

# 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

***May 20, 2019***



**Hobbs City Commission**  
**Regular Meeting**  
**City Hall, City Commission Chamber**  
**200 E. Broadway, 1<sup>st</sup> Floor Annex, Hobbs, New Mexico**

**Monday, May 20, 2019 - 3:30 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

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**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](http://www.hobbsnm.org)*

**CALL TO ORDER AND ROLL CALL**

**INVOCATION AND PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES**

1. Minutes of the May 6, 2019, Regular Commission Meeting
2. Minutes of the May 6, 2019, Commission Budget Work Session

**PROCLAMATIONS AND AWARDS OF MERIT**

3. Proclamation Proclaiming the Week of May 19 - 25, 2019, as "Emergency Medical Services Week" (Barry Young, Deputy Fire Chief)

4. Recognition of City Employees - Milestone Service Awards for May, 2019:

- ▶ 5 years - Nancy Tovar, Municipal Court
- ▶ 5 years - Doug McDaniel, Parks and Recreation Department
- ▶ 10 years - Ryan Herrera, Hobbs Fire Department
- ▶ 15 years - Joe Hill, Parks and Recreation Department
- ▶ 20 years - Clipper Miller, 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.)*

**DISCUSSION**

**ACTION ITEMS** (Ordinances, Resolutions, Public Hearings)

5. Resolution No. 6797 - Authorizing Approval of the FY 19-20 Preliminary Budget *(Deb Corral, Assistant Finance Director)*
6. Resolution No. 6798 - Authorizing Funding Appropriations to Social Service Agencies and Authorizing the Mayor to Execute Professional Service Agreements *(Mayor Sam Cobb)*
7. Resolution No. 6799 - Approval of a Development Agreement with Black Gold Estates Concerning the Development of Market Rate Single-Family Housing *(Kevin Robinson, Development Director)*
8. Consideration of Approval of RFP No. 508-19 for the Purchase/Lease of 70 Golf Carts and Recommendation to Accept the Proposal of Masek Rocky Mountain Golf Cars *(Doug McDaniel, Parks and Recreation Director)*
9. Resolution No. 6800 - 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. *(Erik Scramlin, Deputy City Attorney)*

## COMMENTS BY CITY COMMISSIONERS, CITY MANAGER

### 10. Next Meeting Date:

- ▶ City Commission Regular Meeting  
**June 3, 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: May 20, 2019

**SUBJECT:** City Commission Meeting Minutes

DEPT. OF ORIGIN: City Clerk's Office  
DATE SUBMITTED: May 15, 2019  
SUBMITTED BY: Jan Fletcher, City Clerk

**Summary:**

The following minutes are submitted for approval:

- ▶ Regular Commission Meeting of May 6, 2019
- ▶ Commission Budget Work Session of May 6, 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, May 6, 2019, in the City Commission Chamber, 200 East Broadway, 1<sup>st</sup> 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:

Efren Cortez, City Attorney  
Erik Scramlin, Deputy City Attorney  
Brian Dunlap, Acting Police Chief  
Shane Blevins, Police Lieutenant  
Barry Young, Deputy Fire Chief  
Kevin Shearer, Battalion Chief  
Max Brown, Battalion Chief  
Ben Maynes, Building Official  
Todd Randall, City Engineer  
Kevin Robinson, Development Director  
Tim Woomer, Utilities Director  
Doug McDaniel, Parks and Recreation Director  
Matt Hughes, Rockwind Community Links/Lovington Hwy. Trail Superintendent  
Nicholas Goulet, Human Resources Director  
Tracy South, Assistant Human Resources Director  
Raymond Bonilla, Community Services Director  
Matthew Berry, Garage Superintendent  
Shannon Arguello, Municipal Court Administrator  
Shelia Baker, General Services Director  
Meghan Mooney, Communications Director  
Sandy Farrell, Library Director  
Ron Roberts, Information Technology Director  
Toby Spears, Finance Director  
Mollie Maldonado, Deputy City Clerk  
Jan Fletcher  
13 citizens

### **Invocation and Pledge of Allegiance**

Commissioner Penick delivered the invocation and Commissioner Calderón led the Pledge of Allegiance.

### **Approval of Minutes**

Commissioner Calderón moved that the minutes of the regular meeting held on April 15, 2019, and the special meeting held on April 22, 2019, be approved as presented. Commissioner Gerth seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor abstain, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried.

### **Proclamations and Awards of Merit**

#### ***Proclamation Proclaiming the Week of May 6 - 12, 2019, as "National Nurses Week".***

Mayor Cobb proclaimed the week of May 6 - 12, 2019, as "National Nurses Week". He presented the proclamation to Ms. Kim Webb, Director of Nursing, New Mexico Junior College.

#### ***Proclamation Proclaiming the Week of May 12 - 18, 2019, as "Police Week".***

Mayor Cobb proclaimed the week of May 12- 18, 2019, as "Police Week". He presented the proclamation to Acting Police Chief Brian Dunlap. Acting Police Chief Dunlap thanked the Commission for its support. He stated Wednesday, May 15, 2019, the Hobbs Police Department will host the Annual Memorial Day for fallen police officers during Coffee with Cops at 300 North Turner. Acting Police Chief Dunlap invited the Commission and the public to attend.

#### ***Proclamation Proclaiming the Month of May, 2019, as "Building Safety Month".***

Mayor Cobb proclaimed the month of May, 2019, as "Building Safety Month". He presented the proclamation to Mr. Ben Maynes, Building Official.

Mr. Maynes thanked the Commission for its support. He stated the International Code Council is truly dedicated to building safety and is proud of the 2019 theme "No Code No Confidence". He further stated "Building Safety Month" is a five-week program that consists of the following:

1. Partnering for disasters: Build Strong, Build Smart
2. Ensuring a safer future through training and education - Importance of training and professional development
3. Securing clean, abundant water for all communities
4. Construction professionals and homeowners: Partners in Safety
5. Innovations in Building Safety

### **Public Comments**

Ms. Helen Houston, President of the New Mexico National Black Chamber of Commerce (NMNBCC), stated she has had conversations with concerned citizens regarding the proposed ordinance prohibiting parking of commercial motor vehicles on streets. She stated CDL drivers may be fired by their employer for receiving a citation or could lose their CDL drivers license based on the MVD point system. Ms. Houston stated she is in favor of not permitting big trucks on residential areas for the safety of the children but she has concerns about the consequences for CDL drivers.

Mayor Cobb recommended Ms. Houston to schedule an appointment with him and Mr. Efrén Cortez, City Attorney, to discuss the proposed ordinance Prohibiting Parking of Commercial Motor Vehicles on Streets. He stated the Planning Board has had a lot of meetings and discussions regarding the proposed ordinance.

Mr. Cortez stated the proposed ordinance will not affect CDL drivers as it is not a moving violation per State law.

### **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 Gerth moved for approval of the following Consent Agenda Item(s):

*Resolution No. 6791 - Authorizing the Mayor to Appoint Susan Odom to the City of Hobbs Library Board.*

*Resolution No. 6792 - Approving the FY 2019 DFA 3<sup>rd</sup> Quarter Financial Report.*

*Resolution No. 6793 - Approving the FY 2019 Lodgers' Tax DFA 3<sup>rd</sup> Quarter Financial Report.*



Resolution No. 6794 - Amending the City of Hobbs 401(A) Plan with Nationwide Retirement Solutions to Comply with IRS Rules.

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**

Presentation of FY 19-20 Funding Requests by Economic Development and Marketing Entities.

- Economic Development Corporation of Lea County (EDC)

Mr. Finn Smith, Chairman of the Economic Development Corporation of Lea County (EDC), Mr. Steve Vierck, President and CEO of the EDC, and Mr. Joshua Grassham, President Elect of the EDC, presented a PowerPoint presentation to the Commission for its FY 19-20 funding request. Mr. Smith thanked the Commission for its continuing investment and support to the EDC. He stated the EDC is dedicated to expanding and diversifying the economy in Hobbs and Lea County. He stated this is achieved through recruiting new employers, assisting with the retention and expansion of existing businesses and strengthening the EnergyPlex brand recognition. Mr. Smith continued to stated the EDC also performs critical community capacity building work in areas such as housing, air transportation, legislative advocacy and workforce development.

Mr. Vierck reviewed the conferences EDC has attended, hosted and will host to market the Energyplex brand and promote "FlyHobbs". He also reviewed the marketing and business retention for EDC.

Mr. Grassham stated the Evening with Lea County event in 2019 was very successful with over 240 people in attendance along with key administrative officials. He recommended the Commission to save the date for the New Mexico EnergyPlex Conference to be held on Tuesday, June 25, 2019, at the Lea County Event Center beginning at 7:30 a.m.

Mr. Smith stated the brand recognition is that "Hobbs is the "Heart of the Permian Basin!". He reviewed the FlyHobbs Marketing and displayed the FlyHobbs load factor increases from 2016 to current. Mr. Vierck stated the EDC is requesting funds in the amount of \$250,000.00 as follows: \$200,000.00 for professional services and \$50,000.00 for special

projects. He stated \$107,000.00 has been funded by the Lodgers' Tax for the "FlyHobbs" airline service marketing and was approved by the Commission at a previous meeting.

Mayor Cobb and Commissioners Taylor and Gerth wished Mr. Vierck the best in his new endeavors and thanked him for all of his hard work in the community.

- Hobbs Chamber of Commerce

Ms. Patty Collins, Executive Director of the Hobbs Chamber of Commerce (HCC), and Mr. Grassham reviewed the events the HCC will be hosting for FY20 and discussed the welcome packets distributed by the HCC and the Find it in Hobbs Marketing Campaign. Ms. Collins stated the HCC is requesting funds in the amount of \$75,000.00 as follows: \$17,500.00 for Find it in Hobbs Marketing; \$17,500.00 for Hobbs Jobs Marketing; \$30,000.00 for Welcome Services; and \$10,000.00 for administrative overhead. Ms. Collins stated the two fundraisers hosted by the Chamber are the Hobbs Holiday Tournament and the feBREWary Fest. She added they also partner with the Hobbs Hispano Chamber of Commerce and the J. F Maddox Foundation to host other events in the community.

