

Commission Meeting Agenda



Mayor

Samuel D. Cobb

City Commission

Marshall R. Newman

Christopher R. Mills

Patricia A. Taylor

Joseph D. Calderón

Dwayne Penick

Don R. Gerth

Acting City Manager

Manny Gomez

June 17, 2019



Hobbs City Commission
Regular Meeting
City Hall, City Commission Chamber
200 E. Broadway, 1st Floor Annex, Hobbs, New Mexico

Monday, June 17, 2019 - 6:00 p.m.

Sam D. Cobb, Mayor

Marshall R. Newman
Commissioner - District 1

Christopher R. Mills
Commissioner - District 2

Patricia A. Taylor
Commissioner - District 3

Joseph D. Calderón
Commissioner - District 4

Dwayne Penick
Commissioner - District 5

Don R. Gerth
Commissioner - District 6

A G E N D A

*City Commission Meetings are
Broadcast Live on KHBX FM 99.3 Radio
and Available via Livestream at www.hobbsnm.org*

CALL TO ORDER AND ROLL CALL

INVOCATION AND PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

1. Minutes of the June 3, 2019, Regular Commission Meeting

PROCLAMATIONS AND AWARDS OF MERIT

2. Recognition of City Employees - Milestone Service Awards for June, 2019:
 - ▶ 5 years - Ashley Dimascio, Parks Department
 - ▶ 5 years - German Ramirez, Hobbs Police Department
 - ▶ 10 years - Joseph Clemmer, Hobbs Police Department
 - ▶ 10 years - Ahmaad White, Hobbs Police Department

PUBLIC COMMENTS *(Citizens who wish to speak must sign the Public Comment Registration Form located in the Commission Chamber prior to the beginning of the meeting.)*

CONSENT AGENDA *(The consent agenda is approved by a single motion. Any member of the Commission may request an item to be transferred to the regular agenda from the consent agenda without discussion or vote.)*

3. Consideration of Approval of a Professional Services Agreement with the Boys and Girls Club of Hobbs for FY 19-20 *(Doug McDaniel, Parks and Recreation Director)*

DISCUSSION

4. Hobbs Municipal Schools - Career Technical Education (CTE) *(T. J. Parks, Superintendent)*
5. Economic Development Corporation of Lea County - Airline Services *(Finn Smith, EDC Board President)*
6. CORE Year-in-Review *(Catherine Vorrasi, CORE Facility Director)*

ACTION ITEMS (Ordinances, Resolutions, Public Hearings)

7. Resolution No. 6809 - Authorizing FY 19-20 Funding Appropriations for Economic Development and Marketing Entities *(Erik Scramlin, Deputy City Attorney)*
8. Consideration of Approval of Professional Services Agreement with Pacific Rim, Inc., for Management and Operation of Rockwind Restaurant and Catering Service *(Erik Scramlin, Deputy City Attorney)*
9. Resolution No. 6810 - Authorizing Approval of the Market Rate Multi-Family and Single-Family Unit Production Municipal Infrastructure Reimbursement Incentive Program for FY 19-20 *(Kevin Robinson, Planning Department)*

COMMENTS BY CITY COMMISSIONERS, CITY MANAGER

10. Next Meeting Date:
 - ▶ City Commission Regular Meeting
July 1, 2019, at 6:00 p.m.

ADJOURNMENT

If you are an individual with a disability 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 above meeting, please contact the City Clerk's Office at (575) 397-9207 at least 72 hours prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the City Clerk's Office if a summary or other type of accessible format is needed.



CITY OF HOBBS

COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 17, 2019

SUBJECT: City Commission Meeting Minutes

DEPT. OF ORIGIN: City Clerk's Office
DATE SUBMITTED: June 12, 2019
SUBMITTED BY: Jan Fletcher, City Clerk

Summary:

The following minutes are submitted for approval:

- ▶ Regular Commission Meeting of June 3, 2019

Fiscal Impact:

Reviewed By: _____
Finance Department

N/A

Attachments:

Minutes as referenced under "Summary".

Legal Review:

Approved As To Form: _____
City Attorney

Recommendation:

Motion to approve the minutes as presented.

Approved For Submittal By:



Department Director



City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

Resolution No. _____
Ordinance No. _____
Approved _____
Other _____

Continued To: _____
Referred To: _____
Denied _____
File No. _____

Minutes of the regular meeting of the Hobbs City Commission held on Monday, June 3, 2019, in the City Commission Chamber, 200 East Broadway, 1st Floor Annex, Hobbs, New Mexico.

Call to Order and Roll Call

Mayor Cobb called the meeting to order at 6:00 p.m. and welcomed everyone in attendance to the meeting. The City Clerk called the roll and the following answered present:

Mayor Sam D. Cobb
Commissioner Marshall R. Newman
Commissioner Christopher Mills
Commissioner Patricia A. Taylor
Commissioner Joseph D. Calderón
Commissioner Dwayne Penick
Commissioner Don Gerth

Also present: Manny Gomez, Acting City Manager/Fire Chief
Efren Cortez, City Attorney
Erik Scramlin, Deputy City Attorney
Valerie Chacon, Assistant City Attorney
Brian Dunlap, Acting Police Chief
Shane Blevins, Police Lieutenant
Mark Deporto, Fire Captain
Toby Spears, Finance Director
Todd Randall, City Engineer
Kevin Robinson, Development Director
Doug McDaniel, Parks and Recreation Director
Bryan Wagner, Parks and Open Spaces Director
Nicholas Goulet, Human Resources Director
Tracy South, Assistant Human Resources Director
Tim Woomer, Utilities Director
Shannon Arguello, Municipal Court Administrator
Shelia Baker, General Services Director
Meghan Mooney, Communications Director
Sandy Farrell, Library Director
Ron Roberts, Information Technology Director
Ann Betzen, Risk Manager/Executive Assistant
Mollie Maldonado, Deputy City Clerk
Jan Fletcher, City Clerk
22 citizens

Invocation and Pledge of Allegiance

Commissioner Taylor delivered the invocation and Commissioner Mills led the Pledge of Allegiance.

Mayor Cobb requested Item #10 - Resolution No. 6806 - Authorizing Approval of a Development Agreement with Grimes Land Co. Concerning Installation of Public Infrastructure be removed from the agenda.

Approval of Minutes

Commissioner Penick moved that the minutes of the regular meeting held on May 20, 2019, be approved as presented. Commissioner Taylor seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried.

Proclamations and Awards of Merit

Proclamation Proclaiming June 3, 2019, as "New Mexico Junior College Lady Thunderbirds Day"

Mayor Cobb proclaimed June 3, 2019, as "New Mexico Junior College Lady Thunderbirds Day". He presented the proclamation to members of the team and Coach Kenneth Blackwill. Mr. Deron Clark, Director of Athletics at NMJC, expressed appreciation to City Staff for assisting in hosting the 2019 NJCAA Outdoor Track & Field National Championship in Hobbs.

Public Comments

There were no Public Comments.

Consent Agenda

Mayor Cobb explained the Consent Agenda and the process for removing an item from the Consent Agenda and placing it under Action Items.

Commissioner Calderón moved for approval of the following Consent Agenda Item(s):

Resolution No. 6801 - Authorizing a Special Variance to the City's Noise Ordinance During Hobbs August Nites on August 17-18, 2019.

Consideration of Approval of Park Usage Fee for Vendors at City-Sponsored Events.

Resolution No. 6802 - Authorizing the Appointment of Finn Smith to the Board of the Eddy-Lea Energy Alliance, LLC.

Commissioner Penick seconded the motion and the vote was recorded as follows: Newman yes, Mills yes, Taylor yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolutions and supporting documentation are attached and made a part of these minutes.

Discussion

There were no items presented for Discussion.

Action Items

PUBLIC HEARING: Resolution No. 6803 - Establishing Permit Parking Restrictions for On-Street Parking on Streets Adjacent to the Hobbs High School (Specifically the Neighborhood West of the Hobbs High School).

Mr. Efren Cortez, City Attorney, stated a legal notice advertising a the public hearing on to consider a permit parking program for neighborhoods adjacent to Hobbs High School was published on May 10, 2019.

In response to Mr. Cortez' inquiry, Ms. Cortney Whitley stated she is here to testify about the petition submitted to the City regarding the establishment of permit parking restrictions for on-street parking on streets adjacent to the Hobbs High School (specifically the neighborhood west of the Hobbs High School).

In response to Mr. Cortez' inquiry, no members of the audience requested to speak in opposition to the petition.

Ms. Jan Fletcher, City Clerk, administered the oath to Ms. Whitley.

Ms. Whitley stated she submitted the petition on April 15, 2019, with 65 signatures "for" and two "against". Ms. Whitney reviewed the signatures on the petition and testified that there were no changes to the petition since she submitted it on April 15, 2019.

Mr. Cortez requested Ms. Fletcher to enter the "Petition" into the record as "Exhibit 1".

