary to the procurement code. The procurement code does not allow for any bribes or gratuities, and it is specifically stated in one of the provisions in the procurement code. I made copies of that provision of that procurement code that I will present in a little while. With regard to the evaluation process, there are two particular items, discounts and the fee schedule that are problematic with regard to the discounts. The discounts are directed to three groups. Those three groups are indigents, senior citizens and veterans. None of those three groups are defined in the request for proposal. Without definition and without demographics, it is impossible for a bidder to address the discounts. In other words, without base line or other demographic information on Rio Communities and how many indigents, senior citizens and veterans would qualify, the bidders simply cannot address that. It is impossible to know to whom it applies, how many people it applied to, and how it affects the bottom line, which is what is the value to Rio Communities, what is the charge that the citizens of Rio Communities will be paying for the services. The procurement code, generally is intended to provide for bids that are evaluated on an equal bases and objectively evaluated so that the evaluators of the committee and the local public body, in this case, the Council and Mayor can make objective rulings. The process in this case involved, not only an arbitrary scoring on the area of discounts, which was a ten-point item out of a hundred, but also arbitrariness in the fee schedule which is a fifty five out of a hundred point item. With regard to the fee schedule, there was no method of determination for the amount of gross receipt tax, gross receipts tax was said to be an item for consideration under the fee schedule, an estimate of gross receipt taxes. Part of the problem with that is gross receipt taxes by statute are confidential, they cannot be disclosed to the Municipality, the statute says that is unlawful to disclose a tax return of tax information. And so, it can't then be a factor. Beside that, even if gross receipts taxes were to be considered, then if one of the bidders is paying gross receipts tax on an amount that is charged to all of the people in Rio Communities, and say the total is a hundred thousand dollars for one year, and if the other bidder is the lower bidder and charges ninety thousand dollars to the same group in Rio Communities, the gross receipts tax is the same, the tax rate is the same. There is an inverse effect and the low bidder is actually going to pay less in gross receipt, so if the fee consideration under evaluation factors, in part, is an estimated gross receipts tax to Rio Communities, then the lower the bid the less gross receipts and that is really not what you want if you want the lower bidder to get the proposal. Beside that, there was a requirement for a local bidding office, which is something that is in the evaluation factors. Well, the local bidding office has been in place by AC Disposal for some time. The other bidder, Universal Waste, is actually billing out of its California offices, when Rio Communities residents call and ask about their bill, they get connected to someone in California. Because its corporate offices are in California, without a local bidding office, gross receipts taxes would be paid out of New Mexico and in another state. And they also have another office somewhere in New Mexico. Without a local office, not only is there not the convenience to go and see someone

face to face, to pay your bill or ask questions about your bill, you can't talk to someone local about it and without a deadline to establish a local bidding office by Universal, Universal was able to do this. In their bid they said, we will provide a local billing office, but they didn't say when. Well, if they were granted a ten-year contract, which they were, then could it be the day before the end of the ten-year contract that they finally provide that? Again the request for proposal has to be very specific, so that if there is a requirement of a local bidding office, then both parties have to equally have that at the beginning, at the onset, and it didn't say that in the RFP, it didn't make any reference to when that local billing office was to be provided, and ,so it was unfair to AC Disposal who already had it. Yet on that particular item, the fee schedule, there was a very sizable difference in the evaluation. Fifty-four points for Universal and thirty-nine points for AC Disposal. Lastly, and I think most importantly on this point, the fee schedule was supposed to be set out by each of the bidders. When you look at the bid by AC Disposal, AC Disposal provided a bid on a four-year, eight-year, and twelve-year basis. The 12-year fee schedule, the longest term of the contract was the lowest. It was lower than Universal, so AC Disposal was the low bidder on the contract. The RFP indicated that eight-years, two four-year terms, the second being an extension of the contract being another four years would be the maximum of the contract. Yet, a ten-year contract was negotiated and approved. So, if a ten-year contract was approved but the RFP said eight years, then there is a departure from the RFP and the twelve-year proposal, the low bid by AC Disposal is the bid that should have been recognized as the low bid and this item, the fifty-five point item, the fee schedule, again was something that was done in an arbitrary way and it was unfair in the application to AC Disposal. So, without the primary item, the fifty-five-point item, being completely objective and fair to both parties, it was arbitrary. And also, the discount item was arbitrary, a total of sixty-five points. I will review the other items that were in the bidding process as well, but those were the main ones that I wanted that I wanted to talk, they were the primary reasons why this bid process really should be redone. The last thing we are asking is, not only that the contract be terminated and bid process be redone, but that Universal not be allowed to participate. There is also a provision in the procurement code that if there is misconduct by one of the bidders, then they may be excluded. We are asking that they be excluded from the next bid process. Again, buying lunch for the employees of Rio Communities, the City Manager and a person on the evaluation committee is not allowed under the procurement code. So, those violations of the procurement code are the things we would ask being the basis for the procurement officer to terminate the contract, rebid without Universal being allowed to bid. With that, I do have questions of Mr. Montoya and would ask that he be sworn in.

