

# 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

***September 16, 2019***



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

**Monday, September 16, 2019 - 6:00 p.m.**

Sam D. Cobb, Mayor

Marshall R. Newman  
Commissioner - District 1

Christopher R. Mills  
Commissioner - District 2

Patricia A. Taylor  
Commissioner - District 3

Joseph D. Calderón  
Commissioner - District 4

Dwayne Penick  
Commissioner - District 5

Don R. Gerth  
Commissioner - District 6

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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 September 3, 2019, Regular Commission Meeting
2. Minutes of the September 9, 2019, Special Commission Meeting

**PROCLAMATIONS AND AWARDS OF MERIT**

3. Recognition of City Employees - Milestone Service Awards for the Month of September, 2019 (*Nicholas Goulet, Human Resources Director*)
  - ▶ 5 years - Raymond Bonilla, Community Services Department
  - ▶ 5 years - Adrian Lujan, Parks Department
  - ▶ 5 years - Jarrod Purvis, Hobbs Fire Department
  - ▶ 5 years - Dustin Seay, Hobbs Police Department

- ▶ 5 years - Veronica Sosa, Parks Department
- ▶ 15 years - Tennie Clay, Hobbs Police Department
- ▶ 25 years - Kim Savage, Water Office

**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)

4. Resolution No. 6851 - **PUBLIC HEARING**: Regarding the Transfer of Ownership of Liquor License No. 2584 from Hobbs Oil Patch Inn, LLC, to Jitter Enterprises, LLC, d/b/a Derrick Lounge and Saxony Steak Room Located at 501 North Marland, Hobbs, New Mexico *(Efren Cortez, City Attorney)*
5. Resolution No. 6852 - Authorizing a First Amendment to FY 18-19 Memorandum of Agreement with the New Mexico Department of Transportation (NMDOT) Related to Public Transportation Services *(Jan Fletcher, City Clerk)*
6. Resolution No. 6853 - Authorizing an FY 19-20 Memorandum of Agreement with the New Mexico Department of Transportation (NMDOT) for Public Transportation Services *(Jan Fletcher, City Clerk)*
7. Resolution No. 6854 - Approving an Agreement with the Hobbs Municipal Schools Regarding Middle School Athletic Programs *(Doug McDaniel, Parks & Recreation Director)*
8. Resolution No. 6855 - Authorizing a Memorandum of Agreement with the New Mexico Energy, Minerals and Natural Resources Department for Funding for the Hobbs Fire Department for Hazardous Response Training *(Barry Young, Deputy Fire Chief)*

## COMMENTS BY CITY COMMISSIONERS, CITY MANAGER

### 9. Next Meeting Date:

- ▶ City Commission Regular Meeting  
**October 7, 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: September 16, 2019

**SUBJECT:** City Commission Meeting Minutes

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

**Summary:**

The following minutes are submitted for approval:

- ▶ Regular Commission Meeting of September 3, 2019
- ▶ Special Commission Meeting of September 9, 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. _____	Continued To: _____
Ordinance No. _____	Referred To: _____
Approved _____	Denied _____
Other _____	File No. _____

Minutes of the regular meeting of the Hobbs City Commission held on Tuesday, September 3, 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: Manny Gomez, Acting City Manager/Fire Chief  
Efren Cortez, City Attorney  
Erik Scramlin, Deputy City Attorney  
Valerie Chacon, Assistant City Attorney  
John Ortolano, Police Chief  
Brian Dunlap, Deputy Police Chief  
Chad Wright, Police Captain  
Barry Young, Deputy Fire Chief  
Mark Doporto, Fire Inspector  
Todd Randall, City Engineer  
Kevin Robinson, Development Director  
Tim Woomer, Utilities Director  
Doug McDaniel, Parks and Recreation Director  
Bryan Wagner, Parks and Open Spaces Director  
Michal Hughes, Recreation Superintendent  
Matt Hughes, Rockwind Community Links Superintendent  
Angela Courter, Senior Center Coordinator  
Nicholas Goulet, Human Resources Director  
Tracy South, Assistant Human Resources Director  
Toby Spears, Finance Director  
Ben Maynes, Building Official  
Shannon Arguello, Municipal Court Administrator  
Shelia Baker, General Services Director  
Meghan Mooney, Communications Director  
Ron Roberts, Information Technology Director  
Bob Hamilton, Reference Librarian  
Mollie Maldonado, Deputy City Clerk  
Jan Fletcher, City Clerk  
36 citizens

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

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

### **Approval of Minutes**

Commissioner Newman moved that the minutes of the regular meeting held on August 19, 2019, be approved as presented. Commissioner Penick 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.