Commissioner Newman stated the nuisance parking adjacent to the Hobbs High School is really the Irresponsible Parent Parking Act.

Commissioner Penick commended Ms. Whitley for her hard work in obtaining signatures on the petition. Ms. Whitley thanked the neighbors for their assistance in the matter.

Ms. Valerie Chacon, Assistant City Attorney, presented a PowerPoint presentation to the Commission reviewing the history of the issue. She stated members of the community have expressed concerns regarding on-street parking in neighborhoods adjacent to Hobbs High School. The City of Hobbs has reviewed the concerns and considered options to assist the residents in the matter. She stated the Commission held a work session on March 4, 2019, and a Town Hall meeting on March 11, 2019, to address the issue. Ms. Chacon stated pursuant to Uniform Traffic Ordinance (UTO) Section 12-6-6.7 and Section 12-6-6.12, the City Manager may erect signs affecting parking adjacent to any school property where, in his opinion, parking would interfere with traffic or create a hazardous situation. She stated prior to exercising his authority, the City Manager sought input from members of the public, both for and against permit parking, by implementing a petition process spanning from March 20, 2019, to May 20, 2019. The petition required signatures from 67% of the neighborhood "for" permit parking in order for the Commission to consider action on the matter. Ms. Chacon stated only the neighborhood West of the Hobbs High School achieved this mark. She stated the City has published notice of the hearing in the Hobbs News-Sun and, thus, has provided notice via publication to the general public. Ms. Chacon reviewed some of the frequently asked questions and explained how permits would be issued and how enforcement would be handled.

In reply to Commissioner Newman's questions, Ms. Chacon stated neighbors who hire professional services, such as plumbers, would have to request the plumber to apply for a "Parking Permit" from the Hobbs Municipal Court and return the permit back to the Court within seven days. Ms. Chacon stated the permits are only applicable during the school year and not during summer school as there is not an issue during the summer session.

Ms. Chacon requested testimony from Ms. Fletcher to lay a legal foundation to establish a public record.

Ms. Fletcher stated the petition for the West neighborhood was picked up from the City Clerk's Office on March 21, 2019, and looking at the petition it has not been altered in any way and is substantially the same as when submitted on April 15, 2019. She continued to state the petition has met the requirements of 67% for permit parking.

Ms. Chacon stated, at this time, she would move for the admission of the West neighborhood petition as "Exhibit 1". Ms. Fletcher ensured the West neighborhood petition will be entered into the record as "Exhibit 1".

Continuing her testimony, Ms. Fletcher stated the South neighborhood petition was not picked up for circulation of signatures. She further stated the South neighborhood petition has not been altered and is substantially the same as when it was created. She

stated the petition does not meet the 67% of signatures for permit parking. Ms. Fletcher ensured the South neighborhood petition will be entered into the record as "Exhibit 2" per the request of Ms. Chacon.

Ms. Fletcher stated the North neighborhood petition was picked up from the City Clerk's Office on March 21, 2019, and returned on April 30, 2019. She stated the petition was submitted with only one signature which does not meet the 67% of signature for permit parking. She further testified the North neighborhood petition has not been altered and is substantially the same as when it was submitted on April 30, 2019. Ms. Fletcher ensured the North neighborhood petition will be entered into the record as "Exhibit 3" per the request of Ms. Chacon.

Mr. Cortez stated all the facts have been stated, and he requested action by the Commission on the item.

Commissioner Calderón moved to approve Resolution No. 6803 as presented. Commissioner Mills seconded the motion and the vote was recorded as follows: Newman yes, Mills yes, Taylor yes, Calderón yes, Gerth yes, Penick yes, Cobb yes. The motion carried. Copies of the resolution and documentation are attached and made a part of these minutes.

FINAL ADOPTION: Ordinance No. 1121 - Amending Chapter 10 of the Hobbs Municipal Code Prohibiting Parking of Commercial Motor Vehicles on Streets.

Mr. Erik Scramlin, Deputy City Attorney, presented a PowerPoint to the Commission. Mr. Scramlin stated State Statutes allow the municipality to regulate the operation of commercial motor vehicles with respect to streets under their jurisdiction. He also stated pursuant to that authority, the proposed ordinance would make it a parking violation to park any commercial motor vehicle, as defined by statute, on any street within the municipal boundaries of Hobbs. Mr. Scramlin stated the proposed ordinance would, at a minimum, require signs to be posted at all major entrances to the City. He further stated the UTO only allows regulation on streets and does not authorize regulation on private property. Several citizens have voiced concerns at the Planning Board meetings regarding safety as it relates to commercial motor vehicles being parked upon City streets. Mr. Scramlin reviewed the PowerPoint which contained the local and state law, definitions of parking violations, commercial motor vehicle defined, pictures of truck weight, exceptions, implementation and enforcement, and penalty. He stated the City of Midland, Texas, recently adopted an ordinance which is much more restrictive in nature. Mr. Scramlin stated this ordinance is consistent with State and Federal law and a penalty would not have any effect on a CDL.

Commissioner Mills voiced opposition to the proposed ordinance.

After a lengthy discussion regarding the language in the ordinance, weight of vehicles and type of registration through the Motor Vehicle Department, Commissioner Penick moved to table Ordinance No. 1121 as presented. Commissioner Taylor seconded the motion and the vote was recorded as follows: Newman yes, Mills yes, Taylor yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried. A copy of the ordinance is attached and made a part of these minutes.

For clarification, Mr. Cortez stated if the Commission desires to move forward with the ordinance on an agenda at a later date, the City would have to republish notice of intent to consider the ordinance.

Resolution No. 6804 - Authorizing a Solid Waste Services Agreement with Waste Management of New Mexico.

Mr. Tim Woomer, Utilities Director, explained the resolution and stated the City of Hobbs and Waste Management of New Mexico desire to enter into a new Solid Waste Services Agreement. He outlined the summary highlights of the proposed new agreement as follows:

- Contract Term: 10 year agreement with two automatic five year renewals.
- Twice a week residential pickup from alley or curbside as currently designated.
- Residential Rates will remain the same:

96-gallon Polycart	\$ 18.67 per month
Second Polycart	\$ 7.25 per month
- City Rates Charged to Customers

96-gallon Polycart	\$ 23.01 per month
Second Polycart	\$ 6.87 per month

Mr. Woomer stated the City Rates are adjusted to pay for the operation of the Recycling Facility and the Convenience Center, all City landfill tipping fees and hauling charges, as well as, costs associated with the Citywide Community Clean-ups. He further stated the following rate table does not include NMGRT:

- Commercial Rates will remain the same.
- The Transfer Facility Operation Fees:

Convenience Center	\$8,570.68 per month; This is the same as the current fee.
Recycling Facility	\$9,500.00 per month; This is an increase of \$942.03 per month

Mr. Woomer stated the current charge for the Recycling Facility operation is \$8,557.97 per month. The increase is due to Waste Management assuming the capital and operating expenses related to the Transfer Facility located at 3000 E. Marland. He stated in the previous agreement, the City owned and maintained all capital assets related to the operation of the Transfer Facility. Mr. Woomer stated in addition to maintaining the facility and equipment, the new capital expenses include the purchase of a new compactor, a recycling baler/conveyor, and a new bobcat. He stated the operating hours at the Transfer Facility will remain the same. He further stated as a part of the new agreement, the City proposes to relinquish the 3% Administrative Fee it receives as a discount and Waste Management proposes to relinquish the CPI and Fuel Adjustment they would have been eligible to receive on July 1, 2019. Mr. Woomer stated the proposed agreement allows for an annual rate increase based on the national CPI~WST index. He further explained there would be no Fuel Adjustments allowed with the proposed agreement and Waste Management agrees to relocate their current hauling site, located at 2608 Lovington Highway, to a more suitable location to better serve the City of Hobbs.

Commissioner Taylor thanked Mr. Woomer and his staff for their commitment on negotiating a good contract with Waste Management.

Commissioner Calderón moved to approve Resolution No. 6804 as presented. Commissioner Taylor seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Gerth yes, Penick yes, Cobb yes. The motion carried. Copies of the resolution and documentation are attached and made a part of these minutes.

Resolution No. 6805 - Authorizing Budgetary Adjustment #5 for FY 2018-2019.

Mr. Toby Spears, Finance Director, presented Budgetary Adjustment No. 5 for FY 18-19 to the Commission. He stated the total expenditures increased by \$3,173,204.99 and total revenues increased by \$2,310,000.00. Mr. Spears stated the ending cash balance for all funds decreased from \$56,870,374.60 to \$56,007,169.61 resulting in a net decrease of \$863,204.99. He stated the General Fund reserve balance remains at 34%.

Commissioner Gerth moved to approve Resolution No. 6805 as presented. Commissioner Newman seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Gerth yes, Penick yes, Cobb yes. The motion carried. Copies of the resolution and documentation are attached and made a part of these minutes.

Resolution No. 6807 - Approving the Final Plan for Tanglewood Unit Three at Ranchview Estates Subdivision.