- City Attorney Chris DeFillippo: Mr. Chavez, again, we are a City we don't have the ability to swear in a witness, seeing as how this is an administrative hearing.
- Mr Chavez: Okay, with that, I understand that there is discretion, per the provisions relating to the discretion of the hearing officer, the hearing officer has some discretion with regard to either following the rules of evidence or using a more relaxed method during the hearing. I am understanding from Council, I expect from the hearing officer, that there is no need to swear in Mr. Montoya is that accurate? I also understand that at a judicial review, in other words, depending upon the result of the hearing, if there is a judicial review, that Council has indicated that a full evidentiary hearing would be held at that time, including subpoenas for witnesses and a subpoena for the personnel file of Leisa Haynes and , of course, would be heard by a district judge.

- City Attorney Chris DeFillippo: That is correct Mr. Chavez. Based on the procurement code, as you know, following this administrative hearing we are having currently, you afforded the right to a district court appeal. That obviously follows the following written decision from the City.
- Mr. Chavez: With that, Mr. Montoya, would you, you have already been introduced, would you please, say what it is, or the reasons, that you have brought this bid protest and you are asking that the contract be set aside.
- Mr. Montoya: Well, the bid process was tainted, first and foremost. The process is arbitrary. We can go back to the fee schedule, we spoke about.
- Mr. Chavez: Before we go into that, you said to begin with that the process was tainted, would you specifically address that first.
- Mr. Montoya: Well, you have a couple City employees having lunch through a bid process, and evaluation process, that is just, that's influenced. You can't do that.
- Mr. Chavez: What evidence of that do you have?
- Mr. Montoya: We have a video and we have a paid receipt.
- Mr. Chavez: So, in the exhibits, I would refer the hearing officer first to the exhibit number two, the two articles involving suspension and then termination of the City Manager. And I mentioned those two articles earlier, and how the City Manager stated that she was terminated as a result of her communications with Universal Waste and having lunch with Universal Waste during the process. You were able to obtain a video, could we have that video played? I understand that this TV will play a video, we have a CD. This has been provided to Council. While that is coming up, we also have, that is exhibit three, exhibit four is a receipt. Will you please explain what that receipt shows?
- Mr. Montoya: It shows that on the fifteenth, at 12:56, that Mitch Blackburn paid for six meals.
- Mr. Chavez: And the video shows what as far as.
- Mr. Montoya: Six people present.
- Mr. Chavez: Can you explain what is shown on this video?
- The video was played.
- Mr. Montoya: That looks like they are all walking in, into the Oasis Café, it looks like they were speaking to a gentleman, (inaudible), an employee. You can see they all sit down at the same table.
- Mr. Chavez: This café is located where?
- Mr. Montoya: In Rio Communities.
- Mr. Chavez: Can you point out the people shown in the video, please?
- Mr. Montoya: Yes, it's (inaudible) one of the owners.
- Mr. Chavez: Owners of what company?
- Mr. Montoya: Of Universal Waste, I think he runs the New Mexico operation. (Inaudible), that guy is an employee, a consultant to them, and you will see that Lisa Adair and Leisa Haynes are present.
- Mr. Chavez: Where are they? Where are Lisa Adair and Leisa Haynes?
- Mr. Montoya: Lisa Adair is next to Rhéganne Vaughan, and Leisa Haynes goes to sit in between Mr. Barnes and Mr. Blackburn.
- Mr. Chavez: There are actually two different videos, am I right?
- Mr. Montoya: It's the same video, different camera.
- Mr. Chavez: Did you solicit these videos, or where they provided to you?
- Mr. Montoya: They were actually provided to me by an employee Gordon Reeves. (Inaudible)