### **Closed Session**

The City Commission convened in closed session on Tuesday, September 3, 2019, at 4:00 p.m, for the discussion of matters subject to the attorney-client privilege pertaining to threatened or pending litigation in Federal or State Courts in which the City is or may become a participant, specifically involving the following cases: Aranda v. City of Hobbs, Artis v. City of Hobbs, Banks v. City of Hobbs, Carnes v. City of Hobbs, et al., Maciel v. Ramirez, Sanchez v. City of Hobbs et al., Shimer, et al. v. Hobbs Police Department, Smith, et al. v. City of Hobbs, et al., Thompson v. Munro, Hill v. Ozuna et al., Baeza, et al. v. Munro et al., Craft v. Wright et al., Ellis, et al. v. Hobbs Police Department et al., Everhart v. Dominguez et al., Trujillo v. City of Hobbs et al, Hargrove, et al. v. City of Hobbs et al., King, et al. v. Lea Regional Hospital et al., Wright, et al. v. Martinez, et al., Cabrera v. City of Hobbs, et al., City of Abq., et al., v. NM Tax and Rev . The matters discussed during the closed meeting were limited only to discussion of pending litigation as specified. No action was taken during the meeting.

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

#### ***Presentation of Awards from the NMRPA Conference.***

Mr. Doug McDaniel, Parks and Recreation Director, presented the following awards to the Commission:

- The American Institute of Architects (AIA) Award for Design Excellence was presented to Mayor Cobb at the NMRPA State Conference by Mr. Craig Bouck, Principal and CEO of Barker Rinker Seacat (BRS) Architecture.
- The Leadership in Energy and Environmental Design (LEED) Award was presented to Mayor Cobb at the NMRPA State Conference by Mr. Bouck.

- Aquatics International Dream Design Award was presented to Mayor Cobb at the NMRPA State Conference by Douglass Whiteaker, Principal and Owner of Water Technology, Inc.

Mr. McDaniel presented the following NMRPA awards:

- The City of Hobbs received an award for being the NMRPA Host City and this award was presented to Commissioner Newman.
- The CORE Facility Design award was presented to Mr. Randall and Acting City Manager/Fire Chief Manny Gomez.
- The Kudos Award for Print Media for The Guide was presented to Commissioner Penick.
- The 2019 Elected Official of the Year was awarded and presented to Mayor Cobb.

Mr. McDaniel thanked and recognized all of the committee members who were involved with the planning of the 2019 NMRPA Conference. He stated the Conference was a huge success and there was positive feedback from the 217 attendees.

Promotion of Adam Marinovich to Captain, Hobbs Fire Department.

Deputy Fire Chief Barry Young presented Captain Adam Marinovich with a Certificate of Achievement in recognition of his promotion to the position of Captain with the Hobbs Fire Department.

Proclamation Honoring 90 Years of Excellence - Hobbs Fire Department.

Mayor Cobb honored 90 Years of Excellence at the Hobbs Fire Department and read a proclamation which was presented to Deputy Chief Young and members of the Hobbs Fire Department present in the audience.

**Public Comments**

Agent Joel Saenz with the New Mexico State Police Special Investigation Unit introduced himself and stated he has been transferred from Roswell to Hobbs in order to assist with alcohol related investigations.



Commissioner Calderón stated that he, other Commissioners and City staff members recently traveled to Las Cruces, New Mexico, for the 2019 Annual New Mexico Municipal League (NMML) Conference. He stated he attended a very good Cyber Security training. Commissioner Calderón also stated he received many compliments on the CORE facility. He asked the staff members and Commissioners to also report on their trip.

Commissioner Gerth also stated he attended the 2019 NMML Conference. He stated he was able to meet with other elected officials. Commissioner Gerth stated he attended a meeting regarding the 2020 Census and Hobbs is ahead of the others in gathering information.

Commissioner Penick stated the 2019 NMML Conference was enlightening and he, too, received many compliments about Hobbs from other cities.

Ms. Jan Fletcher, City Clerk, stated she attended a meeting of the Clerks and Finance Officers Association and received an updated report on the new election code. She stated she also attended a marketing session and heard Dr. Bill Mitchell speak about leadership.

Ms. Mollie Maldonado, Deputy City Clerk, stated she attended the New Mexico Taxation and Revenue Department session and the Department will disburse the online tax reimbursement to municipalities which will be calculated by its population. She also stated City Officials will be able to utilize the funds as they see fit.