Mr. Kevin Robinson, Development Director, explained the resolution and stated the final plan for Tanglewood Unit Three at Ranchview Estates Subdivision has been submitted by ALJO, LLC. He further stated the subdivision is located northwest of the intersection of East Bender and Ranchland within the municipal boundaries and encompasses +/- 10.43 acres which will contain 39 single family residential lots. Mr. Robinson stated a bond is being presented to the City of Hobbs to ensure completion of public infrastructure. He added the dollar amount of uninstalled public infrastructure is estimated to be \$329,389.33 including GRT. Mr. Robinson stated the City Engineer has approved the Engineer of Record (EOR) completion estimate. He stated he has approved the bond along with Mr. Toby Spears, Finance Director, and Mr. Efen Cortez, City Attorney. Mr. Robinson stated the Planning Board considered this item at the May 21, 2019, regular meeting and voted 5-0 to recommend approval contingent upon an EOR certification of all infrastructures.

Commissioner Calderón moved to approve Resolution No. 6807 as presented. Commissioner Penick seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Gerth yes, Penick yes, Cobb yes. The motion carried. Copies of the resolution and documentation are attached and made a part of these minutes.

Consideration of Approval to Renew the Professional Services Agreement with Life Skills Fore Youth of the Pecos for the First Tee Program at Rockwind Community Links.

Mr. Doug McDaniel, Parks and Recreation Director, explained the agreement and stated with the opening of Rockwind Community Links, one of the goals was to engage the youth of Hobbs, Lea County, Southeast New Mexico and West Texas in the game of golf by offering various junior golf instructional programs, clinics and camps. He further stated the First Tee Program teaches valuable life lessons using the game of golf. Mr. McDaniel stated the City of Hobbs has funded the First Tee Program at Rockwind Community Links for the previous four years with the most recent agreement being renewed in March, 2018, with a term of one year, and the option for two additional one year terms. He stated the partnership with Life Skills Fore Youth of The Pecos has afforded local youth golfers to participate in the nationally renowned First Tee Program. The First Tee's Nine Core Values, Nine Healthy Habits and Code of Conduct continue to have a positive impact on all who participate in this program at Rockwind Community Links, at the Boys and Girls Clubs and in the Hobbs Municipal Schools. He further stated by renewing this agreement, Rockwind Community Links will continue to be officially designated as a "The First Tee of Southeastern New Mexico Program Location" and will receive all considerations normally associated with First Tee Program locations. He

added the City of Hobbs will also provide a maximum of two fundraising golf events per year to benefit The First Tee program.

Mr. Mc Daniel stated the new Professional Services Agreement includes language that gives the City of Hobbs the ability to audit First Tee program finances. It also prohibits the City of Hobbs from acting as a trustee for funds generated by the First Tee and prohibits City of Hobbs staff being issued credit cards assigned to the First Tee program. He further stated the Finance Department is proposing an extension of the previous agreement that expired on March 5, 2019, to cover services from March 6, 2019, through June 30, 2019, at a pro-rated amount of \$34,819 ($\$109,560 / 365 \times 116$). Mr. McDaniel stated the new Professional Services Agreement would then commence on July 1, 2019, and have a term of one year with the option to renew for three additional one-year terms.

Commissioner Gerth moved to approve renewal of the professional service agreement to offer various junior golf instructional programs, clinics and camps with Life Skills Fore Youth at an annual cost of \$109,560.00 as presented. Commissioner Newman seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Gerth yes, Penick yes, Cobb yes. The motion carried. A copy of the supporting documentation is attached and made a part of these minutes.

Resolution No. 6808 - (Tabled Item from May 20, 2019) Authorizing the Mayor and City Manager to Enter Into a Legal Services Agreement with Robles, Rael and Anaya, P.C., and with Baron & Budd, P.C.

Mr. Scramlin explained the resolution and stated the City of Hobbs seeks to retain the legal services of Robles, Rael and Anaya, P.C. and Baron & Bud, P.C., to investigate and possibly initiate litigation involving the manufacture, marketing, sale and distribution of prescription opioid products within Hobbs, New Mexico. He stated payment for services will be pursuant to a contingency fee agreement meaning there is no fee if there is no recovery and the contractor shall not receive reimbursement from public funds unless required by law. Mr. Scramlin presented a PowerPoint presentation outlining the United States Opioid Epidemic along with numerical statistics based on 2018 provisional data provided by the National Vital Statistics System.

Commissioner Calderón moved to approve Resolution No. 6808 as presented. Commissioner Gerth seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Gerth yes, Penick no, Cobb yes. The motion carried. Copies of the resolution and documentation are attached and made a part of these minutes.

Comments by City Commissioners, City Manager

Acting City Manager/Fire Chief Manny Gomez recognized Mr. Hubert Quintana in the audience. He also recognized Mr. Bryan Wagner, the new Department Head for Parks and Open Spaces.

Acting City Manager/Fire Chief Gomez congratulated the Commission and City staff on its First Anniversary at the CORE. He stated it has been very successful. Acting City Manager/Fire Chief Gomez stated the CORE annual statistics will be reviewed at the June 17th Commission meeting.

Acting City Manager/Fire Chief Gomez stated Rockwind Community Links has climbed to No. 2 on the "Great Facility" list in the Golf Week Magazine.

Acting City Manager/Fire Chief Gomez expressed appreciation to City staff for their hard work to provide adequate information on items presented to the Commission for consideration tonight.

Commissioner Gerth thanked everyone for attending tonight's meeting.

Commissioner Mills stated he and Mr. Scramlin participated in the ATK Mentoring Program and had fun playing frisbee with the kids.

Commissioner Mills also stated his son attended the First Tee Program and it is a great program.

Commissioner Mills expressed concern regarding the enforcement of a Hobbs Municipal Code which would prohibit the parking of Commercial Motor Vehicles on streets. He recommended the Commission review different options and not include the 10,000 pound vehicles.

Commissioner Taylor thanked Ms. Whitley for her hard work and perseverance on the neighborhood parking issue by the Hobbs High School.

Commissioner Taylor stated the City badly needs a South Bypass which would assist in the problem of large vehicles entering the City. She stated she does not see the F-250 and F-350 trucks being a problem in Hobbs.

Commissioner Taylor thanked Ms. Meghan Mooney, Communications Director, for all her hard work.

Commissioner Penick also thanked everyone for their attendance at tonight's meeting.

Commissioner Penick thanked the Legal Department for being very diligent in its presentation. He stated the Planning Board has been reviewing the problem of commercial motor vehicles parking on streets since 2016.

Commissioner Penick thanked the community and the City for allowing him to attend the Municipal Official Leadership Institute (MOLI) Course in Santa Fe.

Mayor Cobb stated local residents participated in the "Make a Wish" fundraiser and raised \$250,000.00. He stated 1% of the monies go to the State Social Service and the remaining funds are given to families of "Make a Wish".

Mayor Cobb stated the next regular Commission meeting will be held on Monday, June 17, 2019.