- Mr. Chavez: Different camera? And these videos are how long?
- Mr. Montoya: Between two and three minutes.
- Mr. Chavez: Exhibit four is a receipt for that meal and is on who's credit card?
- Mr. Montoya: Mr. Blackburn's.
- Mr. Chavez: So, one note to the hearing officer is that, in addition to exhibit two, the two news articles and this video, which is actually two consecutive videos, which are of the same lunch, same day, that this established that lunch was paid for by Universal Wastes' Mr. Blackburn, so (inaudible). I have a copy for Council. This is Section 13-1-191 of the procurement code. It is a very short, one sentence section. It reads, "All contracts and solicitations therefore shall contain reference to the criminal laws prohibiting bribes, gratuities and kickbacks." So, the next section that I have is actually from the New Mexico Statutes and Criminal Code dealing with the bribery of public officer or public employee. In this Statutory section, 30-24-1, in part reads, "Bribery of Public officer or public employee, consist of any person, giving or offering to give, directly or indirectly, anything of value to any public officer or public employee with intent to induce or influence such Public officer or public employee to:" A, B, C, D or E, "render any official opinion, judgement, or decree," "be more favorable to one party than to other in any cause, action, suit, election, appointment, matter or thing pending or to be brought before such person," "procure him to vote or withhold his vote on any question," "to execute any of the powers in him vested or", "perform any public duty otherwise than as required by law, or to delay in or omit to perform any public duty required of him by law." So, those are the references to the applicable sections of the procurement code and the Statutory sections. Charles, would you address now the review process, and go through the six items one by one, what the outcome was, and what was unfair and what should be done to make it fair.
- Mr. Montoya: So, the capacity and capability, the last one was worth ten points, UWS received ten points. We received eight. We have been operating in Rio Communities for over ten years, so the capacity and capability we were already doing it. So, if anything, we should have been evaluated equal, if not they should have received less. We had the majority of residents, so we should have been equal or had a few more points.
- Mr. Chavez: What's the next item?
- Mr. Montoya: Past Performance, with the maximum of ten points. We received ten and they received eight.
- Mr. Chavez: So you actually received two more points.
- Mr. Montoya: We receive two more points, but you have to remember you guys did not factor in our local preference number, you guys did not know it was in our RFP. We had to let you guys know that we have a local bid preference number because you guys didn't know. So, that was never factored in.
- Mr. Chavez: I printed from the State General Services Department Purchasing Division the list that included AC Disposal. So, I didn't specifically list this as an exhibit, but let me mark it as exhibit eleven. The comparison of the bids is exhibit ten, and this does show on the second page AC Disposal services. The statute requires what percent for local preference?
- Mr. Montoya: Five percent.
- City Attorney Chris DeFillippo: Mr. Montoya, are you looking at number ten right now? What document are you looking at?
- Mr. Montoya: I am just going off my notes.
- City Attorney Chris DeFillippo: Okay, I am wondering which copy you were referring to so I can keep up here.