- Hobbs Hispano Chamber of Commerce

Ms. Rachel Moon and Ms. Laura Barrios with the Hobbs Hispano Chamber of Commerce (HHCC) presented a PowerPoint presentation to the Commission for its FY 20 funding request. She reviewed the events HHCC will be hosting for FY20. Ms. Moon also briefly discussed the partnership between HHCC and various groups throughout the community, all of which help promote the quality of life in Hobbs. She stated HHCC hosts numerous fundraisers and introduced the 1<sup>st</sup> Annual Mother's Day Dinner to be held on May 10, 2019. Ms. Moon stated the HHCC is requesting funds in the amount of \$64,000.00 for operations which is the same amount requested last year.

### Action Items

Consideration of Approval to Utilize New Mexico State Contract Agreement No. 60-805-16-14088 with Dustrol, Inc., for Hot In-Place Asphalt Recycling of Various City Streets in the Amount of \$798,592.06.

Ms. Shelia Baker, General Services Director, explained the New Mexico State Contract Agreement No. 60-805-16-14088 for the Hot In-Place Asphalt Recycling of various City Streets. She stated the City desires to utilize this agreement and contract Dustrol, Inc., for

this project. Ms. Baker stated the streets to recycle include: Business Park, Industrial, Joe Harvey, Turner, Michigan, Lincoln, Sanger, Snyder, Broadway Place and Willow.

Mayor Cobb stated the Hot In-Place Asphalt Recycling is a much cleaner process and a cost savings to the City.

Commissioner Taylor moved to approve the New Mexico State Contract Agreement No. 60-805-16-14088 with Dustrol, Inc., for the Hot In-Place Asphalt Recycling of various City streets in the amount of \$798,592.06 including Gross Receipts Tax (GRT), as presented. Commissioner Newman 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. Copies of the supporting documentation are attached and made a part of these minutes.

*Resolution No. 6795 - Authorizing the Adoption of the City of Hobbs' Accounts Receivable, Revenue Control, Allowance for Doubtful Account and Write-Off Policy.*

Mr. Toby Spears, Finance Director, explained the details of the proposed policy regarding the City's Accounts Receivable, Revenue Control, Allowance for Doubtful Accounts and Write-Offs. He stated during the FY 2018 audit, the external auditors recommended the City establish a policy on accounts receivable, revenue control, allowance for doubtful accounts and write offs. Mr. Spears stated the overall scope and summary of the policy is as follows:

- Accounts Receivable/Revenue Control - the policy defines the types of receivables that will need to be recognized at fiscal year, types of revenue and departments that generate receivables. The policy also requires that any department that is generating revenue shall be required to automate/interface with the existing City of Hobbs Electronic, Reporting and Planning (ERP) Software.
- Allowance for Doubtful Accounts - the policy establishes guidelines for recognizing allowance accounts at fiscal year-end for the established departmental accounts receivable.
- Write Offs - the policy establishes guidelines for writing off accounts receivable both on a daily basis and an annual basis. Any annual write off will require a resolution by the City Commission. Daily write-offs that require the Finance Department approval are contractual obligations and errors in billing do not need the Commission approval. Errors in billing will require justification from the Department Head.

Mayor Cobb stated the City is establishing a policy for writing off accounts to improve internal control but will continue to collect on these accounts.

Commissioner Penick moved to approve Resolution No. 6795 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. 6796 - Approving a Development Agreement Concerning the Projection of Goings Road with the Subdivider, Kress Jones and Patricia Jones, and with the Developer, Tyler Wittman and Amber Wittman.*

Mr. Kevin Robinson, Development Director, stated the City is proposing to enter into a Development Agreement with subdivider, Kress Jones and Patricia Jones, and the developer, Tyler Wittman and Amber Wittman, for property located Northeast of the Pilot Travel Center on Goings Road. He stated the subdivision of property requires that all public infrastructures either be in place or surety given to the City that the cost for the same will be borne by the Subdivider prior to acceptance of the subdivision. Mr. Robinson stated the development agreement requires the Developer to deposit a cash bond with the City in the amount of 130% of the estimate or \$75,000.00, whichever sum is greater, prior to or concurrent with the City's acceptance of the subdivision. Additionally, failure of the subdivider to produce an Engineer of Record certification for the proposed infrastructure within 365 days of ratification of this agreement will forfeit any remaining cash bond deposited with the City. The City of Hobbs Planning Board recommended approval of the Subdivision contingent to the Development Agreement at the regular meeting held on December 18, 2018, by a vote of 4 to 0.

Commissioner Penick moved to approve Resolution No. 6796 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.

**Comments by City Commissioners, City Manager**

Mayor Cobb stated the next regular Commission meeting will be held on Monday, May 20, 2019.

Commissioner Gerth thanked Mr. Vierck for his service in the community. He also thanked everyone for attending tonight's meeting.

Commissioner Mills stated he attended the District 5 Cleanup along with Commissioner Penick. He stated they picked up trash and ended up with four large pickup loads. Commissioner Mills stated he would like to see the City continue hosting cleanup projects throughout Hobbs.

Commissioner Mills stated he and Mr. Erik Scramlin, Deputy City Attorney, will be speakers at the ATK Mentorship Program which will be held on May 25, 2019, at Harry McAdams Park.

Commissioner Taylor also thanked everyone for attending tonight's meeting.

Commissioner Calderón reminded the Commission that on Monday, May 20, 2019, the Hobbs Municipal Schools will be hosting the Hobbs High School Graduation Ceremony which is the same day as the next City Commission meeting.

Commissioner Penick stated the District 5 Cleanup was a success. He stated they picked up trash behind Walmart. Commissioner Penick stated there needs to be more awareness and he encouraged citizens not to litter in the community.

Commissioner Penick stated he attended the Cinco de Mayo Celebration and it was a great celebration with wonderful food and entertainment.

Commissioner Taylor stated she also attend the Cinco de Mayo Celebration and it had a big attendance.

### **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 7:30 p.m.

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SAM D. COBB, Mayor

ATTEST:

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JAN FLETCHER, City Clerk

Minutes of the budget work session of the Hobbs City Commission held on Monday, May 6, 2019, at 4:00 p.m. in the City Commission Chamber at City Hall, 200 East Broadway, Hobbs, New Mexico.

Mayor Cobb called the work session to order and welcomed everyone in attendance. The following were present:

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

Also present were Mr. Toby Spears, Finance Director, Mr. Efren Cortez, City Attorney, Ms. Jan Fletcher, City Clerk and Ms. Mollie Maldonado, Deputy Clerk. Other staff members and public were also present.

**FY 19-20 Preliminary Budget - (General Fund Budget)**

Mr. Toby Spears, Finance Director, read a letter from Acting City Manager/Fire Chief Manny Gomez, who was unable to attend the meeting due to illness, thanking Mr. Spears and Ms. Deborah Corral, Assistant Finance Director, for their work in drafting the preliminary budget. In his letter, Acting City Manager/Fire Chief Gomez outlined the budget process and stated in order to maintain the 30% reserve funds, City staff made significant cuts and ended up with all of the funds budgeted at a total of \$123,252,042.63. He reviewed the breakdown and stated the largest recurring expenditure for the City of Hobbs is the employee salaries and benefits. Acting City Manager/Fire Chief Gomez, in his letter, stated the outstanding caliber of City staff remains the City's single greatest asset. He further stated staff has asked for a COLA increase in the amount of 2% and up to a 3% merit increase to recognize and reward those employees who demonstrate the continued expectations of excellence. Also, an Educational Achievement Incentive has been requested to reward employees who have taken the initiative to complete their educational ambitions. He reviewed the number of full time employees and outlined the organization-wide emphasis on the high vacancy factor and some reasons why the employees leave employment with the City. Acting City Manager/Fire Chief Gomez, in his letter, stated the proposed budget is balanced and continues to show fiscal restraint while maintaining triple the amount of reserve required. He added this reserve puts the City in a solid position to endure future short term economic downturns while maintaining the City's high bond rating. Since the last comprehensive plan in 2006, the City of Hobbs' population has grown approximately 40% with an increasingly diverse population that offers the opportunity to grow the economy by developing a unique identity and culture. He further stated \$150,000.00 has been included for comprehensive planning to provide the

for the efforts by outlining the general path going forward. Acting City Manager/Fire Chief Gomez, in his letter, concluded by stating a continued conservative approach to cost avoidance and careful fiscal oversight will be in order for this budget year. He thanked City staff again for creating this financial plan.

Mr. Spears presented a budget review to the Commission and stated the following topics will be covered during the PowerPoint presentation:

1. Preliminary Budget Process
2. Revenue and Reserve Limits
3. Budget Highlights
4. General Fund Expenditures and Overall Fund Expenditures
5. General Fund - Capital Outlay
6. Salary and Benefits
7. Special Revenue Funds
8. Enterprise Funds
9. Future Considerations

Mr. Spears reviewed the budget timeline which has been followed and stated the City will need to take action and adopt the preliminary budget at its next Commission meeting on May 20, 2019, which is due to the New Mexico Department of Finance and Administration (DFA) by June 1, 2019. He stated there will be an opportunity to make final changes in mid-June and the Commission will need to approve to the FY 19 Preliminary Budget and the Final FY 20 Budget by July 15, 2019, which is due to DFA on July 31, 2019, with carryovers and actual beginning cash balances.