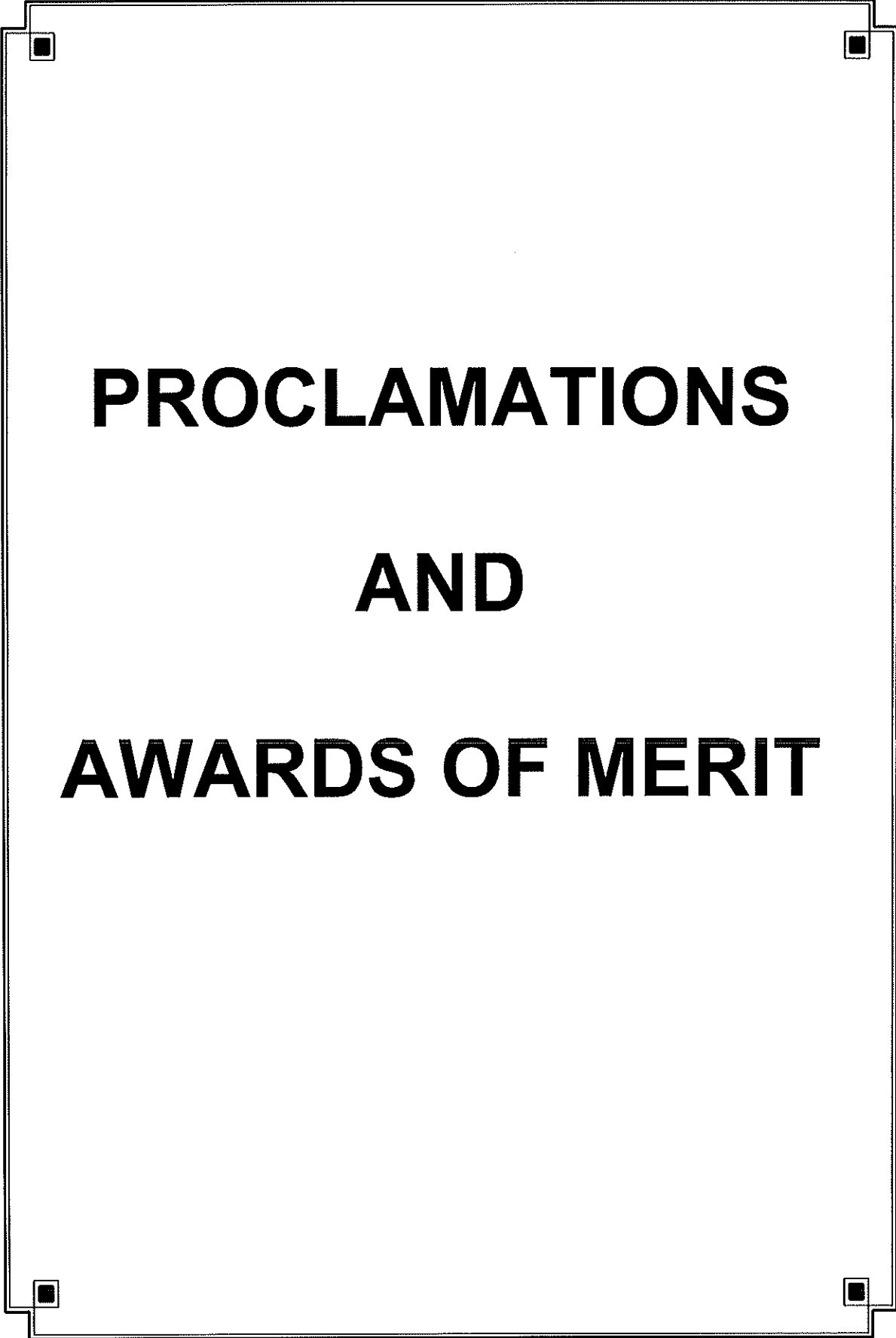
Adjournment

There being no further business or comments, Commissioner Calderón moved that the meeting adjourn. Commissioner Newman seconded the motion and the vote was recorded as follows: Newman yes, Mills yes, Taylor yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried. The meeting adjourned at 7:40 p.m.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



PROCLAMATIONS

AND

AWARDS OF MERIT

June Milestones

10 Years

Joseph Clemmer	HPD	06/01/2009
Ahmaad White	HPD	06/09/2009

5 years

Ashley Dimascio	Parks	06/16/2014
German Ramirez	HPD	06/30/2014



CONSENT AGENDA



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 17, 2019

SUBJECT: CONSIDER APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH THE BOYS AND GIRLS CLUB OF HOBBS
DEPT. OF ORIGIN: Parks and Recreation
DATE SUBMITTED: June 11, 2019
SUBMITTED BY: Doug McDaniel, Parks and Recreation Director

Summary:

Previously, the City of Hobbs and The Boys and Girls Club of Hobbs have entered into a Professional Services Agreement since the Club has the technical and professional experience to operate a nine (9) week Summer Program. The Club will also operate, concurrently, a Special Needs program and will hire staff to supervise both of these programs. Additionally, the Club will also enter into a contract with Gus Macker for the operation of the Gus Macker 3-on-3 Basketball Tournament during the Hobbs Downtown Slam & Jam, and will also provide scorekeepers and the Head Referee for this event.

Fiscal Impact:

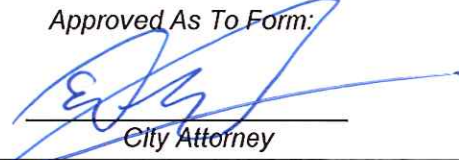
Reviewed by: 
Finance Department

The term of this agreement is for one (1) year beginning on July 1, 2019 and ending on June 30, 2020. The agreement is to provide funds to operate a full-day summer program at the Club. There is currently \$69,000 in the Parks & Recreation Department's Professional Services FY20 budget (01-0330-42601) to fund this agreement. A payment of \$17,250 will be on the following dates upon receipt of an invoice from The Boys and Girls Club of Hobbs: October 1, 2019, January 1, 2020, April 1, 2020, and June 1, 2020.

Attachments: Copy of Professional Services Agreement

Legal Review:

Approved As To Form:


City Attorney

Recommendation:

Staff recommends approval of a Professional Services Agreement with The Boys and Girls Club of Hobbs in the amount of \$69,000.

Approved For Submittal By:


Department Director


City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

Resolution No. _____
Ordinance No. _____
Approved _____
Other _____

Continued To: _____
Referred To: _____
Denied _____
File No. _____

**PROFESSIONAL SERVICES AGREEMENT
CITY OF HOBBS – BOYS AND GIRLS CLUB OF HOBBS, INC.**

FY 2019-2020

WHEREAS, NMSA 1978, §3-17-1, provides that cities are granted those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the City and its inhabitants; and

WHEREAS, the City Commission of the City of Hobbs, Lea County, New Mexico, has determined that the services to be provided by the contracting party pursuant to this Agreement are needed by certain segments of the population of the City and are necessary to contribute to the quality of life of the citizens of the City of Hobbs; and

WHEREAS, the City of Hobbs, through its management staff, and pursuant to NMSA 1978, §13-1-126, as amended, has conducted a good faith review of available resources within Lea County and has determined that there is only one source within Lea County for the services needed.

NOW THEREFORE, the City of Hobbs (hereinafter referred to as "City") and Boys and Girls Club of Hobbs, Inc., (hereinafter referred to as "Contractor") and hereby do agree as follows:

1.0 SCOPE OF SERVICES

1.1 CONTRACTOR will provide the following services:

CONTRACTOR will operate a 9-week summer recreation program for 6 to 12-year-olds, and shall perform the necessary services toward promoting these activities in the community, and such services shall include, but not be limited to, the following:

1.1.1 Provide a facility to operate a nine-hour summer recreation program to run Monday through Friday, with an agenda that includes recreational, educational, personal improvement and cultural activities.

1.1.2 Serve in the capacity as being the designated site to accommodate special needs participants during the regular 9-week program hours kept by the facility.

1.1.3 Hire and maintain a minimum of at least eight (8) additional employees to serve as staff for the day program. For the special needs program, an additional employee shall have a background and working knowledge of special need participants and work in the capacity of the special needs participant supervisor during the hours of operation. Additional employees shall also be designated as employees to work with special needs participants as attendance warrants. Staff for all programs arising under this agreement shall be employees of CONTRACTOR and shall not be employees of CITY and are not entitled to any City of Hobbs benefits, including, but not limited to, insurance, leave, worker's compensation,

and/or retirement.

CONTRACTOR will provide the following services in addition to those above:

1.1.4 Provide and obtain Licensing Agreement for the Gus Macker Basketball Tournament. Provide additional staff for the Gus Macker Basketball Tournament to consist of: one (1) Head Buster (referee); and scorekeepers as attendance warrants.

1.1.5 Design and placement of news releases and advertising in the appropriate media, naming CITY as co-sponsor. All advertising shall be reviewed and approved by CITY prior to submission to the media.

1.1.6 Provide reasonable assistance to CITY staff with special summer program activities such as July 4th, on which date at least four (4) of CONTRACTOR's summer staff will be required to assist. During the Gus Macker Basketball Tournament an adequate number of scorekeepers will be provided.

1.1.7 Maintain daily records of activities and the number of participants in the program and submit weekly reports to CITY by Monday of the week following the reporting period. In addition, a final report at the conclusion of the summer programs shall be submitted to CITY. Any incidents of serious nature, as determined by the CONTRACTOR, shall be immediately reported to CITY.

1.1.8 Perform such other related services as mutually agreed upon by both parties and requiring no additional cost as anticipated by the scope of this Agreement including a final written evaluation of the total program.

1.2 All persons retained by CONTRACTOR to provide the services required by this Agreement shall be employees, volunteers or contractors of CONTRACTOR, which shall be solely responsible for their acts and omissions, as well as all compensation, taxes and benefits associated with their work for CONTRACTOR.

1.3 It is expressly understood and acknowledged that CONTRACTOR is an independent contractor, that it is not an instrumentality, agent or employee of City, and that it will not so represent itself to the public.

1.4 This Agreement shall not preclude funding or other contracts from other sources.

2.0 COMPENSATION

2.1 City shall pay CONTRACTOR a total sum not to exceed SIXTY-NINE THOUSAND DOLLARS (\$69,000) for services rendered under this Agreement. The aforesaid amount shall be paid in quarterly installments of \$17,250.00, payable at the end of each quarter after the services contracted for are actually rendered. The first such payment shall be due on or after October 1, 2019; the second shall be due on or after January 1, 2020; the third payment on or after April 1,

2020; and the last payment on or after June 1, 2020. CONTRACTOR shall submit invoices to the City of Hobbs ten (10) days prior to payment dates and shall be sent to City of Hobbs, 200 E. Broadway, Hobbs, NM 88240 Attn: Shelly Raulston.