- Mr. Chavez: Council, exhibit ten does have the comparison of each of these items and also an explanation of arbitrariness of the two items that I mentioned earlier, the discount points and the fee schedule, totaling sixty-five points between them. We have not gotten to those points yet. I think that is the next item up.
- City Attorney Chris DeFillippo: So, this is the document you created then?
- Mr. Chavez: We created that document together. In other words, if you go through the exhibit, we have listed the bid of AC Disposal is exhibit six, the bid of Universal Waste is exhibit seven, the bid evaluation forms by each of the four committee members is exhibit eight and the summary of bid evaluations is exhibit nine. Exhibit ten is the comparative analysis of each of those items.
- City Attorney Chris DeFillippo: Thank you.
- Mr. Montoya: So, moving onto recycling, the maximum points was ten points. The evaluation to Universal was ten, AC Disposal was eight. They were charging you guys for curbside recycling, we were free.
- Mr. Chavez: So, what should it have been for a fair score?
- Mr. Montoya: Flipped, they were charging, and we were free. I mean, there is not even any thinking about that, we should have received the higher points. Again, it was free, curbside was free.
- Mr. Chavez: What is the next item?
- Mr. Montoya: The discounts, again we could not give you guys, we couldn't prove our discounts. There were no numbers to go off of. How could we provide you guys with something we can't go off of.
- Mr. Chavez: Did the RFP have any information about how many were indigent, indigent people, indigent families, or veterans, or the third category was what? Let me see, indigents, veteran, and senior citizens. So, was any information provided to you on any of those categories?
- Mr. Montoya: There was no information given to us, there was no information on how residents we had.
- Mr. Chavez: Was there anything with regard to the definition of, for example, who would qualify as a senior citizen, age 55, 60, 65 or some other age? Was there any indication of how an income level would be set for indigency, how that would be determined or who would do it?
- Mr. Montoya: No.
- Mr. Chavez: So, apart from not having base line demographic information provided so that you could evaluate and determine how much you would charge any of these categories, was there any information in the RFP about how qualification would be determined or who would determine qualification, whether it would be up to you as a solid waste company to gather that information and make that determination, or if it would be Rio Communities who would have someone to determine that.
- Mr. Montoya: There was not that information in the RFP.
- Mr. Chavez: Did the RFP, for example, provide any forms that would be sent out to residents to gather that type of information.
- Mr. Montoya: No, it did not.
- Mr. Chavez: So, is it your position then that discount factor should be removed as invalid, arbitrary, and immeasurable?
- Mr. Montoya: Yes.
- Mr. Chavez: The next item is what?

- Mr. Montano: Bulk item.
- Mr. Chavez: What does bulk item mean?
- Mr. Montoya: Large item pickup, removed from resident's home. That is (inaudible). The evaluation score was worth five. Universal's was five and AC Disposal's was four. You guys for four pickups and that's what we offered. So, if anything there should have been an equal evaluation on that.
- Mr. Chavez: The last item was what?
- Mr. Montoya: The fee schedule.
- Mr. Chavez: And what were the problems with the fee schedule.
- Mr. Montoya: So, if you look at our fee schedule, we are cheaper. Our commercial is really cheaper than the other bidders. Our residential was a few cents difference. If you go to the longer-term contract, which you allowed them to do, if you go to our longer-term contract, we were cheaper across the board. Commercial, residential, everything was cheaper, so we should have been evaluated with higher points.
- Mr. Chavez: The RFP said the term of the contract would be what?
- Mr. Montoya: A four-year with a four-year extension.
- Mr. Chavez: So, a maximum of eight years was what was provided in the RFP, and the contract with Universal Waste was for how many years?
- Mr. Montoya: A four, a three, and a three.
- Mr. Chavez: So, how many years?
- Mr. Montoya: Ten years. And we offered an eight-year and a twelve-year. And the twelve-year we were cheaper across the board.
- Mr. Chavez: Now, one of the items that was listed as a factor in fee was gross receipts. Is there any problem with gross receipts as a factor in the fee schedule?
- Mr. Montoya: Well, again, we can't, we have a local office, we can provide that as a local office, our fees would automatically go here. With them, you don't know because it is confidential, you truly don't know what you are receiving with their gross receipts tax because it is confidential through the State.
- Mr. Chavez: Is that a problem that is going on with another entity and Universal Waste?
- Mr. Montoya: That is correct.
- Mr. Chavez: Explain that.
- Mr. Montoya: There is another entity that they cannot figure out if they are receiving their gross receipts tax.
- Mr. Chavez: What entity is that?
- Mr. Montoya: It is Valencia County.
- Mr. Chavez: Explain that, please.
- Mr. Montoya: So, they have had a few meeting, and I watch their Council meetings, and it is one of their biggest concerns. They cannot provide GRT to them and they are not required to because it is State law, they are not required to show them any GRT tax.
- Mr. Chavez: With that, should GRT somehow be a factor in what is a lower fee?
- Mr. Montoya: No, because you can't evaluate that. You cannot evaluate that. You can evaluate price and everything else but you cannot evaluate GRT. GRT is, everyone has to pay it (inaudible).
- Mr. Chavez: And with regard to the local billing office, what does the RFP require?
- Mr. Montoya: I am assuming immediately, and I provided that.
- Mr. Chavez: You are assuming that, but what does the RFP say with regard to when you have to have a local billing office?