Mr. Spears explained the preliminary budget for FY 20 and stated the beginning cash balance is \$29,269,228, budgeted revenue is 69,392,109, budget transfers are \$4,281,660, budgeted expenditures are \$72,314,930 with the ending budgeted cash balance of \$22,064,747 resulting in a 31% reserve. Mr. Spears stated the reserve does not include clawback amounts at this time. The proposed budget is all new dollars and does not include carryovers. He stated the carryovers are estimated at \$2,595,400 which will result in a 38% cash reserve. Mr. Spears explained the anticipated budget carryovers and stated the projected ending cash balance (\$36,911,371) divided by budgeted expenditures (\$72,314,930) with re-allocation of 2019 capital carryovers (\$18,830,022) would increase the projected reserve to 40%. He reviewed the City's tax structure with restricted and unrestricted breakdown and the nine-year trend in gross receipts tax revenues (GRT). Mr. Spears also reviewed a seven-year trend of GRT and the spot price of West Texas crude oil through April 2019. He reviewed other revenues of the General Fund and the overall FY 20 Revenue Summary. Mr. Spears

reviewed the Budget Highlights and stated the GRT Revenue is set at \$60,750,000 for the General Fund. He stated there is no increase in medical insurance premiums for the third year in a row. Mr. Spears stated the proposed budget includes an additional 31.50 positions since the last preliminary budget cycle which includes: (3) Fire, (20.75) CORE, (1) Clerk, (2.75) Administration, (1) Finance, (1) General Services, and (2) Parks. He stated staff will be reclassified in several departments to align duties with needs to better serve the community. Mr. Spears stated a 2% COLA and up to a 3% merit are included.

Mr. Spears highlighted the following projects which are included in the proposed budget:

Vehicle Replacements	\$988,800
Jefferson Ballfields (Turf)	\$4,278,000
Paving Rehabilitation	\$1,750,000
Housing Incentives	\$1,500,000
Affordable Housing	\$1,500,000
West Hobbs Water/Sewer Ext.	\$1,000,000
Joint Utility Line Extensions	\$1,000,000
Generators - HPD Public Safety	\$750,000
Drainage Improvements	\$500,000
Heizer Pool Enhancements	\$400,000
Total Capital Projects	\$19,651,544

Mr. Spears reviewed the General Fund Expenditures and Overall Fund Expenditures as follows:

	<b>Total</b>	<b>% of Total</b>
Total Budgeted Expenditures	\$123,252,043	100%
Total Budgeted General Fund	\$72,314,930	59%
<u>General Fund Breakdown:</u>		
Personnel and Benefits	\$39,223,217	54%
Operating	\$19,296,422	27%
Capital Outlay	\$13,755,290	19%
Transfers	\$(4,281,660)	



Mr. Spears reviewed the Salary and Benefits - All Funds:

	<u>2020</u>	<u>2019</u>	<u>2018</u>
Salary and Benefits	\$49,530,688	\$47,534,270	\$46,200,042
Budgeted FTE Counts	615.50	584	593
Proposed FTE Count:	<u>2020</u>	<u>2019</u>	
Police	148.00	144.00	
Fire	103.00	100.00	
Engineering	16.00	16.00	
Parks	88.00	90.00	
C.O.R.E.	89.78	69.00	
Clerk/Hobbs Express	16.00	15.00	
General Services	32.00	31.00	
Administration	49.75	47.00	
Utilities	56.00	56.00	
Finance/DMV	<u>17.00</u>	<u>16.00</u>	
TOTAL	615.50	584.00	

Mr. Nicholas Goulet, Human Resources Director, stated seasonal positions at the CORE will now be FTE positions.

Acting Police Chief Brian Dunlap stated there are 20 vacant positions at the Hobbs Police Department.

Mr. Goulet stated the CORE has 30 positions that are vacant.

Mr. Spears stated there are currently 90 vacant City positions.

Mr. Spears also reviewed the Health Insurance Trust Fund, Special Revenue Funds, and CORE Fund.

Mr. Spears also reviewed the Enterprise Funds as follows:

FTE Count	56
Total Budgeted Expenditures	\$20,752,503
Total Budgeted Revenues	<u>\$22,676,500</u>
Difference before Debt Transfer	<u>\$ 1,923,997</u>

Transfers In:	
Environmental Tax Debt Service (1/16 <sup>th</sup> )	\$ 1,470,000
Transfers Out:	
Debt Service	<u>\$(2,412,818)</u>
Difference paid by user rates	<u>\$ 942,818</u>
Difference after Debt Transfer	\$ 981,179

Mr. Todd Randall, City Engineer, stated the last phase of the sewerline replacement will be constructed in 2020.

Mr. Randall stated there is currently \$350,000 budgeted for a Traffic Count Study but the bid has not yet been processed.

Mr. Spears stated the future considerations are to create strong, goal-oriented financial practices into the frame of our organization which will benefit the City by avoiding short-term thinking/emotions. He stated the practices will identify conflicts and alignment. He stated the development of goal-oriented practices will assist City staff by:

- ▶ Helping leaders express their vision. To be able to answer: What a thriving, growing organization would look like in the future.
- ▶ Reviewing past decisions "The City will always attempt to work with others so it can do more than it would be able to do alone".
- ▶ Links to the organization's work.
- ▶ Providing guidance for the future
- ▶ Renewal of Hobbs Comprehensive Plan at \$150,000.00

Mr. Spears stated to embody the principles in the budget, City staff will be able to achieve take charge of the organization's financial destiny; operate within available means and with minimal debt; and ensure continuing value of services in the future.

Mr. Spears reviewed the City of Hobbs taxing structure and stated the following are the remaining tax options available to the City::

Municipal Gross Receipts - 6 <sup>th</sup>	1/4 % yields	5.88 million
Municipal Infrastructure - 3 <sup>rd</sup>	1/16 % yields	1.47 million
Municipal Infrastructure - 4 <sup>th</sup>	1/16 % yields	1.47 million

Mr. Spears stated the approximate City's bonding capacity thresholds are as follows:

	<u>10 years</u>	<u>20 years</u>
Bonding/NMFA 1/16 <sup>th</sup> (\$1,470,000)	\$10.1 million	\$16.05 million
Bonding/NMFA 1/8 <sup>th</sup> (\$2,940,000)	\$20.2 million	\$32.10 million

Mr. Spears identified the following capital outlay requests, which have been deferred, to be reconsidered during the final budget:

Parks - Del Norte Park	\$4,400,000
Garage - Equipment over \$5,000	\$210,000
Fire Protection Fund - Vehicle Replacement	\$200,000
Golf Course Maint. - Golf Course Renovation	\$180,000
CORE - New Vehicle	\$50,000
Cemetery - Equipment over \$5,000	\$43,000
Fire Protection Fund - Equipment over \$5,000	\$38,250
Fire - Equipment under \$5,000	\$37,000
Engineering - Vehicle Replacement	\$35,000

In conclusion, Mr. Spears stated this work session is the first public offering for review of the proposed budget. He stated the preliminary budget has been placed on the City's website as a flip book containing 206 pages.

In reply to Commissioner Newman's inquiry, Mayor Cobb stated the Social Services Committee will meet to discuss the funding of the social services agencies.

In response to Commissioner Penick's question, Mayor Cobb stated Hobbs did receive a preliminary award from the Mortgage Finance Authority (MFA) for a housing project in June, 2019.

There being no further discussion, the work session adjourned at 4:55 p.m.

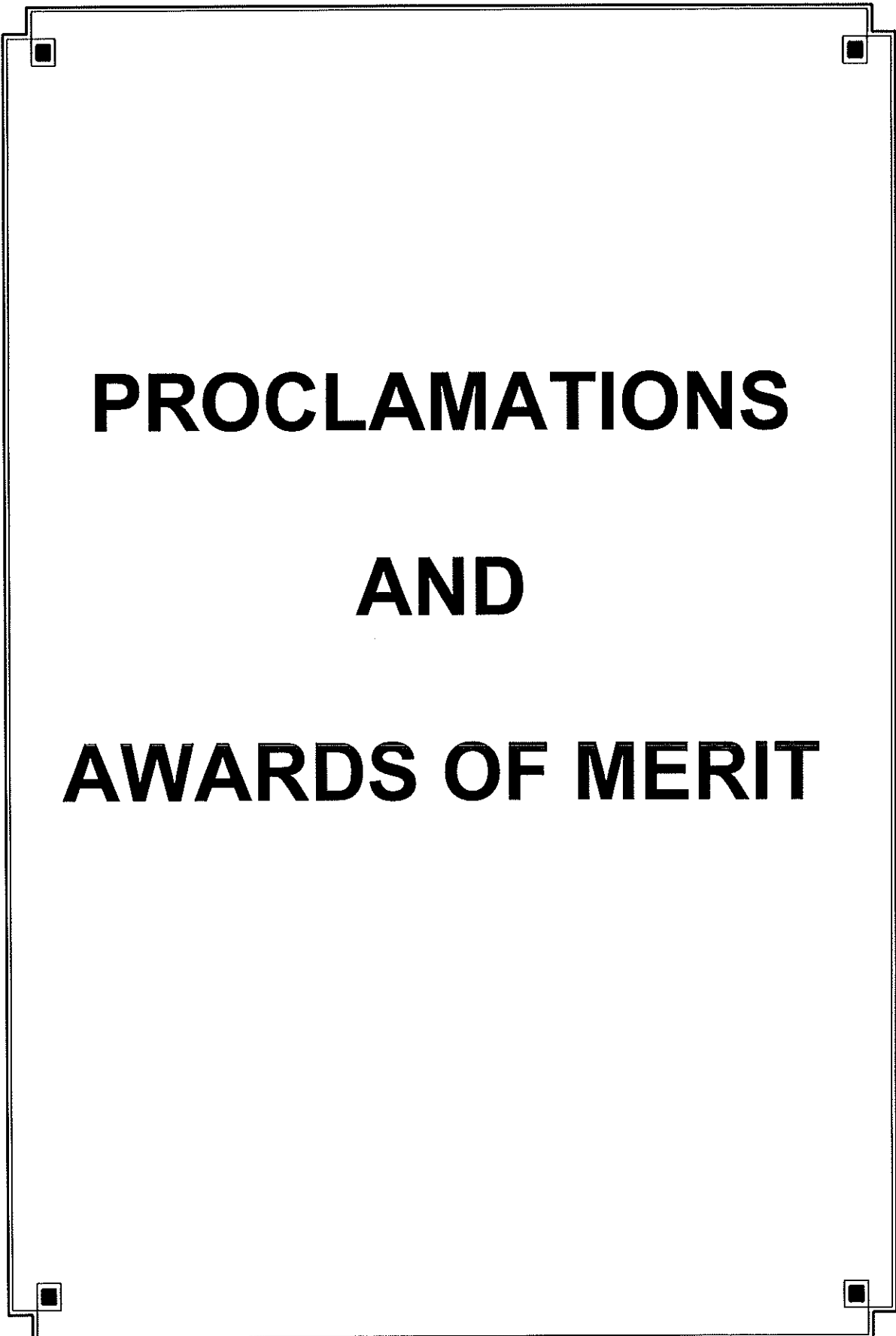
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SAM D. COBB, Mayor