Deputy Fire Chief Young stated he attended the NMML Fire Chief's meeting. He stated he also attended a workshop regarding the solvency of PERA. Deputy Fire Chief Young stated Dr. Bill Mitchell, a motivational speaker, gave a great presentation on leadership.

Acting City Manager/Fire Chief Gomez stated he attended the NMML Fire Chief's Session in which they discussed a resolution regarding the Fire Marshal Fund. He stated he also attended the PERA Session and PERA will be hosting a Road Show in preparation for the 30-day Legislative Session. Acting City Manager/Fire Chief Gomez further stated he attended the Resolution Committee Meeting where resolutions were discussed regarding Public Safety. He stated the NMML has hired additional staff to focus on the upcoming session.

Mayor Cobb stated he missed the Annual Conference this year but instead he took a tour of a vocational school in Corpus Christi, Texas, as a delegate from Lea County. He stated there were good ideas and the opportunity to learn more as the bond election nears in November. He stated a vocational school of this nature is important and will be a legacy to leave the community.

### **Consent Agenda**

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

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

Resolution No. 6841 - Authorizing the Disposition of Obsolete, Worn-Out and Unusable Personal Property.

Consideration of Approval Authorizing a Sole-Source Purchase of Controllers for 32 Traffic Signals from Intelight at a Cost of \$75,840.00.

Consideration of Approval of a Memorandum of Agreement with the Hobbs Municipal Schools for Transportation Services and Use of the Teen Center for the 21<sup>st</sup> Century Community Learning Centers Grant.

Resolution No. 6842 - Authorizing the Replat of Lots 20, 21 and 22, Block 68 of the Original Hobbs Subdivision and Affirming a Variance Granted by the Planning Board Allowing a Subdivision of Property Creating a Lot Containing a Detached Structure Less than 35' in Width.

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

### **Discussion**

There were no items presented for Discussion.

### **Action Items**

Resolution No. 6843 - (Tabled Item from August 19, 2019) Approving the FY 2021-2025 Infrastructure Capital Improvements Plan (ICIP).

Mr. Kevin Robinson, Development Director, stated the Fiscal Year 2021-2025 Infrastructure Capital Improvement Plan (ICIP) was reviewed and approved by the Planning Board at its July 31, 2019, special meeting. He further stated the City Commission first discussed the ICIP during its August 9, 2019, regular meeting. Mr. Robinson reviewed the Top 5 projects for 2020-2024 are as follows: (1) WWRF Aerobic

Digester Renovation; (2) Sewer Main Replacement Program; (3) Citywide Wireless Internet; (4) Community Housing Projects; and (5) Drainage Master Plan. He stated the Top 5 ICIP priority projects for this year are to be determined during public discussion prior to adoption. Mr. Robinson stated formal approval of the FY 2021-2025 ICIP was tabled at the August 19, 2019, Commission Meeting due to the absence of Mayor Cobb and Commissioner Taylor.

Mayor Cobb requested the Commission complete the ranking worksheet provided by Mr. Robinson and a live tally would be done to determine the Top 5 Projects.

Following some discussion, Mr. Randall stated the results of the ICIP tally are as follows:

1. Joe Harvey Median/Basin Renovation Project
2. Community Housing Projects
3. Aerial Class A Pumper
4. West Bender Widening Project and Drainage
5. Street Resurfacing

Commissioner Penick moved to approve Resolution No. 6843 approving the FY 2021-2025 ICIP as presented. Commissioner Newman seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Gerth yes, Penick yes, Cobb yes. The motion carried. A copy of the resolution and supporting documentation are attached and made a part of these minutes.

*Resolution No. 6844 - Rescinding a Development Agreement with Habitat for Humanity as Per Resolution No. 6679 and Adopting a Low to Moderate Income Housing Grant Agreement with Habitat for Humanity.*

Mr. Robinson explained the resolution and stated the City, per Resolution No. 6679, entered into a Development Agreement with Habitat for Humanity concerning the development of single-family housing units located within the Albertson Block 1 Subdivision. He stated the Development Agreement was for municipal public infrastructure fair share reimbursement not to exceed \$105,000.00, as per the 2019 Market Rate Multi-Family & Single Family Unit Production Municipal Infrastructure Reimbursement-Incentive Program adopted by the Commission on August 20, 2018. Mr. Robinson further explained the municipality is able to incentivize low to moderate income housing at greater levels providing compliance with Municipal Code 3.14 which places a greater burden on the developer to assure income qualifications on the tenants and/or owners and affordability terms for each unit produced. He stated the proposed grant agreement allows a municipal grant for an amount not to exceed \$300,000.00 in total, distributed equally between 20 units (\$14,999.00 per unit) over four years, as each unit is produced. Mr. Robinson further stated each unit produced will be conveyed to income qualified owners and deed restrictions will be in place to assure

compliance with the affordability period. He stated the attached resolution will rescind and nullify the previous Development Agreement and adopt a new grant agreement.