2.2 As an express condition to payment outlined in Section 2.1 above, CONTRACTOR shall submit written quarterly reports ten (10) days prior to the following anticipated payment dates: October 1, 2019; January 1, 2020; April 1, 2020; and June 1, 2020. The reports shall include an overview of the services CONTRACTOR provided pursuant to the agreement during the previous quarter. Quarterly reports shall be sent to City of Hobbs, 200 E. Broadway, Hobbs, NM 88240 Attn: Doug McDaniel. Failure to submit quarterly reports may delay payment under this Agreement.

2.3 CONTRACTOR shall make no claim against City for any expense incurred by it in providing the services required by this Agreement. Specifically, CONTRACTOR shall make no claim against City for travel expense, duplication costs, telephone costs, secretarial assistance, office supplies or any other cost not specifically allowed herein.

3.0 TERM AND TERMINATION

3.1 This Agreement for services is to cover City's fiscal year, beginning July 1, 2019, and ending June 30, 2020. CONTRACTOR shall not be entitled to future contracts or other funding in future fiscal years by virtue of entering into this Agreement.

3.2 This Agreement may be terminated, for any reason, by either party with thirty (30) days advanced written notice to the other. In the event of termination, City shall submit payment, for all services rendered up to the final date outlined in the written notice. Partial performance in a given quarter shall not entitle CONTRACTOR to full payment of the quarterly installment outlined in Section 2.1 herein.

4.0 INSURANCE

4.1 CONTRACTOR shall provide the City of Hobbs with a Certificate of Insurance naming the City of Hobbs as an additional insured on all general and/or professional liability, automobile liability, and workers' compensation insurance policies. Said policies shall be primary and shall be required as set out herein:

General Liability as follows: Premises, operations, products, completed operations and contractual liability. The limits of liability shall be no less than \$1,000,000.00 combined single limits for bodily injury and property damage.

Workers' Compensation is required along with State statutory employer's liability limits regardless of the number of employees.

5.0 MISCELLANEOUS PROVISIONS

5.1 CONTRACTOR shall timely notify City of any change as to its principal place of business, the identity of all its directors, officers and members, any change of its corporate status, any change of its tax-exempt status with the Internal Revenue Service, any change in programming and any pending litigation or asserted claims or any other matter that might affect the continued rendition of services to City residents under this Agreement.

5.2 CONTRACTOR represents and warrants that the information given to City in support of its request for funding is true and correct; further, that its staff is competent to render the services which are the subject of this Agreement, and finally, that there is no other provider in Lea County of the kind of services contemplated by this Agreement.

5.3 CONTRACTOR agrees to abide by all state and federal rules, regulations and statutes pertaining to equal opportunity. In accordance with these laws and regulations, CONTRACTOR agrees to assure that no person shall, on the grounds of race, color, national origin, sex, age, handicap or medical condition, be excluded from participation in programs and services to be rendered by CONTRACTOR pursuant to this Agreement.

5.4 CONTRACTOR shall give City prompt and timely notice of any claim made or suit instituted against CONTRACTOR which may in any way, directly or indirectly, contingently or otherwise, result in a judgment against City.

5.5 CONTRACTOR agrees to and shall indemnify, defend and hold the City, the City Commission of the City of Hobbs, its individual commissioners, its officers, employees and agents harmless from any and all causes of action, suits, claims, judgments, losses, costs, expenses and liens, of every kind and nature, including but not limited to court costs and reasonable attorneys' fees arising or alleged to have arisen out of performance of CONTRACTOR's rendition of services or failure to render services pursuant to this Agreement or any breach of this Agreement.

5.6 This Agreement shall be construed pursuant to the laws of the State of New Mexico. The parties represent that the requirements of the New Mexico Procurement Code have been met as a prerequisite for entering into this Agreement. They further agree that any changes or modifications to this Agreement suggested or required by any supervising state entity, such as the New Mexico Attorney General's office or the New Mexico Department of Finance and Administration, shall be made in order to fully comply with the law as such agencies might interpret and define it to the parties.

5.7 If CONTRACTOR obtains an audit or other type of financial review of its affairs, then City shall receive a copy of same. This provision does not otherwise obligate CONTRACTOR to secure such services. City shall be entitled to a detailed current income/expense statement upon written request.

5.8 This is a professional services contract and neither City nor CONTRACTOR may assign this Agreement, or any interest herein, without prior written approval of the other.

5.9 This Agreement reflects all covenants, understandings and agreements between the parties. This Agreement may not be altered except by another writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this
____ day of _____, 2019.

ATTEST:

THE CITY OF HOBBS, NEW MEXICO

By: _____
SAM D. COBB, Mayor

By: _____
JAN FLETCHER, City Clerk

By: _____
TOBY SPEARS, Finance Director

ATTEST:

BOYS AND GIRLS CLUB OF HOBBS, INC.

By: _____
Executive Director

By: _____
Board President

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

EFREN A. CORTEZ, City Attorney

DISCUSSION



ACTION ITEMS



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 17, 2019

SUBJECT: Resolution Authorizing the Mayor to Execute a Professional Service Agreement with the Economic Development Corporation of Lea County (Operations and Special Project), Hobbs Chamber of Commerce and Hobbs Hispano Chamber of Commerce.

DEPT. OF ORIGIN: Legal Department
DATE SUBMITTED: June 10, 2019
SUBMITTED BY: Erik M. Scramlin, Deputy City Attorney

Summary:

This resolution authorizes the Mayor to execute a Professional Services Agreement with the Economic Development Corporation of Lea County for operations and special projects, Hobbs Chamber of Commerce and Hobbs Hispano Chamber of Commerce for FY 19-20.

Fiscal Impact:

The funding has been approved in the 2019-20 budget.

Reviewed By: _____



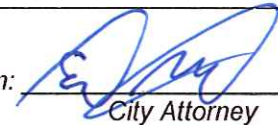
Finance Department

Attachments:

Resolution

Legal Review:

Approved As To Form: _____



City Attorney

Recommendation:

The Commission should approve the Resolution.

Approved For Submittal By:

Department Director

City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

Resolution No. _____ Continued To: _____
Ordinance No. _____ Referred To: _____
Approved _____ Denied _____
Other _____ File No. _____

CITY OF HOBBS

RESOLUTION NO. 6809

A RESOLUTION AUTHORIZING FY 19-20 FUNDING APPROPRIATIONS
FOR ECONOMIC DEVELOPMENT AND MARKETING ENTITIES

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that FY 19-20 funding appropriations are approved for economic development and marketing of Hobbs in the following amounts:

	Amount Requested	Amount Approved
Economic Development Corporation		
Operating	\$200,000.00	
Special Project	\$ 50,000.00	
Hobbs Chamber of Commerce	\$ 75,000.00	
Hobbs Hispano Chamber of Commerce	\$ 64,000.00	

BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized and directed to execute appropriate Professional Services Agreements with each agency in the amounts approved above.

PASSED, APPROVED AND ADOPTED this 17th day of June, 2019.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 17, 2019

SUBJECT: Approval of a Professional Services Agreement with Pacific Rim, Inc., for Management and Operation of Rockwind Restaurant and Catering Service.

DEPT. OF ORIGIN: Legal Department

DATE SUBMITTED: June 12, 2019

SUBMITTED BY: Erik M. Scramlin, Deputy City Attorney

Summary:

On April 22, 2019, the City Commission awarded restaurant, food, beverage and catering services at Rockwind Community Links Golf Course to Pacific Rim, Inc. DBA Rockwind Grill, LLC. (The Grill). Staff was authorized to proceed with negotiating a professional services agreement (Agreement) for the Commission's review and approval.

An agreement has been successfully negotiated with The Grill. The Agreement includes a complete scope of services as it relates to management and operation of the Rockwind restaurant and catering services. Pursuant to NMSA 6-6-11 (Bateman Act) and NMSA 13-1-150(B) the agreement will commence on July 1, 2019 and shall be for a term of one (1) year. The agreement may be renewed for three (3) one-year extensions with the mutual written consent of the parties. The agreement also allows for the City Manager to conduct evaluations of the performance of The Grill.

The Grill will pay the City \$1,000 /month, plus 5% of its gross sales. The City is entitled to conduct periodic audits of all monthly gross sales of The Grill. In addition, the City is entitled but not required to sponsor up to three "major events" each year and be entitled to 80% of the net income after deductions of The Grill's pre-approved expenses.

Fiscal Impact:

The City will receive monthly payments and a percentage of gross sales and net profits as outlined in the Agreement.

Reviewed By: _____

[Signature]
Finance Department

Attachments:

Proposed Professional Services Agreement

Legal Review:

Approved As To Form: _____

[Signature]
City Attorney

Recommendation:

The Commission should approve the Professional Services Agreement.