ATTEST:

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JAN FLETCHER, City Clerk



**PROCLAMATIONS**

**AND**

**AWARDS OF MERIT**

## PROCLAMATION

**WHEREAS**, emergency medical services is a vital public service; and

**WHEREAS**, the members of emergency medical services teams are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and

**WHEREAS**, the Hobbs Fire Department responds to over 7,800 EMS calls annually; and

**WHEREAS**, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and

**WHEREAS**, emergency medical services has grown to fill a gap by providing important, out of hospital care, including preventative medicine, follow-up care, and access to telemedicine; and

**WHEREAS**, the emergency medical services system consists of first responders, emergency medical technicians, paramedics, emergency medical dispatchers, firefighters, educators, administrators, pre-hospital nurses, emergency nurses, emergency physicians, trained members of the public, and other out of hospital care providers; and

**WHEREAS**, the members of emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills; and

**WHEREAS**, it is appropriate to recognize the value and the accomplishments of emergency medical services providers by designating Emergency Medical Services Week.

**NOW, THEREFORE**, I, Sam D. Cobb, Mayor of the City of Hobbs, New Mexico, do hereby proclaim the week of May 19-25, 2019, as

### "EMERGENCY MEDICAL SERVICES WEEK"

With the theme, "**EMS Strong: Beyond the Call**", and encourage the community to observe this week with appropriate programs, ceremonies and activities.

**IN WITNESS WHEREOF**, I have hereunto set my hand this 20<sup>th</sup> day of May, 2019, and cause the seal of the City of Hobbs to be affixed hereto.

\_\_\_\_\_  
SAM D. COBB, MAYOR

ATTEST:

  
\_\_\_\_\_  
JAN FLETCHER, CITY CLERK



## **May Milestones**

### **20 Years**

Clipper Miller	HPD	05/10/1999
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### **15 Years**

Joe Hill	Parks	05/24/2004
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### **10 Years**

Ryan Herrera	HFD	05/06/2009
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### **5 Years**

Nancy Tovar	Municipal Court	05/27/2014
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Doug McDaniel	Parks	05/30/2014
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# **ACTION ITEMS**



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: May 20, 2019

SUBJECT: Consideration of Preliminary FY 2020 Budget  
DEPT. OF ORIGIN: Finance  
DATE SUBMITTED: May 10, 2019  
SUBMITTED BY: Deborah Corral, Assistant Finance Director

**Summary:**

Pursuant to applicable state law the preliminary budget must be approved and submitted to the Local Government Division of the NMDFA by June 1<sup>st</sup>. This proposed preliminary budget includes \$72,314,929.56 in proposed General Fund expenditures and \$123,251,442.63 in proposed expenditures for all funds. Revenues in the General Fund are projected at \$69,392,109.08 and total revenue projections for all funds are set at \$116,246,297.08. Current projected general fund cash reserve is set at 31% with a preliminary ending cash balance for all funds of \$49,865,229.05.

**Fiscal Impact:**


Reviewed By:   
Finance Department

Annual budgeting process has more fiscal impact than any other city policy issue.

**Attachments:**

Resolution and FY20 Fund Summary

**Legal Review:**

Approved As To Form:   
City Attorney

Motion to approve the resolution

**Recommendation:**

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. 6797

2019-2020 PRELIMINARY BUDGET CONSIDERATION

(108<sup>th</sup> FISCAL YEAR)

WHEREAS, the Governing Body of the Municipality of Hobbs, State of New Mexico has developed a preliminary budget for fiscal year 2019 - 2020; and

WHEREAS, said preliminary budget was developed on the basis of need and through cooperation with all user departments, elected officials and other department supervisors; and

WHEREAS, the official meetings for the review of said documents were duly advertised and held on May 6, 2019 and May 20, 2019, in compliance with the State Open Meetings Act; and

WHEREAS, it is the majority opinion of this Commission that the proposed preliminary budget meets the requirements as currently determined for fiscal year 2019 -2020.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Governing Body of the Municipality of Hobbs, State of New Mexico, hereby adopts the preliminary budget herein above described and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

PASSED, ADOPTED, APPROVED AND RESOLVED in session this 20<sup>th</sup> day  
of May, 2019.

MUNICIPAL GOVERNING BODY OF  
HOBBS, NEW MEXICO

\_\_\_\_\_  
SAM D. COBB, Mayor

\_\_\_\_\_  
MARSHALL R. NEWMAN, Commissioner

\_\_\_\_\_  
CHRISTOPHER R. MILLS, Commissioner

\_\_\_\_\_  
PATRICIA A. TAYLOR, Commissioner

\_\_\_\_\_  
JOSEPH D. CALDERON, Commissioner

\_\_\_\_\_  
DWAYNE PENICK, Commissioner

\_\_\_\_\_  
DON R. GERTH, Commissioner

ATTEST:

\_\_\_\_\_  
JAN FLETCHER, City Clerk

**City of Hobbs Preliminary Budget  
FY20 Fund Summary**

	Beginning Cash (FY19 BAR #4)	Total Revenue	Interfund Transfer	Total Expenditures	Ending Cash
1 GENERAL	29,269,228.29	69,392,109.08	(4,281,660.32)	72,314,929.56	22,064,747.49
2 LAND ACQUISITION	101,192.47	100,000.00	-	100,000.00	101,192.47
<b>General Fund Subtotal</b>	<b>29,370,420.76</b>	<b>69,492,109.08</b>	<b>(4,281,660.32)</b>	<b>72,414,929.56</b>	<b>22,165,939.96</b>
11 LOCAL GOV CORR	84,256.10	192,500.00	-	118,500.00	158,256.10
12 POLICE PROTECTION	-	73,200.00	-	73,200.00	-
13 P D N (parif, drug, narcotics)	1,918.75	-	-	-	1,918.75
14 SAFER Grant	1,000.29	-	-	-	1,000.29
15 COPS GRANT	230,732.00	250,000.00	-	471,310.04	9,421.96
16 RECREATION (CORE)	615,400.00	1,731,745.00	3,105,342.75	5,377,487.75	75,000.00
17 OLDER AMERICAN	1,000.00	137,546.00	926,636.42	1,064,182.42	1,000.00
18 GOLF	1,000.00	942,700.00	2,883,904.09	3,826,604.09	1,000.00
19 CEMETERY	1,000.00	163,300.00	294,508.66	457,808.66	1,000.00
20 AIRPORT	218,802.13	38,500.00	-	57,500.00	199,802.13
23 LODGERS' TAX	1,947,465.67	2,025,000.00	(1,031,850.00)	1,101,149.00	1,839,466.67
27 PUBLIC TRANSPORTATION	160,580.00	723,502.00	103,118.40	986,200.40	1,000.00
28 FIRE PROTECTION	22,710.18	434,400.00	-	411,250.00	45,860.18
29 EMER MEDICAL SERV	11.27	20,000.00	-	20,000.00	11.27
<b>Special Revenue Subtotals</b>	<b>3,285,876.39</b>	<b>6,732,393.00</b>	<b>6,281,660.32</b>	<b>13,965,192.36</b>	<b>2,334,737.35</b>
37 COMM DEVE CONST	181,000.00	-	-	-	181,000.00
46 BEAUTIFICATION IMPROVEMENT	1,135,993.89	-	-	-	1,135,993.89
48 STREET IMPROVEMENTS	715,746.01	875,000.00	-	-	1,590,746.01
49 CITY COMM. IMPROVEMENTS	1,121,000.04	2,940,000.00	(3,350,000.51)	120,000.00	590,999.53
<b>Capital Project Subtotals</b>	<b>3,153,739.94</b>	<b>3,815,000.00</b>	<b>(3,350,000.51)</b>	<b>120,000.00</b>	<b>3,498,739.43</b>
51 UTILITY BOND	-	-	307,609.34	307,609.34	-
53 WASTEWATER BOND	1,989,842.96	-	2,105,208.28	2,105,208.28	1,989,842.96
<b>Debt Service Subtotals</b>	<b>1,989,842.96</b>	<b>-</b>	<b>2,412,817.62</b>	<b>2,412,817.62</b>	<b>1,989,842.96</b>
10 SOLID WASTE	1,975,305.20	6,500,000.00	-	6,500,000.00	1,975,305.20
44 JOINT UTILITY EXTENSIONS CAPITAL P	999.49	750,000.00	1,350,000.51	2,100,000.00	1,000.00
60 JOINT UTILITY	833,134.98	-	5,224,867.85	6,057,002.83	1,000.00
61 JOINT UTILITY CONST	1,000.00	-	1,575,000.00	1,575,000.00	1,000.00
62 WASTE WATER PLANT CONST	707,994.60	942,000.00	-	1,142,000.00	507,994.60
63 JOINT UTILITIY - WASTEWATER	1,000.00	-	4,890,814.53	2,668,500.26	2,223,314.27
65 JOINT UTILITIY INCOME - WASTEWATE	60,000.00	7,620,000.00	(7,619,000.00)	60,000.00	1,000.00
66 JOINT UTILITY INCOME	271,000.00	6,214,500.00	(6,484,500.00)	-	1,000.00
68 METER DEPOSIT RES	973,283.98	350,000.00	-	350,000.00	973,283.98
69 INTERNAL SUPPLY	76,262.04	300,000.00	-	300,000.00	76,262.04
<b>Utility Subtotals</b>	<b>4,899,980.29</b>	<b>22,676,500.00</b>	<b>(1,062,817.11)</b>	<b>20,752,503.09</b>	<b>5,761,160.09</b>
64 MEDICAL INSURANCE	3,737,836.73	6,526,000.00	-	6,581,000.00	3,682,836.73
67 WORKERS COMP TRUST	1,069,590.44	685,000.00	-	685,000.00	1,069,590.44
<b>Internal Service Subtotal</b>	<b>4,807,427.17</b>	<b>7,211,000.00</b>	<b>-</b>	<b>7,266,000.00</b>	<b>4,752,427.17</b>
70 MOTOR VEHICLE	22,290.49	5,000,000.00	-	5,000,000.00	22,290.49
71 MUNI JUDGE BOND FUND	103,565.84	-	-	-	103,565.84
72 RETIREE HEALTH INSURANCE TRUST F	9,000,000.00	1,235,000.00	-	1,235,000.00	9,000,000.00
73 CRIME LAB FUND	72,649.55	79,000.00	-	79,000.00	72,649.55
75 FORECLOSURE TRUST FUND	71.88	-	-	-	71.88
76 RECREATION TRUST	-	-	-	-	-
77 LIBRARY TRUST	4,756.00	1,500.00	-	2,000.00	4,256.00
78 SENIOR CITIZEN TRUST	1,088.18	1,500.00	-	1,500.00	1,088.18
79 PRAIRIE HAVEN MEM	5,830.71	75.00	-	-	5,905.71
80 COMMUNITY PARK TRUST	1,619.50	20.00	-	-	1,639.50
82 EVIDENCE TRUST FUND	132,237.46	1,000.00	-	-	133,237.46
83 HOBBS BEAUTIFUL	15,069.53	-	-	-	15,069.53
86 CITY AGENCY TRUST	3,907.95	1,200.00	-	2,500.00	2,607.95
<b>Trust &amp; Agency Subtotals</b>	<b>9,363,087.09</b>	<b>6,319,295.00</b>	<b>-</b>	<b>6,320,000.00</b>	<b>9,362,382.09</b>
<b>Grant Total All Funds</b>	<b>56,870,374.60</b>	<b>116,246,297.08</b>	<b>-</b>	<b>123,251,442.63</b>	<b>49,865,229.05</b>