- Mr. Montoya: On their contract it doesn't say that.
- Mr. Chavez: On their proposal, what does it say?
- Mr. Montoya: That they will provide a local billing office.
- Mr. Chavez: What do they say in their bid, in response to the RFP? I mean in their bid, in response to the RFP, what did Universal Waste indicate that they would do as far as having a local billing office?
- Mr. Montoya: They will have one, but there is no date on it. They don't put a date on it.
- Mr. Chavez: So, without having a date on it, could they potentially, the last day of the then-year contract, establish a billing office.
- Mr. Montoya: Yes, their investment is cheaper than mine.
- Mr. Chavez: So, without a specific requirement of a billing office by a certain date, is the RFP something that can be construed in an arbitrary manner in the evaluation of bids.
- Mr. Montoya: Yes.
- Mr. Chavez: And what was the bid scoring on fee schedule?
- Mr. Montoya: It was thirty-nine for Ac Disposal and 54 for Universal Waste.
- Mr. Chavez: So, if you were the low bidder and, essentially, your gross receipts tax could be paid the same, on whatever each of you is making, how could they be scored so much higher? How could Universal have been scored fifteen points higher on the main item?
- Mr. Montoya: It should not have been evaluated through the evaluation committee.
- Mr. Chavez: With that I would like to make a closing. So, First, because of the tainted bid process, and because there were violations of the procurement code, and potentially the statute to bribe a public officer or public employee, that I read just a minute ago, section 30-24-1, as well as gratuity apart from bribery, buying someone a lunch can be considered a gratuity which can be considered a violation of procurement code, neither of those things can happen during the bid or the negotiation process. It taints the process and should require, not only that the individual involved, in this case the City Manager, be suspended and then removed, but also that the bid process be invalidated and if a contract has already been awarded, that that contract be terminated. So, I have the statutory section, again from the procurement code that deals with termination after execution of a contract. I would like to present that to you. This is section 13-1-182 of procurement code, that indicated in subsection B that the "contract may be terminated and the contractor shall be compensated for the expenses for actual expenses (inaudible) incurred under the contract, plus a reasonable profit prior to termination," but there is a provision in the first section that would negate that and indicated the "if a contract was in violation of law" or either fraudulently or in bad faith, then there would be no reason to compensate the contractor upon termination. So, we would simply ask the contract be terminated for the misconduct. I didn't make another copy of this, but I do have the statutory section that deals with confidentiality of returns, that is tax returns, including gross receipts tax, in section 7-1-8 NM Statutes annotated under subsection A, that indicates that it is unlawful for any person, other than the tax payer, to reveal to any other person the tax payer's return or other return information. There is an exception that doesn't apply here, so that is the section that indicates that gross receipts cannot be compelled, that it cannot be required, and it would be the type of thing, because it is confidential, that cannot be used as an independent or objectively reviewable criteria. So, going back to the reasons that the bid process is flawed, two of the items, the discount points, because of lack of definition of the three applicable discount parties, senior citizens, veterans and indigents, and without giving any demographics, it is called speculation and speculation is not something that can be properly evaluated and is arbitrary. And not only is