Approved For Submittal By:

[Signature]
Department Director

[Signature]
City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

Resolution No. _____

Ordinance No. _____

Approved _____

Other _____

Continued To: _____

Referred To: _____

Denied _____

File No. _____

PROFESSIONAL SERVICES AGREEMENT

CITY OF HOBBS – PACIFIC RIM, INC

WHEREAS, NMSA 1978, §3-17-1, provides that cities are granted those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the city and its inhabitants; and

WHEREAS, the City of Hobbs, Lea County, New Mexico (“City”) and Hobbs City Commission has determined that the services to be provided by the contracting party pursuant to this Agreement are needed by certain segments of the population of the City and are necessary to contribute to the quality of life of the citizens of the City of Hobbs; and

WHEREAS, City is the owner of Rockwind Community Links Golf Course (“Rockwind”) located at 5001 Jack Gomez Blvd., Hobbs, NM; and

WHEREAS, on March 6, 2019, the City of Hobbs issued a Request for Qualifications for providing restaurant, food, beverage and catering services at Rockwind Community Links Golf Course. Rockwind Grill, LLC (“Grill”) was determined the best qualified proposer; and

WHEREAS, City desires to engage Grill to manage and operate Rockwind restaurant, food, beverage and catering services, on behalf and for the benefit of City, and Grill desires to accept such engagement, pursuant to the terms and conditions herein; and

NOW, THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1.0 SCOPE OF SERVICES

1. City hereby engages Grill to act as the sole and exclusive manager and operator of Rockwind restaurant and catering services, which will be the exclusive provider of food and beverage for Rockwind, subject to and as more fully described in this Agreement, and, in connection with, to perform the services described in Exhibit “1”, attached hereto.
2. Grill hereby accepts such engagement, and shall perform the services described herein, subject to the limitations expressly set forth in this Agreement.
3. Lease of Liquor License: The parties acknowledge that City has procured and maintains a governmental liquor license pursuant to NMSA 1978, §69-6A-101. City shall lease to Grill, as part of this Agreement, the liquor license, to be used exclusively for the operation of the Rockwind facility. Grill agrees to designate a qualified employee to serve as the designated representative to meet the requirements for issuance and maintenance of the license. Grill agrees all activities by Grill associated with the

operation of the license shall strictly conform to New Mexico law and regulations of the New Mexico Alcohol and Gaming Division of the New Mexico Regulation and Licensing Department. Grill shall ensure it receives approval from Alcohol and Gaming to act as Lessee under City's Municipal Liquor License. All income and proceeds from alcohol sales shall be considered revenue in determining gross sales under this Agreement. City shall implement the administrative modification for Grill to become City's Lessee and the City shall pay the administrative fees associated with the modification.

2.0 TERM & TERMINATION

1. This Agreement, shall commence on July 1, 2019, and pursuant to NMSA 1978, §13-1-150(B), shall be for one (1) year, subject to termination as described herein.
2. This Agreement may be renewed for three (3) one-year extensions with the mutual written consent of the parties. Mutual written consent to renew this Agreement must be executed prior to expiration of the current one-year term. This Agreement shall be construed so as to provide for a continuity of services for the benefit of the general public. In the event all extensions are exhausted as contemplated herein, Grill shall continue to provide services under this Agreement until such time as a new agreement is executed, or a new manager and operator occupies the restaurant at Rockwind pursuant to a professional services agreement, whichever is earlier.
3. If the parties mutually agree to terminate this Agreement, or if the contract expires, the parties shall work together to transition the subsequent manager and operator, however, termination shall not occur less than 120 days after the parties enter a written agreement to terminate. Unless specifically objected to by City, Grill shall continue to provide services until such time as a subsequent manager and operator occupies the restaurant at Rockwind. If the parties mutually agree to terminate this Agreement, City reserves the right to issue a Request for Qualifications for providing restaurant, food, beverage and catering services at Rockwind during the transition time contemplated herein.
4. Either party may terminate, for cause, upon thirty days written notice, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions hereof, and such failure is not cured during such thirty day notification period. Such notification shall be in writing subject to paragraph 11.0(6) herein. If this Agreement is terminated for cause following a thirty days written notice and subsequent failure to cure, City and Grill may agree in writing to provide for continuity of services, until such time as a Request for Qualifications for providing restaurant, food, beverage and catering services at Rockwind can be issued and awarded. In the alternative, City reserves the right to proceed without restaurant, food, beverage and catering services until such time as an award to a subsequent manager and operator is made.
5. Upon conclusion of this Agreement for any of the reasons outlined above and transfer of occupancy of the restaurant to a subsequent manager and operator, Grill shall (i) promptly discontinue the performances of all services hereunder, (ii) deliver or otherwise

make available to City all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the facility as may have been accumulated by Grill in performing its obligations hereunder, whether complete or in progress, and (iii) assign to City, or at the City's discretion the subsequent manager and operator, all contracts or leases entered into by Grill in furtherance of its duties hereunder, who shall accept such contracts and perform all obligations thereunder following the expiration or termination date. This does not include any proprietary information of Grill including recipes, menus, intellectual property or other such material.

6. In addition to any other cause for termination, "cause" shall exist to terminate this Agreement in the event Grill exhibits deficient performance as further outlined in Section 3.0, and fails to cure the same within the thirty-day notice period outlined in subsection 4 above.
7. The remedies described in this Section 2.0 shall be in addition to any other remedies the parties may be entitled to, either by virtue of the terms of this Agreement, at law or in equity, as a result of a breach or termination of this Agreement.

3.0 EVALUATION OF PERFORMANCE

1. City, through the City Manager or his/her designee, shall conduct quarterly, or at a frequency deemed necessary by City Manager, performance evaluations of the performance of The Grill at Rockwind. City also reserves the right to conduct periodic evaluations following any event. The performance evaluations shall be conducted in a manner determined as most effective for City. The performance evaluations shall be designed to ensure the general public is receiving the best possible service from The Grill at Rockwind.
2. The Grill shall be entitled to and the City shall provide the performance evaluation criteria so that The Grill may meet the standards and expectations of City in rendering service to the general public. However, The Grill shall not be entitled to prior notice of any performance evaluations.
3. In the event The Grill's performance is found deficient, City shall provide The Grill with a thirty-day notice which shall state the deficiencies in The Grill's performance and shall make an affirmative statement of the City's intent to terminate the Agreement in the event that The Grill does not cure said deficiencies as outlined in Section 2.0(6) herein.
4. City, at its sole discretion, shall make the initial determination as to whether or not the deficiency is cured. City shall be reasonable in all determinations regarding satisfaction of deficient performance, and it will be based on specific performance related criteria.
5. The Grill shall timely address all complaints regarding their performance – whether from City or members of the general public. The Grill shall timely inform the City in writing of the resolution of each complaint.

6. All records discussed herein shall constitute "public records" subject to inspection pursuant to NMSA 1978, §14-2-1, et seq.
7. In the event there exists a dispute as to whether The Grill has met the performance criteria, the City and The Grill shall enter into negotiations, the negotiation process should be completed within 30 days. If the dispute has not be resolved by negotiations, then the parties shall proceed to mediation. The City and The Grill shall agree to identify a third party knowledgeable about the food service industry who will act as a Mediator between the parties. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party [or the mediator] states that there is no reason to continue because of an impasse that cannot be overcome and sends a "notice of termination of mediation." All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. If mediation fails the parties may decide to go to trial, go back to mediation, continue negotiations on their own without formal proceedings, or may decide upon a mutual alternate resolution.

4.0 COMPENSATION

1. The Grill shall pay City \$1,000.00 per month, plus 5% of its gross sales on or before the 25th day of the following month (gross sales is determined by the monthly New Mexico Taxation and Revenue CRS Report). The Grill shall provide documentation of the 5% gross sales payment as determined by the CRS Report.
2. Gross sales shall include all income received by The Grill pursuant to its responsibilities under this Agreement, including, but not limited to, restaurant, bar and catering income, including income from tournaments, meetings, banquets, parties or weddings held at Rockwind.
3. City is entitled, but not obligated, to sponsor up to three "major events" each year and shall be entitled to 80% of the net income, which means the income after expenses are deducted, from The Grill's sales for each event after deduction of The Grill's prior City approved expenses for each event. As used herein, "major event" means any concert, exhibition, live performance, or event outside of non-professional golf tournaments and non-professional golf events.
4. City shall be entitled to conduct periodic audits of all monthly gross sales of The Grill at Rockwind, upon reasonable notice to The Grill and during The Grill's ordinary business hours. All audits required by City shall be at City's expense. The Grill shall cooperate with City in said audits.