31%



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: 5-20-19

SUBJECT: A Resolution Authorizing Funding Appropriations to Social Service Agencies and Authorizing the Mayor to Execute Professional Service Agreements.

DEPT. OF ORIGIN: Mayor's Office  
DATE SUBMITTED: 5-13-19  
SUBMITTED BY: Ann Betzen

Summary:  
Proposed funding for community social service agencies.


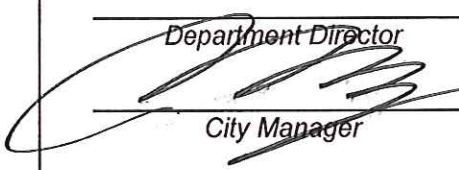
Fiscal Impact:  
  
Ordinance #1086 capped funding at \$400,000; commission committee's recommendation is \$400,000. These appropriations are budgeted under the FY 19-20 preliminary budget.

Reviewed By:   
Department

Attachments:  
Resolution, History of Funding Ledger

Legal Review:  
  
Approved As To Form:   
City Attorney

Recommendation:  
  
Motion to approve Resolution.

<p>Approved For Submittal By:</p> <p> Department Director</p> <p> City Manager</p>	<p>CITY CLERK'S USE ONLY COMMISSION ACTION TAKEN</p> <table><tr><td>Resolution No. _____</td><td>Continued To: _____</td></tr><tr><td>Ordinance No. _____</td><td>Referred To: _____</td></tr><tr><td>Approved _____</td><td>Denied _____</td></tr><tr><td>Other _____</td><td>File No. _____</td></tr></table>	Resolution No. _____	Continued To: _____	Ordinance No. _____	Referred To: _____	Approved _____	Denied _____	Other _____	File No. _____
Resolution No. _____	Continued To: _____								
Ordinance No. _____	Referred To: _____								
Approved _____	Denied _____								
Other _____	File No. _____								

CITY OF HOBBS

RESOLUTION NO. 6798

A RESOLUTION AUTHORIZING FY 19-20 FUNDING  
APPROPRIATIONS TO VARIOUS SOCIAL SERVICE AGENCIES

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS,  
NEW MEXICO, that FY 19-20 funding appropriations are approved for various social  
service agencies in the following amounts:

CASA	\$20,000
Faith in Action	\$13,500
Isaiah's Kitchen	\$18,000
Legacy Pregnancy Resource Ctr	\$ 7,500
My Power, Inc.	\$35,000
Option	\$19,000
Opportunity House	\$ 9,500
Palmer Drug Abuse Program	\$50,000
Salvation Army	\$ 8,500
Senior Bash	\$ 2,000
Southwest Symphony	\$ 5,000
Teen Court	\$32,000
Weekend Hunger Initiative	\$20,000

Community Drug Coalition	\$155,000
Cavern City Child Advocacy Ctr.	\$ 5,000

BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized and directed to execute appropriate Professional Service Agreements with each agency in the amounts specified above for the provision of social services to the citizens of Hobbs.

PASSED, ADOPTED AND APPROVED this 20<sup>th</sup> day of May, 2019.

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SAM D. COBB, Mayor

ATTEST:

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JAN FLETCHER, City Clerk

**HISTORY OF FUNDING  
SOCIAL SERVICE AGENCIES**

	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY19-20 Agency Proposal	FY 19-20 Committee Recommend
CASA	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000
CASA Visitation Program	\$12,000	\$12,000		-0-	-0-	\$ 5,000	-0-
CASA Canine Companion		-0-	-0-	-0-	-0-	\$ 2,500	-0-
Faith in Action	\$10,000	\$10,000	\$10,000	\$10,000	\$ 12,500	\$15,000	\$13,500
Isaiah's Kitchen	\$10,000	\$10,000	\$10,000	\$10,000	\$ 12,000	\$20,000	\$18,000
Lea County Commission for the Arts	\$15,000	\$15,000	\$15,000	\$15,000	\$ 15,000	\$40,000	-0-
Legacy Pregnancy Resouce Ctr				\$10,000	-0-	\$ 7,500	\$ 7,500
Manna Outreach	\$10,000	\$10,000	\$10,000	\$10,000	\$ 12,500	-0-	-0-
My Power, Inc.	\$20,000	\$20,000	\$20,000	\$20,000	\$25,000	\$50,000	\$35,000
Option	\$15,000	\$15,000	\$15,000	\$15,000	\$ 17,500	\$20,000	\$19,000
Opportunity House	\$ 8,500	\$ 8,500	\$ 8,500	\$ 8,500	\$ 8,500	\$25,000	\$ 9,500
PDAP	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$50,000	\$50,000
Salvation Army	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 7,500	\$10,000	\$ 8,500
Senior Bash	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Southwest Symphony	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 4,500	\$10,000	\$ 5,000

	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY19-20 Agency Proposal	FY 19-20 Committee Recommend
Teen Court	\$20,000	\$20,000	\$32,000	\$32,000	\$ 32,000	\$32,000	\$32,000
Weekend Hunger Initiative	\$17,500	\$17,500	\$17,500	\$17,500	\$ 20,000	\$20,000	\$20,000
CDC			\$100,000	\$100,000	\$100,000	\$155,000	\$155,000
Cavern City Child Advocacy Ctr						\$20,000	\$ 5,000
<b>TOTAL</b>	<b>\$241,500</b>	<b>\$233,500</b>	<b>\$304,000</b>	<b>\$314,000</b>	<b>\$324,000</b>	<b>\$504,000</b>	<b>\$400,000</b>

Prepared by A. Betzen 5/13/19





**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: May 20, 2019

**SUBJECT:** CONSIDERATION TO APPROVE A DEVELOPMENT AGREEMENT WITH BLACK GOLD ESTATES CONCERNING THE DEVELOPMENT OF MARKET RATE SINGLE-FAMILY HOUSING.

DEPT. OF ORIGIN: Planning Division  
DATE SUBMITTED: May 13, 2019  
SUBMITTED BY: Kevin Robinson – Planning Department

**Summary:** Black Gold Estates has requested a Development Agreement concerning the development of single-family housing units located within the municipal boundaries. The developer proposes to produce market rate single-family units and is requesting infrastructure incentives of \$100,000.00.

**Fiscal Impact:**

Reviewed By: 

Finance Department

A budget reclassification of \$25,000.00 would need to be made from the multi-family budget line (010100-44901-162) to the single family budget line of 010100-44901-00170. Since there is no cash budget impact (due to re-class), the reclassification would need to be ratified in the upcoming Budget.

**Attachments:** Resolution and Development Agreement.

**Legal Review:**

Approved As To Form: 

City Attorney

**Recommendation:**

Commission considers approval / denial of the attached Development Agreement.

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. 6799

**A RESOLUTION TO APPROVE A DEVELOPMENT AGREEMENT WITH BLACK GOLD ESTATES CONCERNING THE DEVELOPMENT OF MARKET RATE SINGLE-FAMILY.**

WHEREAS, the City of Hobbs is proposing to enter into a Development Agreement with Black Gold Estates concerning the development of market rate single-family housing; and

WHEREAS, the aforementioned Development Agreement allows for an incentive of reimbursement of public infrastructure for this type of development, said agreement being in the best interest of the City.

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that

1. The City of Hobbs hereby approves the Development Agreement, which is attached hereto and made a part of this Agreement as Exhibit #1 and the Mayor, and/or his designee, is hereby authorized to execute the Agreement.
2. That City staff and officials are authorized to do any and all deeds to carry out the intent of this Resolution.

PASSED, ADOPTED AND APPROVED this 20<sup>th</sup> day of May, 2019.