the fee schedule arbitrary because of the gross receipts tax issue, but it is arbitrary because it does not require a specific deadline or gate for the party to have a local billing office. The third, and I think main thing, that shows the arbitrariness of the last and largest of the evaluation factors, the fee schedule is because it was actually a lower bid amount provided by AC Disposal. That is what the bidding process is all about, getting the best value for customers, for your citizens in this situation. And it did not happen. And it did not happen because of the arbitrariness it was applied and evaluated and so there was no way to objectively (inaudible) in the fees and in the evaluation process that it was obviously very highly and unfairly in favor of Universal Waste getting 54 of a total of 55 allowable points and AC Disposal only getting 39 points, as the low bidder. So, there was obviously a problem with the bidding process. Besides that, the other four items, capacity, capability, performance, recycling, and bulk items, should have, at least, been equal and there was no consideration whatsoever for the five points that should have been awarded to AC Disposal when they included their qualification as their local business preference in their Bid. And they included their number and it's very easy to go online like I did, I showed it to you in exhibit eleven, from the general services division, it took me two minutes to go to that section and find, yes, they are a qualified resident business that is entitled to resident preference. So, for those reason, again, the three things we are asking, that the contract from Universal Waste, that the bid process be refined and opened so that it is objective, and that Universal Waste be disqualified from participation under the section of Procurement Code that indicated that a parties that had violated the procurement code may or should be excluded from participation. If there are question that you have, hearing officer, I would be happy address those or have Mr. Montoya answer questions.

- Procurement Officer Angela Valadez: No, I am good. Again, I just wanted to read, say this here. Following the procedure of this hearing, I will be providing AC Disposal a final written decision within a reasonable period of time, describing the City's final determination regarding this protest. Thank you.
- Mayor Pro tem Gutjahr: Thank you.
- City Attorney Chris DeFillippo: Universal was provided notice that this hearing as happening and should they wish to call in, the opportunity is now. I do not have Mr. Cation's phone number, who is the representative for Universal. However, I do believe he is watching, so Mr. Cation, if you are watching, now would be the time to call in if you wish. So, we will give him a few minutes to call in, should he wish.
- Mayor Pro tem Gutjahr: I just have a comment, a question. I guess it is for Ms. Valadez, as well as our attorney, once the written reply is completed it will be made public since this all your presentation has been made public, that will be made public.
- Attorney DeFilippo: That is correct, it will be a public document, we, in fact, next meeting we can have it written into the minutes, if the Council will wish.
- Mayor Pro tem Gutjahr: I think that would be good, thank you, that would be helpful.
- City Attorney Chris DeFillippo: Mr. Chavez, for the record Universal's attorney has not sent an email, we will close the meeting.

Adjourn

- Councilor Ramsell moved to adjourn. The motion was second by Councilor Jim Winters. With a 4-0 vote the City Council procurement protest hearing: AC Disposal Protest of City of Rio Communities Request for Proposal, No. 2019-0102 Solid Waste Collection Services was adjourned at 7:29 pm.

Respectfully submitted,

Elizabeth (Lisa) Adair, Municipal Clerk
(Transcribed by Amy L. Lopez, Deputy Clerk)

Date: _____

Approved:

Mark Gwinn,
Mayor

Margaret (Peggy) Gutjahr,
Mayor Pro-tem/Councilor

Bill Brown,
Councilor

Joshua Ramsell,
Councilor

Jim Winters,
Councilor