5.0 OWNERSHIP/USE OF FACILITY

1. The equipment displays, fixtures and similar property materials and any improvements made during the term, not specifically designated as to be provided by The Grill in Exhibit "1" herein shall at all times be owned by City. City shall provide equipment at restaurant as set forth in Exhibit "2" which shall at all times be owned by City. All designated equipment shall remain in the care and custody of the owner designated in Exhibits 1 and 2 upon termination or expiration of this Agreement.
2. City hereby gives The Grill the right and license to use facility, and The Grill accepts such right of use, for the sole purpose of performing the services herein specified, including the operation and maintenance of the restaurant dining room, kitchen, outdoor covered patio (subject to scheduling and prior approval of Rockwind General Manager) and any storage approved by Rockwind General Manager.
3. City shall assign to The Grill, at no cost, parking spaces sufficient for all of The Grill's management staff. All other Grill employees shall park in the designated public parking spaces. The Grill staff shall not park in any of the drop off or pick up areas at Rockwind. Rockwind General Manager has final authority over all parking issues.
4. Any and all scheduling of events outside of the restaurant, including the outdoor patio, shall be coordinated through the Rockwind General Manager and use by The Grill is subject to Rockwind General Manager approval.
5. In the event The Grill utilizes any portion of the facility it shall be responsible for cleaning and maintaining that portion of the facility immediately following its use.
6. The Grill shall be responsible for the maintenance and service of all grease traps on a regular basis.
7. Repair of Equipment: The party who has ownership of each individual piece of equipment shall be responsible for all repairs and any necessary replacement of the same. In the event The Grill makes emergency expenditures for maintenance or repair if any City owned pieces of equipment, the City will cause The Grill to be reimbursed for any such expenses reasonably incurred.

6.0 PERSONNEL

1. All Grill staff and employees shall be engaged or hired by The Grill and shall be employees of The Grill and not City. The Grill shall select, in its sole discretion, the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment/termination, relating to such personnel. The Grill agrees to use reasonable and prudent judgment in the selection and supervision of such personnel. City agrees that The Grill shall be entitled to pay its employees, as an operating expense, bonuses and benefits in

accordance with The Grill's current employee manual or as a reasonable amount for the locale.

2. The Grill shall employ sufficient number and qualified employees to perform all of its obligations under this Agreement. Additionally, The Grill shall ensure that all events, including but not limited to golf tournaments, are adequately staffed so as to meet the needs of the general public.
3. The Grill agrees to abide by all state and federal rules, regulations and statutes pertaining to equal opportunity employment issues. In accordance with these laws and regulations, The Grill agrees to assure that no person shall, on the basis of race, color, natural origin, sex, age, handicap or medical condition, be discriminated against in regards to its personnel.

7.0 TAXES, ASSESSMENTS, GOVERNMENTAL FEES

1. The Grill agrees to pay all New Mexico Gross Receipts Tax, Federal and State Income Taxes and all required wage withholding taxes for its employees, and all alcohol related taxes. City shall not be responsible for any of the aforementioned taxes and assessments.
2. The Grill agrees to pay all assessments and/or other required governmental licensing fees they may be required to pay pursuant to state and federal regulations. City shall not be responsible for any of the aforementioned assessments and governmental licensing fees.

8.0 FISCAL RESPONSIBILITY / REPORTING

1. The Grill agrees to keep and maintain, at its office in the facility, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its operation and management of the facility. Such records shall contain all entries reflecting the business operations of The Grill at the facility under this Agreement. City shall have the right to audit and inspect such records from time to time during the term of this Agreement, upon reasonable notice to The Grill and during The Grill's ordinary business hours.
2. The Grill agrees to provide to City monthly financial reports for the facility including a CRS Report, balance sheet aging reports on accounts receivable, and statement of revenues and expenditures for such month and year to date in accordance with generally accepted accounting principles. The Grill agrees to provide City a summary of bookings for each month and separate cash receipts and disbursement reports for each catering event held at the facility.
3. The Grill agrees to provide City, within one hundred-twenty (120) days following the end of each operating year, a certified audit report on the accounts and records as kept by The Grill for the facility. Costs associated with obtaining such certified audit report shall be an operating expense of The Grill. Such audit shall be conducted in accordance with generally accepted auditing standards.

9.0 INDEMNIFICATION

1. The Grill agrees to defend, indemnify and hold harmless City, its commissioners, elected officials and employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorney fees even if City utilizes in-house counsel) liabilities, or damages (collectively, "Losses") suffered by such parties, arising out of or in connection with any (a) negligent act or omission, or intentional misconduct, on the part of The Grill or any of its employees or agents in the performance of its obligations under this Agreement, or (b) breach by The Grill of any of its representations, covenants or agreements made herein; except to the extent such Losses arise out of or relate to City's negligence, intentional misconduct, or failure to comply with the terms of this Agreement.
2. City agrees to indemnify The Grill only to such extent as allowed by New Mexico law, including any negligence or intentional tortious conduct on the part of the City or its employees may be responsible for.
3. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor") under this paragraph 9.0, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may at its option participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may at its option assume control of such defense or resolution, if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed) . In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's expense. With respect to each and every matter to which any indemnification may be sought hereunder, upon receiving notice of such matter, Indemnitee shall promptly (and in no event more than 20 days after any third party litigation is commenced assessing such claim) give reasonable detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.
4. The obligations of the parties contained in this paragraph 9.0 shall survive the termination or expiration of this Agreement.

10.0 INSURANCE

1. The Grill agrees to maintain insurance in the manner and amounts as set forth in Exhibit "3", attached hereto, and shall provide to City promptly following the effective date a certificate of insurance evidencing such coverage. The insurance contemplated herein shall list City as an additional insured and shall be primary. The Grill shall maintain such

referenced insurance coverage at all times during the term of this Agreement and shall not make any material modifications or changes to the coverage without the prior written consent of City. Each policy shall include a requirement that the insurer provide to City at least thirty days written notice of cancellation or material change in the terms and provisions of the applicable policy. The cost of such insurance shall be an operating expense.

2. The Grill agrees to maintain appropriate dram shop liability coverage arising from its dispensing of alcoholic beverages under this Agreement.

11.0 Miscellaneous

1. Except as required by the New Mexico Inspection of Public Records Act, and any other statutory provision of the laws of the State of New Mexico, as same now read, or may be modified in the future, this Agreement and its terms, conditions provisions and contents, shall be kept strictly confidential and shall not be disclosed by either party hereto to any persons, except to such party's employees, attorneys, accountants, financial advisors and advertising agencies who have a need to know such information, except in the case of a proceeding surrounding a dispute under this Agreement or as may otherwise be required by court order or applicable law, in which case such disclosure shall be conditioned on all reasonable steps being taken to maintain the confidentiality of the economic terms of this Agreement (unless applicable laws requires disclosure of such terms).
2. The Grill shall have the right to use throughout the term of this Agreement, without restriction and without charge, the name and all logos of the facility, on The Grill's stationary, in its advertising of the facility, and whenever conducting the business of the facility; provided that The Grill shall take all prudent and appropriate measures to protect the intellectual property rights of City and its logos. All intellectual property rights in any facility logos developed by City shall be and at all times remain the sole and exclusive property of City. The Grill agrees to execute any documentation requested by City from time to time to establish, protect or convey any such intellectual property rights.
3. City agrees that in all advertisements placed by City for the facility or events at the facility, whether such advertisements are in print, on radio, television, the internet or otherwise, it may include a designation that the facility is operated by The Grill.
4. Except as provided herein, neither party shall be obligated to perform, and neither party shall be deemed to be in default of its performances, if prevented by occurrences outside its reasonable control, including without limitation: (a) fire, earthquake, hurricane, wind, tornado, flood, act of God, riot, or civil commotion occurring at the facility; or (b) any law rule or ordinance, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation; or (c) labor dispute which results in a strike or work stoppage, affecting the facility or services described in this Agreement. Notwithstanding the foregoing, a

party's failure to make payments due hereunder shall not be considered to be a force majeure.

5. Neither party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Any purported assignment in contravention of this paragraph shall be void.
6. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, or three days after mailed, if sent by registered or certified mail.

If to City:

City of Hobbs
City Manager
200 E. Broadway
Hobbs, NM 88240

If to The Grill:

Rockwind Grill, LLC
Jaw Yue
5031 N. Carriage Rd.
Hobbs, NM 88240

7. If a court of competent jurisdiction or an arbitrator determines any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.
8. This Agreement supersedes and replaces all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. This Agreement must be approved by the Resolution of the Hobbs City Commission. Any modifications to this Agreement must be in writing and approved by Resolution of the Hobbs City Commission.
9. The parties agree that this Agreement is to be construed by the laws of the State of New Mexico and any legal action to enforce or construe the terms of the Agreement shall be brought in Lea County, New Mexico only.
10. City and The Grill acknowledge and agree they are not joint venturers, partners, or joint owners with respect to the facility, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture or similar relationship between City and The Grill. In operating the facility, entering into contracts, accepting reservations and conducting financial transactions for the facility, The Grill acts on behalf of and agent for City (but subject to the limitations on The Grill's authority as set forth in this Agreement) and assumes no independent contractual liability with respect to any obligations incurred in operating the facility or performing its obligations under this Agreement so long as The Grill does not exceed the authority granted by this Agreement.

IN WITNESS WHEREOF, each party hereto has caused this Professional Services Agreement to be executed on behalf of such party by an authorized representative as of the date set forth herein.