\_\_\_\_\_  
Sam D. Cobb, Mayor

ATTEST:

\_\_\_\_\_  
Jan Fletcher, City Clerk

## MARKET RATE SINGLE FAMILY DEVELOPMENT AGREEMENT

**THIS AGREEMENT** is entered into on this 20<sup>th</sup> day of May 2019 by and between the City Of Hobbs, New Mexico, a municipal corporation (hereinafter "City"); and Black Gold Estates, 4830 N. Zia Crossing, Hobbs, NM 88240, (hereinafter "Developer") for the purpose of delivering Housing Developer Services to be provided to the City.

### RECITALS:

\*\* The City requires to contract with a Market Rate Single Family Development Company to deliver Single Family Market Rate Housing to the Citizens of Hobbs, New Mexico.

\*\* Developer has submitted a proposal to the City to deliver the required Market Rate Single Family Housing, to be produced within 180 days of ratification of this agreement, within the Municipal Boundaries.

\*\* Any outstanding Development Agreements between the Developer and the City of Hobbs concerning the production of Market Rate Single Family Housing shall become null and void upon the ratification of this agreement herewith.

**NOW, THEREFORE**, the City of Hobbs and Developer do hereby agree as follows:

#### **A. Work To Be Performed.**

1. The Developer shall furnish to the City its Professional Housing Developer Services for certain work regarding the Market Rate Single Family Housing. All single family structures completed under this agreement shall be located within the municipal boundaries and shall have received a certificate of occupancy after ratification of this agreement.

2. Developer shall furnish to City its professional Housing Developer Services as provided by this Agreement. The specific duties include the production and delivering to the public Market Rate Single Family Housing Units in Hobbs. Produced Units receiving an infrastructure incentive reimbursement shall not now or in the future be utilized in a pecuniary manner by renting, leasing, exchanging or bartering habitation privileges to the property for a period of no less than 30 days at a time.

3. Specific activities required are to develop privately owned real property in the City including designing, building and transferring to the public individual market rate single family housing units. The City's subsidy may include any or all of the following funding assistance from the City:

Incentives are available for installed 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 installed, 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;

Based on quantities of required publicly owned infrastructure installed supporting the project, the City Engineer shall determine if the value of the infrastructure is adequate as an equal exchange of value for the amount of City subsidy contributed to the market rate single family housing unit. The City Engineer shall resolve any issues concerning value or extent of infrastructure and amount of square footage of constructed housing units. Specifically, the City Engineer will determine the value or unit costs of the publicly owned infrastructure according to any City of Hobbs Annual Pavement/Concrete/Utility Contracts or public infrastructure projects and estimates.

#### **B. Payment For Services.**

- 1) The City shall pay for said services at the rates agreed to and as specified above in the Infrastructure details, as shown herein. Payment will not be made by the City for any unit until a certificate of occupancy is issued, based on this Agreement.
- 2) The total compensation to be paid to the Developer during the term of this Agreement shall not exceed One Hundred Thousand Dollars (\$100,000.00), unless the Agreement is amended by the City Commission.
- 3) City subsidy shall be paid when each individual single family unit is complete and certificate of occupancy is issued, provided the certificate of occupancy for the unit is issued after ratification of this agreement. Payment will be made within fifteen (15) days following a written request from the Developer and upon City inspection of project completion.
- 4) Produced Units receiving an infrastructure incentive reimbursement shall not now or in the future be utilized in a pecuniary manner by renting, leasing, exchanging or bartering habitation privileges to the property for a period of no less than 30 days at a time. Such usage either now or in the future, for a period not to exceed 10 years from date of issuance of a C.O.,

shall require Developer to return any incentive funds received for any unit thus utilized, upon demand by the City. Developer shall record a "Declaration of Restrictive Covenants", attached hereto as Exhibit 2, to restrict such usage and to notify parties involved in future conveyances.

**C. Construction Requirements.**

Construction shall be of energy-efficient design per New Mexico Energy Conservation Code 2009, utilizing either stucco or brick on the exterior of all buildings.

**D. Assignment of Agreement.**

This Section refers to assignability of this Agreement, and not to assignability of the Project to be developed for housing. Developer shall not assign or transfer any interest in this Agreement. Except that Developer is permitted, upon City approval, to assign its interest to a Partnership or Corporation in which the Developer is the principal party or to an affiliated company, working with the Developer on the Project. Subject to the foregoing provision, this Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and assigns; provided that upon any assignment of this Agreement by either party, the other party shall not be released from any obligation under, or liability accruing pursuant to this Agreement. Consent shall not unreasonably be withheld by either party.

**E. Insurance Requirements and Hold Harmless Provision.**

1. Developer agrees to obtain and maintain appropriate insurance during the course of the development of market rate single family housing with the City of Hobbs, as follows, and shall indemnify and hold harmless City, its employees, agents, officers and officials from any and all claims, losses, causes of action, and/or liabilities resulting from the conduct, negligence, errors or omissions of Developer or any employee or agent of Developer while engaged in performing the services called for herein.

2. The Developer shall maintain insurance coverage for General Liability, Automobile Liability, Errors and Omissions Insurance, and Workers' Compensation, subject to review and approval of the City Attorney.

**F. Governing Law and Provisions.**

1. This Agreement shall be governed by the laws of the State of New Mexico. Jurisdiction and venue relating to any litigation or dispute arising out of this Agreement shall be in the District Court of Lea County, New Mexico, only. If any part of this contract shall be deemed in violation of the laws or Constitution of New Mexico, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable.

2. If any party is found by a court to have breached this Agreement, the breaching party agrees to pay all reasonable costs, attorney's fees and expenses that shall be made or incurred by another party in enforcing any covenant or provision of this Agreement, including the expenses of in house counsel.

**G. Final Payment and Release of Claims.**

1. Developer, upon final payment of all amounts due under this Agreement, releases the City and its officers and employees from all liabilities, claims and obligations whatsoever arising

from or under this Agreement.

2. City, upon Developer's final completion of all work items and covenants required of the Developer under this Agreement, shall release the Developer from all liabilities, claims and obligations whatsoever arising from or under this Agreement, on the day that is ten (10) years following the date of the City's issuance of a final certificate of occupancy on the Project.

**H. Amendments.**

This Agreement shall not be altered, changed, or amended except by written instrument approved and executed by both parties hereto.

**I. Breach.**

1. The following events constitute a breach of this Agreement by Developer:

a) Developer's failure to perform or comply with any of the terms, conditions or provisions of this Agreement.

2. The following events constitute a breach of this Agreement by City:

a) City's failure to perform or comply with any of the terms, conditions or provisions of this Agreement, including making timely and appropriate payments to the Developer.

**J. Remedies Upon Breach.**

1. Any party may sue to collect any and all damages that may accrue by virtue of the breach of this Agreement.

2. If any party is found by a court to have breached this Agreement, the breaching party agrees to pay all reasonable costs, attorney's fees and expenses that shall be made or incurred by another party in enforcing any covenant or provision of this Agreement.

**K. Termination.**

This Agreement shall be terminated upon the completion of all tenants herein specified or 180 days from date of ratification whichever comes first. A request for infrastructure reimbursement, for a qualified unit produced within the terms of this agreement, received after the Termination Date of this agreement will not be eligible for payment.

**L. Notice.**

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City, ATTN: City Attorney, 200 E. Broadway, Hobbs, NM 88240; to Developer ATTN and Black Gold Estates, 4830 N. Zia Crossing, Hobbs, NM 88240 and to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

**M. Entire Agreement.**

The foregoing constitutes the entire agreement between the parties hereto and may be modified only in writing by the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first written above.

**City of Hobbs**

**Developer**

\_\_\_\_\_  
By: Sam D. Cobb, Mayor

\_\_\_\_\_  
By:

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JAN FLETCHER, City Clerk

\_\_\_\_\_  
Efren Cortez, City Attorney



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: May 20, 2019

**SUBJECT:** CONSIDER AWARD OF RFP 508-19: PURCHASE/LEASE OF  
70 GOLF CARTS  
**DEPT. OF ORIGIN:** Parks & Recreation Department  
**DATE SUBMITTED:** May 14, 2019  
**SUBMITTED BY:** Doug McDaniel, Parks and Recreation Director

***Summary:***

RFP 508-19 for Purchase or Lease of Golf Carts was advertised beginning on March 12, 2019, and responses were due on March 25, 2019. The Finance Department received three (3) proposals and all three (3) were deemed responsive. The Evaluation Committee, which was comprised of staff from the Parks & Recreation, Utilities and IT Departments, reviewed the submittals, cost proposals, and additional questions which were sent to the prospective vendors. There was \$114,000 included in the FY19 Budget for leasing of golf carts. However, during the review process it was determined that purchasing golf carts is a better option due to interest rates on the leases and having a tangible asset (70 golf carts) as a result of purchasing. The vendor with the highest average score was:

Masek Rocky Mountain Golf Cars – Average Score 97 (110 points possible)

Additionally, during the review of proposals, the Evaluation Committee determined that gas-powered carts were the best option and could lead to extending the life of the golf cart fleet beyond 5 years as the gas engines are covered by a 20 year, 100,000 mile, 5,000 hour warranty. Gas-powered golf carts also have a higher resale value than electric. Yamaha gas-powered carts, supplied by the above vendor, are being recommended.

Twenty-one (21) golf carts in the current fleet were purchased in October 2013. Forty-four (44) golf carts in the current fleet were purchased in February 2015. Thirty five carts have had the lead-acid batteries replaced to date, and as the fleet continues to age these batteries will continue to fail. Approximately \$35,500 has been spent on battery replacement and other repairs over the last two years and there is approximately \$9,000 in labor costs related to maintenance of the lead acid batteries annually.

To further extend the life of the new golf cart fleet, the Evaluation Committee is recommending the installation of GPS units in the carts. This will improve pace of play and geo-fencing technology will notify the driver that they are driving in a restricted area. Later this year, the technology will be available to shut down the gas-powered golf carts much like what can be done currently with electric golf carts and carts will be retro-fitted with this technology at no additional charge. The staff in the Rockwind Club House will also be able to monitor the locations of carts on the course. With the purchase of gas-powered golf carts and the installation of the GPS units, the life of the golf cart fleet should be extended to six (6) years and beyond, thus justifying the investment.