Mr. Richard Sanchez, CEO for Habitat for Humanity, stated 40 homes have been completed and they are adding ten more to the list. He stated the owners of these single-family homes must go through a rigorous application process to be approved. Mr. Sanchez stated that Habitat for Humanity greatly appreciates the help received by the City.

Commissioner Calderón moved to approve Resolution No. 6844 as presented. Commissioner Mills seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Gerth yes, Penick yes, Cobb yes. The motion carried. A copy of the resolution and grant agreement are attached and made a part of these minutes.

*Resolution No. 6845 - PUBLIC HEARING: Regarding the Transfer of Ownership and Location of Liquor License No. 0444 from Yucca Bar & Package, LLC, 210 North Marland, Hobbs, New Mexico, to Tierra Sagrada, LLC, d/b/a Tierra Sagrada, LLC, located at 3710 West Carlsbad Highway, Hobbs, New Mexico.*

Mr. Efrén Cortez, City Attorney, was appointed as the Hearing Officer for the hearing. Ms. Kyla Stoker, of New Mexico Liquor License, LLC, appeared on behalf of Tierra Sagrada, LLC, the applicant, regarding the application for transfer of ownership and location of Liquor License No. 044 from Yucca Bar & Package, LLC, 210 North Marland, Hobbs, New Mexico, to Tierra Sagrada, LLC, d/b/a Tierra Sagrada, LLC, located at 3710 West Carlsbad Highway, Hobbs, New Mexico.

In response to Mr. Cortez' inquiry, no members of the audience requested to speak in support of the application or against the application for transfer of ownership and location of Liquor License No. 0444 to be located at 3710 West Carlsbad Highway.

Ms. Fletcher administered an oath to Ms. Kyla Stoker prior to her testimony.

Mr. Cortez stated the State of New Mexico Alcohol and Gaming Division has granted preliminary approval to the application for transfer of ownership and location of the liquor license and a public hearing has to be held within 45 days of receipt of the application on whether or not the proposed transfer of ownership and location of the license should be granted. He further stated the application can be denied for only three reasons which are as follows: (1) if the location is within 300 feet of a church or school, which is not applicable here; (2) if it is in violation of a zoning or other ordinance of the governing body, which is not applicable here; and (3) if the issuance would be detrimental to the public health, safety or morals of the residents of the local option district. He further stated disapproval by the

governing body on public health, safety or morals must be based on and supported by substantial evidence pertaining to the specific prospective transferee or locations and a copy of the record must be submitted to the Alcohol and Gaming Division. Ms. Stoker testified that all the above statements made by Mr. Cortez are true and correct to her knowledge.

Mr. Cortez stated a notice regarding the transfer of Liquor License No. 0444 was published in the Hobbs News Sun on August 2, 2019, and again on August 16, 2019. He added the location of the Liquor License will be in the Pilot Travel Center at 3710 West Carlsbad Highway.

In response to Commissioner Gerth's question, Ms. Stoker stated Pilot Travel Centers in Santa Rosa, New Mexico, and Las Cruces, New Mexico, also have licenses to sell alcohol. She further stated the intent of the license is to sell only packaged liquor.

Mr. Cortez clarified that the preliminary approval granted by the Alcohol and Gaming Division is for packaged sales only.

A discussion was held on the heavy truck traffic in the area of the truck stop. A comment was also made that the Stripes Convenience Store in the nearby area was granted a license for packaged alcohol sales.

Mr. Cortez explained the requirement of the City Commission when considering the application and stated substantial evidence is needed to prove the issuance would be detrimental to the public health, safety or morals of the residents citing case law from *George Dick vs. City of Portales*. He stated speculation or conjecture is not appropriate and there is no one here to speak or testify otherwise.