CITY OF HOBBS

ROCKWIND GRILL, LLC

By: SAM D. COBB, Mayor

By: Jaw Yue, President

Date: _____

Date: _____

Attest:

Jan Fletcher, City Clerk

Approved as to Form:

Efren A. Cortez, City Attorney

EXHIBIT 1

The Grill shall provide the following in its management of the Rockwind restaurant and catering services located at the Rockwind Community Links Golf Course, located at 5001 Jack Gomez Blvd., Hobbs, NM:

1. Adequate qualified staff to operate all aspects of its responsibilities herein, including, but not limited to, the restaurant, catering, bar and beverage cart(s), and service at all tournaments;
2. Full service menus and hours of operation including breakfast, lunch and dinner;
3. Full service bar;
4. Food service and catering for meetings, banquets, parties and weddings at Rockwind;
5. Staffing of beverage cart(s), restaurant, and bar during peak play and tournaments;
6. Day-to-day custodial services and basic maintenance of restaurant, catering and dining facilities;
7. Supplies, food, beverages and materials for the operation of services and programs;
8. Plates, silverware, eating utensils, cooking utensils, pots, pans, glass ware, napkins, condiment containers, warming equipment, and all smallware item(s) required to operate the restaurant and catering business under this Agreement ;
9. All removable small appliances;
10. Point of sale (POS) electronic equipment, including all software and hardware;
11. Cook line equipment including convection oven, salamander, keg system, dishwasher rental, general assorted kitchen ware, assorted shelves, smallwares (as set forth in paragraph 8 herein), assorted equipment (food pro blenders etc.), medium and assorted prep tables.
12. All dining room furnishings, décor, and design service to restaurant over \$40,000.00.

EXHIBIT 2

City shall provide the following equipment, which is currently located at Rockwind, connected with the Rockwind restaurant:

1. Charbroiler; (Replaced and Paid for by The Grill)
2. Griddle (flattop); (Replaced and Paid for by The Grill)
3. Fryer; (Replaced and Paid for by The Grill)
4. Equipment table;
5. 4 burner stove top;
6. Prep table and freezer;
7. Sandwich table with cooler;
8. Walk-in cooler;
9. Dish table with sink;
10. Dish table clean side;
11. Dish sink trap;
12. Hand sink (2);
13. Reach-in freezer;
14. Ice unit;
15. Glass cooler;
16. Beer cooler; (2, one of which is currently out of order)
17. 3-comp sink (2);
18. All dining room furnishings, décor, and design services to restaurant under \$40,000.00.

Equipment purchased by The Grill due to necessity for operations:

1. Large Stand Alone Oven
2. Double Glass Door Reach In Refrigerator
3. Single Glass Door Reach In Refrigerator
4. Sandwich Unit with Refrigerator
5. Stand Alone Food Warmer
6. Chest Freezer
7. Small Ice Maker
8. Prep Table with Wooden Counter

EXHIBIT 3

Insurance Requirements (Minimum)

1. **Commercial General Liability:**
 - \$1,000,000.00 per occurrence
 - \$3,000,000.00 aggregate

2. **Automobile Liability:**
 - \$500,000.00 per accident (PI and PD combined single limit)

3. **Workers Compensation:**
 - Statutory Coverage



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 17, 2019

SUBJECT: RESOLUTION TO APPROVE AND ADOPT THE MARKET RATE MULTI-FAMILY AND SINGLE FAMILY UNIT PRODUCTION MUNICIPAL INFRASTRUCTURE REIMBURSEMENT INCENTIVE PROGRAM FOR FISCAL YEAR 2019-2020.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: June 10, 2019
SUBMITTED BY: Manny Gomez - Acting City Manager

Summary: The Market Rate Multi-family & Single-family Unit Production Incentive Program, as presented herein, is based upon past Development Agreements and Programs approved and adopted by the Commission, and reflect those tenants within past DA's and Programs that Staff feels were deemed desirable by the Commission.

RFP #440-11 was published on November 10, 2011 advertising to the Development Community the Municipalities need for Multi-Family housing. The first Development Agreement in response to RFP #440-11 was approved on February 21, 2012 and subsequently a total of \$3,872,886.06 has been appropriated towards Development Agreements incentivizing the production of Market Rate Housing valued at approximately \$91,774,551.00 (incentive = 4.22% +/- of total value) by participating in the installation of Municipal infrastructure. The Incentive Program to date has incentivized the production of 997 new Multi-family Housing Units.

RFP #443-12 incentivizing the production of Market Rate Single Family housing was published on June 5, 2012. The Commission has appropriated \$6,700,705.00 towards MRSF Development Agreements; actual disbursements have totaled \$4,416,120.62 incentivizing the production of 462 units of new single family housing.

Fiscal Impact:

Reviewed By: [Signature] Finance Department

Currently in the Proposed FY19-20 budget is the following with final carry overs and line item adjustments.

\$1,500,000.00 Single Family Housing
\$200,000.00 Market Rate Housing (provided Commission\DFA Approvals)

Individual Development Agreements will be presented to the Commission for consideration in order to encumber expenses.

Attachments: Resolution, Program.

Legal Review:

Approved As To Form: [Signature] City Attorney

Recommendation:

Consideration of the Resolution to approve the Incentive Program attached hereto.

Approved For Submittal By:

[Signature]
Department Director

City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

Resolution No. _____ Continued To: _____
Ordinance No. _____ Referred To: _____
Approved _____ Denied _____
Other _____ File No. _____

CITY OF HOBBS

RESOLUTION NO. 6810

A RESOLUTION TO APPROVE AND ADOPT THE MARKET RATE MULTI-FAMILY AND SINGLE FAMILY UNIT PRODUCTION MUNICIPAL INFRASTRUCTURE REIMBURSEMENT INCENTIVE PROGRAM FOR FISCAL YEAR 2019-2020.

WHEREAS, the City of Hobbs recognizes the need for an adequate supply of market rate rental and single family housing units; and

WHEREAS, the City of Hobbs also recognizes the negative impacts that an inadequate supply of market rate rental and single family housing units has on the local and regional economy; and

WHEREAS, the City of Hobbs finds that the production of market rate rental and single family housing units is in the best interest of the Municipality.

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the City of Hobbs hereby approves and adopts the market rate multi-family and single family unit production municipal infrastructure reimbursement incentive program for fiscal year 2019-2020, as attached hereto and made part of this resolution.

PASSED, ADOPTED AND APPROVED this 17th day of June, 2019

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

Fiscal Year 2019-2020

Market Rate Multi-Family & Single Family Unit Production

Municipal Infrastructure Reimbursement - Incentive Program

Program Highlights:

1. **Yearly Program Budget:** City Commission will determine funding levels for this program and may increase or decrease levels from time to time.
2. **Development Agreement:** Each encumbrance to the budget will be supported by a Commission approved Development Agreement.
3. **Incentives** are available for public municipal infrastructure only, providing compliance with:
 - a. Incentive not to exceed per square footage basis:
 - i. \$10.00 per sq. ft. north of Sanger
 - ii. \$20.00 per sq. ft. south of Sanger
 - iii. Calculation based on living area only
 - b. Incentive not to exceed per unit basis:
 - i. \$10,000.00 per single family unit
 - ii. \$5,000.00 per multi-family unit
 - c. Incentive not to exceed fair share per linear foot of infrastructure basis:
 - i. \$180.00 per lineal front footage of complete public infrastructure, and further broken down as follows:
 1. **Water** (\$25 / lf):
 - a. Twenty Five (\$25) per equivalent front foot of lot to which water service is provided (8" minimum service single family & 10" minimum service for multi-family);
 2. **Sewer** (\$35 / lf):
 - a. Thirty Five (\$35) per equivalent front foot of lot to which sewer service is provided (8" minimum service single family & 10" minimum service for multi-family);
 3. **Street** (\$90/ lf):
 - a. Ninety (\$90) per equivalent front foot of lot to which street is provided (built to Minor Residential standards as promulgated within the City of Hobbs Major Thoroughfare Plan);
 4. **Sidewalk:**
 - a. Thirty (\$30) per equivalent front foot of lot to which sidewalk (includes driveway with ADA accessible path) is provided;
4. **Market Rate Single Family Development Agreement:** Development Agreement not to exceed \$200,000.00 nor be less than \$30,000.00, producing no less than 3 units. A Developer holding an active DA shall be required to complete no less than 75% of the DA prior to requesting a new Incentive Development Agreement. The term for any DA shall be limited to 12 months, unless otherwise approved by the City Commission. Funds to be disbursed after issuance of Certificate of Occupancies per unit.
5. **Market Rate Multi-Family Development Agreement:** Development Agreement not to exceed \$250,000.00 nor be less than \$75,000.00. The term for any DA shall be limited to 18 months, unless otherwise approved by the City Commission. Funds to be disbursed after issuance of Final Certificate of Occupancy.