Should the purchase of the seventy (70) golf carts be approved by the Commission, with the re-class of funds in the FY19 budget, there will be \$240,277 available to purchase thirty-nine (39) golf carts. The purchase of the remaining thirty-one (31) golf carts would be funded through a request in BAR #5 in June 2019. The BAR #5 would need to be approved by the City Commission and Department of Finance Administration before the remaining thirty (31) carts could be purchased.



**Fiscal Impact:**

Reviewed By:   
Finance Department


Costs for Purchase of 70 Carts: \$346,990 (carts)  
\$ 72,800 (GPS units)  
\$ 468 (GPS service subscription June 2019 - July 2019)  
\$ 10,080 (GPS service subscription July 2019 - June 2020)  
Total Costs/70 Carts \$430,338

Current Funding: \$134,803 (184316-43006)  
Re-class of funds: \$ 60,000 (184316-43013)  
\$ 45,474 (184316-42706)  
Total Funds Available: \$240,277

Additional Funds/BAR #5: \$190,061

**Attachments:** RFP 508-19 Score Sheet, Vendor Pricing Estimate

**Legal Review:**

Approved As To Form:   
City Attorney

**Recommendation:**

Staff recommends that the City Commission consider approval of RFP 508-19 with Masek Rocky Mountain Golf Cars for the purchase of seventy (70) gas-powered, GPS equipped, Yamaha golf carts at a total cost of \$430,290. There will be no NMGRT applied to this purchase. The purchase of the remaining carts would be contingent upon DFA approval.

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. \_\_\_\_\_

RFP No. 508-19 TOTAL SCORE SHEET

PURCHASE OR LEASE GOLF CARTS FOR RWCL	MAX PNTS	CLUB CAR	ROCKY MOUNTAIN /YAMAHA	TEXTRO N/EZ-GO
1. Length of and coverage provided by standard warranty	20	19.2	18.6	18
2. Availabilty, location, cost and respone times of offeror's preventative maintenance and repair staff. Ability to ship, overnight, and time of any dally deadlines to get parts shipped ovrnight, for parts needed that are not on-site; Quality of, ability to and cost to provide training, both on-site and at offeror's site to enable staff operate, adjust an drepair equipment.	15	13.6	13.2	13
3. Proposed golf carts are of commercial grade, durable, and ergonomically built to allow for comfort of the operator.	10	9.8	10	9.8
4a. Purchase cost of golf carts (to include standard warranty, freight and installation). Exclusive of the following cost: extended warranty as described above; cost of any equipment (hardware, softwar, other items) for tracking preventive maintenance and the cost of any on-site or off-site training to train the staff to make repaires to golf carts.	40	0	0	0
4b. Lease cost of golf carts (to include standard warranty, freight and installation). Exclusive of the following cost: extended warranty as described above; cost of any equipment (hardware, software, other items) for tracking preventive maintenance and the cost of any on-site or off-site training to train the staff to make repairs to golf carts.	40	19.6	40	34.8
5. Additional cost and coverage provided to extend standard waranty to (5) years on each piece of equipment.	15	5.6	15	8.4
6. Resident Bidder/Veterans Preference	10	0	0	0
<b>TOTAL</b>	<b>110</b>	<b>68</b>	<b>97</b>	<b>84</b>



FLEET PRICING FOR ROCKWIND COMMUNITY LINKS



\*\*Pricing is good for 30 days and does not include any applicable taxes\*\*

FLEET PRICING

	<i>4 year lease</i>	<i>5 year lease</i>	<i>Cash purchase</i>	<i>Guaranteed buy-back</i>
<i>Quietech EFI:</i>	<u>\$5,028.00/month</u>	<u>\$4,450.00/month</u>	<u>\$346,990.00</u>	<u>\$154,000.00 after four years</u>
<i>DC electric:</i>	<u>\$5,492.00/month</u>	<u>\$4,782.00/month</u>	<u>\$315,490.00</u>	<u>\$91,000.00 after four years</u>
<i>EFI gas:</i>	<u>\$4,637.00/month</u>	<u>\$4,118.00/month</u>	<u>\$318,500.00</u>	<u>\$140,000.00 after four years</u>
<i>GPS w/screen:</i>	<u>\$2,590.00/month</u>	<u>\$2,310.00/month</u>	<u>\$72,800.00</u>	

Pricing above is quoted using (70) 2019 Yamaha fleet cars Glacier White or Sunstone Beige in color equipped with windshields, wheel covers, fleet numbers, two sand bottles, coolers, club logos, 6 ply tires, tow brackets and information holders. Lease prices are quoted with the club making payments twelve months per year for a total of 48 or 60 payments. Masek's guarantees the club the option to roll out of each lease a year early should they choose to do so. Masek's has also included a guarantee buy-back option on each of their proposed vehicles should the golf course want to trade them in for a new fleet of Yamaha's after four years.

- (70) sand bottles: \$700.00 (\$10.00/bottle)
- (10) spare tires & rims: \$460.00 (\$46.00/spare)
- (10) coolers: \$400.00 (\$40.00/cooler)

- (3) GPS screens: \$3,120.00 (\$1,040/screen)
- (3) chargers: \$1,260.00 (\$420.00/charger)
- (3) tow bars: \$750.00 (\$250.00/tow bar)



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: May 20, 2019

SUBJECT: Resolution Authorizing the Mayor and City Manager to Enter into a Legal Services Agreement with Robles, Rael and Anaya, P.C. and Baron & Budd, P.C.

DEPT. OF ORIGIN: Legal Department  
DATE SUBMITTED: May 14, 2019  
SUBMITTED BY: Erik M. Scramlin, Deputy City Attorney

Summary:

The City of Hobbs seeks to retain the legal services of Robles, Rael and Anaya, P.C. and Baron & Budd, P.C. The City of Hobbs wishes to enter into a contingency fee agreement with Robles, Rael and Anaya, P.C. and Baron & Budd, P.C. to investigate and possibly initiate litigation involving the manufacture, marketing, sale and distribution of prescription opioid products within Hobbs, New Mexico. Payment for services will be pursuant to a contingency fee agreement. There is no fee if there is no recovery and contractor shall not be paid nor receive reimbursement from public funds unless required by law.

Fiscal Impact:

Payment for services are pursuant to a contingency fee agreement. Under the contingency fee agreement, the City of Hobbs will pay any money for attorneys' fees and costs of litigation from any monetary award as a result of the litigation. No fees or costs will result unless the City of Hobbs receives a monetary award. No fee will be paid from public funds, as such there is no fiscal impact for this proposed resolution.

Reviewed By:   
Finance Department

Attachments:

Proposed Resolution and Agreement

Legal Review:

Approved As To Form:   
City Attorney

Recommendation:

The Commission should consider the Resolution as presented.

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. 6800

A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO ENTER INTO A LEGAL SERVICES AGREEMENT WITH ROBLES, RAEL AND ANAYA, P.C. AND BARON & BUDD, P.C.

WHEREAS, the City desires to engage Robles, Rael and Anaya, P.C., and Baron & Budd, P.C. to render legal services for Opioid Investigation and Litigation; and

WHEREAS, the City desires to enter into a contingency fee agreement with Robles, Rael and Anaya, P.C., and Baron & Budd, P.C. securing services to investigate and possibly initiate litigation involving the manufacture, marketing, sale and distribution of prescription opioid products in the City, including claims arising out of the use and/or abuse of said opioid products for the purposes of eliminating the hazard to public health and safety caused by the opioid epidemic and to recoup City monies that have been spent as a result of false, deceptive and unfair marketing and/or unlawful diversion of opioids; and

WHEREAS, the City agrees to pay a contingent fee of the total recovery (gross) in favor of the City as an attorney fee. There is no fee if there is no recovery and contractor shall not be paid nor receive reimbursement from public funds unless required by law.

WHEREAS, The Mayor and City Manager will need to sign various pleadings and verifications as representatives of the City of Hobbs as Plaintiff.

NOW THEREFORE, BE IT RESOLVED by the governing body of the City of Hobbs, the Mayor and City Manager are authorized to sign the contingency fee agreement with Robles, Rael and Anaya, P.C., and Baron & Budd, P.C., and all

pleadings and verifications on behalf of the City of Hobbs as Plaintiff.

PASSED, ADOPTED AND APPROVED this 20<sup>th</sup> day of May, 2019.

\_\_\_\_\_  
SAM D. COBB, Mayor

ATTEST:

\_\_\_\_\_  
JAN FLETCHER, City Clerk



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**LEGAL SERVICES CONTRACT  
FOR OPIOID INVESTIGATION &  
LITIGATION**

**THIS AGREEMENT** is made and entered into by and between the City of Hobbs, hereinafter referred to as the "City", Robles, Rael & Anaya, P.C., and Baron & Budd, P.C., hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the City of Hobbs, City Commissioners.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

The Scope of work shall consist of the following:

A. Communication with the Cooperating City Attorneys on a regular basis and may have to meet and/or confer with the City Commission.

B. Perform significant evaluative and investigative preparatory work related to opioid litigation and potential claims of the City against entities or individuals involved in the manufacturing, distribution and/or dispensing of prescription opioid products within the City, including their subsidiaries, partners, contractors, subcontractors and other responsible parties.

C. Continuing investigation and litigation against potentially responsible parties.

D. Performing all phases of the investigation and litigation, including preparation of complaint(s), filing of complaint(s) and service of summons, responding to motions,

including motions to dismiss; drafting and answering discovery propounded upon the City or any of its agencies; tracking documents obtained in discovery; coordinating litigation with other counties, states and the federal government to promote, to the extent beneficial, a unified approach to litigation; taking depositions; defending depositions noticed by the defendants; preparing relevant witnesses for depositions; responding to motions for summary judgment or other pretrial dispositive motions; identification of experts to testify in favor of the City; preparation of expert witnesses for deposition or trial testimony; assessing the strength of legal arguments propounded by the litigants; preparation of legal arguments on motions; dealing with discovery disputes; representing the City in trial or in any settlement negotiations that may occur; representing the City in responding to post-trial motions; representing the City in the appeal(s) of any judgment or verdict rendered in any such action(s) and, if applicable, the remand from appeal(s); collection of judgments; and representation and defense of the City related to all counterclaims, crossclaims, or other claims related to or arising out of the Opioid Litigation.

E. Preserving and making available to the City all pertinent records. When the contract is completed or if the contract is completely or partially terminated for whatever reason, all records relating to the work shall be preserved and made available to the City for a period of at least five (5) years from the date of final statement or from the date that the litigation is completed, whichever occurs last.

F. Providing detailed information regarding hours worked, services performed and costs incurred in said litigation on a quarterly basis and upon request.

2. **Compensation.**

A. The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Contingent Fee Schedule attached hereto as *Attachment A*. In no event will the Contractor be paid any amount in excess of the specified total amount payable without this Agreement being amended in writing.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work.

C. Contractor must submit a detailed statement accounting for all services performed, specified on a minimum of a quarter hour basis, and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and



State tax identification number(s).

3. **Term.**

This Agreement is for one year, and shall automatically extend for each subsequent year for a total of four years, unless terminated pursuant to paragraph 4, infra. In accordance with Section 13-1-150 NMSA 1978, no contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B. Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. **Appropriations.**

Subject to the terms of the Contingent Fee Schedule attached hereto as Attachment A, the terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City of Hobbs City Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City of Hobbs City Commissioners, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option

to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. **Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City of Hobbs. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City of Hobbs as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City of Hobbs unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. **Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

8. **Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City. In all cases, the contractor is solely responsible for fulfillment of this Agreement.

9. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the City, its officers and employees, and the City of Hobbs from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. **Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

11. **Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City of Hobbs and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. **Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

The City is aware that Contractor represents the State of New Mexico in pending litigation against the manufacturers and distributors of opioids. Neither the City nor the Contractor believes that this presents or is likely to present a conflict of interest.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any City employee while such employee was or is employed by the City and participating directly or indirectly in the City's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the City; (ii) the Contractor is not a member of the family of a public officer or employee of the City; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the City, a member of the family of a public officer or employee of the City, or a business in which a public officer or employee of the City or the family of a public officer or employee of the City has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the City within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the City whose official act, while in City employment, directly resulted in the City making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the City.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in

this Article 12(B).

**13. Amendment.**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

**14. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal, state and City laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in the Fifth Judicial District Court in Lovington. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The

records shall be subject to inspection by the City, the Department of Finance and Administration and the State Auditor. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

**20. Disclaimer and Hold Harmless.**

The City of Hobbs shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold the City of Hobbs harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by the City of Hobbs in connection with the performance by Contractor of Contractor's duties according to this Agreement.

**21. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the City of Hobbs from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City of Hobbs.

**22. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**23. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**24. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**25. Lobbying.**

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

26. **Approval of Contractor Personnel.**

Personnel proposed in the Contractor's written proposal to the City are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the City, such consent not to be unreasonably withheld. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure they're being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the City shall retain the right to request the removal of any of the Contractor's personnel at any time.

27. **Survival.**

The agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement.

28. **Succession.**

This agreement shall extend to and be binding upon the successors and assigns of the parties.

29. **Force Majeure.**

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

30. **Mediation.**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the

New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

**31. Notice to Proceed.**

It is expressly understood that this Agreement is not binding upon the City until it is executed by the City of Hobbs City Commissioners after voting on the contract at a public meeting. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.

**32. Attorney's Fees.**

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

**33. Cooperation.**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

**34. Patent, Copyright, Trademark and Trade Secret Indemnification.**

A. The contractor shall defend, at its own expense, the City of Hobbs against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City of Hobbs based upon the contractor's trade secret infringement relating to any product or service provided under this agreement, the contractor agrees to reimburse the City of Hobbs for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the City of Hobbs shall:

- i. give the contractor prompt written notice of any claim;
- ii. allow the contractor to control the defense or settlement of the claim; and
- iii. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

- i. provide a procuring agency of the City the right to continue using the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be

void as to any product or service modified by the procuring agency of the City to the extent such modification is the cause of the claim.

**35. Professional Liability Insurance.**

Contractor agrees to maintain in full force throughout the duration of the Agreement:

1. Professional Liability: Minimum \$1,000,000.00 aggregate
2. Workers Compensation:
  - a. Contractor shall comply with the provisions of the Worker's Compensation Act.
3. Increased Limits:
  - a. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Section 41-4-1 et seq., Contractor shall increase the maximum limits of any insurance required herein.
4. Malpractice/Errors & Omissions Insurance:
  - a. Contractor shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 per aggregate.
5. City Named as Additionally Insured:
  - a. This condition is required for all insurances requested except Professional Liability.

**36. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:           City of Hobbs  
                              Attn: Erik Scramlin  
                              City of Hobbs  
                              200 E. Broadway  
                              Hobbs, NM 88240  
                              [EScramlin@hobbsnm.org](mailto:EScramlin@hobbsnm.org)

To the Contractor:    Marcus J. Rael, Jr.  
                              Managing Partner  
                              Robles, Rael & Anaya, P.C.  
                              500 Marquette Ave NW Suite 700  
                              Albuquerque, NM 87102  
                              (505) 242-2228 Phone  
                              [Marcus@roblesrael.com](mailto:Marcus@roblesrael.com)

and



Russell W. Budd  
Managing Partner  
Baron & Budd, P.C.  
3102 Oak Lawn Avenue, Suite 1100  
Dallas, TX 75219  
(214) 521-3605 Phone  
[rbudd@baronbudd.com](mailto:rbudd@baronbudd.com)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by approval of the City of Hobbs City Commissioners, by Resolution, through the designated parties below.

**APPROVED, ADOPTED AND PASSED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF HOBBS**

\_\_\_\_\_  
SAM D. COBB  
Mayor

\_\_\_\_\_  
MANNY GOMEZ  
Acting City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
EFREN A. CORTEZ  
City Attorney

\_\_\_\_\_  
TOBY SPEARS  
Finance Director

**CONTRACTOR**

\_\_\_\_\_  
By: Marcus J. Rael, Jr., Managing Partner  
Robles, Rael & Anaya, P.C.

\_\_\_\_\_  
By: Russell W. Budd, Managing Partner  
Baron & Budd, P.C.

SEAL

Date: \_\_\_\_\_

STATE OF NEW MEXICO )  
 )ss.  
COUNTY OF LEA )

SUBSCRIBED before me this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by \_\_\_\_\_.

\_\_\_\_\_  
**Notary Public**

My Commission Expires:

\_\_\_\_\_

## Attachment A Contingent Fee

In consideration, the City agrees to pay twenty-five percent (25%) of the total recovery (gross) in favor of the City as an attorney fee whether the claim is resolved by compromise, settlement, or trial and verdict (and appeal). The gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. Total fees and expenses shall not exceed thirty-five percent (35%) of the gross recovery. The City grants the Contractor an interest in a fee based on the gross recovery. If a court awards attorneys' fees, the Contractor shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded. **There is no fee if there is no recovery.**

The Contractor shall advance all necessary litigation expenses necessary to prosecute these claims. All such litigation expenses, including the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery after the contingent fee is calculated. **There is no reimbursement of litigation expenses if there is no recovery.**

The City acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, the likelihood this employment will preclude other employment by the Contractor, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers performing the services and the fact that the fee is contingent upon a successful recovery.

This litigation is intended to address a significant problem in the community. The litigation focuses on the wholesale distributors and manufacturers and their role in the diversion of millions of prescription opiates into the illicit market which has resulted in opioid addiction, abuse, morbidity, and mortality. There is no easy solution and no precedent for such an action against this sector of the industry. Many of the facts of the case are locked behind closed doors. The billion-dollar industry denies liability. The litigation will be very expensive, and the litigation expenses will be advanced by the Contractor with reimbursement contingent upon a successful recovery. The outcome is uncertain, as is all civil litigation, with compensation contingent upon a successful recovery. Consequently, there must be a clear understanding between the City and the Contractor regarding the definition of a "successful recovery."

The Contractor intends to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages and/or equitable remedies (e.g., an abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the wholesale distributors and manufacturers. The City agrees to compensate the Contractor, contingent upon prevailing, by paying 25% of any monetary settlement/resolution/judgment, in favor of the City. For instance, if the remedy is in the form of monetary damages, the City agrees to pay 25% of the gross amount to Contractor as compensation and then reimburse the reasonable litigation expenses. If the remedy is in the form of non-injunctive, monetary equitable relief (e.g., abatement fund), the City agrees to pay 25% of the gross value of the abatement fund from the abatement fund proceeds to Contractor as compensation,

in addition to reasonable litigation expense, which also shall be paid from the abatement fund proceeds. There will be no compensation to the contractor if the remedy takes the form of injunctive relief. To be clear, the Contractor shall not be paid nor receive reimbursement from public funds unless required by law. Under no circumstances shall the City be obligated to pay any attorneys fee or any litigation expenses except from moneys recovered from or expended by defendant(s) pursuant to the resolution of the City claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then Contractor will be paid the designated contingent fee from the resources expended by the defendant(s). The City acknowledges this is a necessary condition required by Contractor to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then Contractor should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

The division of fees, expenses and labor between the Attorneys will be decided by private agreement between the law firms and subject to approval by the City. Any division of fees will be governed by the New Mexico Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the City; (2) the City has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation; (3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the City and each lawyer and shall comply with the terms of the New Mexico Rules of Professional Conduct; and (4) the total fee is *not clearly excessive*.

The Contractor shall appoint a contact person to keep the City reasonably informed about the status of the matter in a manner deemed appropriate by the City. The City at all times shall retain the authority to decide the disposition of the case and personally oversee and maintain absolute control of the litigation.

Upon conclusion of this matter, the Contractor shall provide the City with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the City and the method of its determination. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the Contractor from the judgment or settlement involved, and, if applicable, the actual division of the lawyers' fees with a lawyer not in the same firm. The closing statement shall be signed by the City and each attorney among whom the fee is being divided.