Proper publication having been made, and there being no further discussion, and no comments from the audience, Commissioner Calderón moved that Resolution No. 6845 be adopted approving transfer of ownership and location of Liquor License No. 0444 from Yucca Bar & Package, LLC, located at 210 North Marland, Hobbs, New Mexico, to Tierra Sagrada, LLC, d/b/a Tierra Sagrada, LLC, located at 3710 West Carlsbad Highway, Hobbs, New Mexico. Commissioner Newman seconded the motion and the vote was recorded as follows: Newman yes, Mills yes, Taylor abstain, Calderón yes, Penick abstain, Gerth no, Cobb yes. The motion carried. Copies of the resolution and application packet are attached and made a part of these minutes.

*Resolution No. 6846 - Approving a Proposed Collective Bargaining Agreement with the Hobbs Fire Fighters Association.*

Mr. Cortez explained the proposed Collective Bargaining Agreement (CBA) between the City and the Hobbs Fire Fighters Association, Local 4384 ("Union"). He stated the parties

participated in collective bargaining negotiations on July 22 - 23, 2019. He stated the previous CBA expired on June 30, 2019. Mr. Cortez highlighted some of the key changes as follows: (1) The CBA is for three years and shall end June 30, 2022; (2) The Union will receive annual increases of 8% (FY 20), 7% (FY 21), and 6% (FY 22); (3) The Union will not be eligible for Cost of Living Adjustments (COLA) or merit increases in any year of the Agreement; (4) Maximum salary rates will be adjusted each year consistent with the annual increases in salary; and (5) Other sections were cleaned up and amended for clarity and consistency. Mr. Cortez stated the City and Union have finalized its negotiations and the proposed CBA was ratified by the Union on August 21, 2019.

Deputy Fire Chief Young commended the negotiation team for their work on the CBA.

Mr. Michael Nash, President of the Hobbs Fire Fighters Association, stated he has been at HFD for 14 years and the CBA process helps teach the fire fighters that they can talk to the Commission and that they have a voice. He stated membership in the Union is voluntary. He expressed his appreciation to the management team that facilitated this agreement.

There being no discussion, Commissioner Newman moved to approve Resolution No. 6846 as presented. Commissioner Penick seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Gerth yes, Penick yes, Cobb yes. The motion carried. Copies of the resolution and agreement are attached and made a part of these minutes.

*Consideration of Approval Authorizing the Purchase of Motor Grader Equipment Utilizing CES Contract with Wagner Equipment in the Amount of \$192,162.00.*

Ms. Shelia Baker, General Services Director, explained the need for the Street Department to purchase a motor grader with a ten foot moldboard. She stated the Department maintains the unpaved alleys of the community and currently has two motor graders with 14-foot moldboards; however, there are some subdivisions in town that have alleys that are too narrow for the graders to access. Ms. Baker stated these subdivisions are as follows: Lincoln Park Addition, North Acres Subdivision, Broadmoor Addition and Original New Hobbs. She explained the narrow alleys have an approximate 12-foot wide driving path. She stated a 10-foot grader will be able to navigate the alleys safely. Ms. Baker added this grader can be used as needed for assisting Parks with collection of material from sports fields and leveling material at the cemetery. Ms. Baker stated staff identified the need for the equipment purchase during their 2019 Goal Planning Session in January, 2019, and included the motor grader in the FY20 budget. The City would utilize Cooperative Educational Services Contract No. 18-0208-C103-ALL with Wagner Equipment, Inc., to purchase the grader at a total cost of the equipment plus added options in the amount of \$192,162.00. She stated the estimated life of the equipment is 10-12 years.

In response to Commissioner Penick's question, Ms. Baker added the Department did not look into leasing the equipment.

There being no further discussion, Commissioner Newman moved to approve the purchase of Motor Grader Equipment utilizing a CES Contract with Wagner Equipment in the amount of \$192,162.00. as presented. Commissioner Gerth seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Calderón yes, Taylor yes, Gerth yes, Penick yes, Cobb yes. The motion carried. A copy of the supporting documentation is attached and made a part of these minutes.

*Resolution No. 6847 - Authorizing an Agreement with the State of New Mexico Environment Department for 2019 Legislative Appropriation in the Amount of \$192,000.00 for the Joe Harvey Blvd. Infrastructure Improvement and Sewer Replacement Project.*

Mr. Tim Woomeer, Utilities Director, explained the resolution and stated a State of New Mexico 2019 Legislative Special Appropriation in the amount of \$192,000.00 has been awarded to the City of Hobbs for the City of Hobbs Joe Harvey Blvd. Infrastructure Improvement and Sewer Replacement Project. He stated this grant may be utilized for the planning, design, and construction for the City of Hobbs Joe Harvey Blvd. Infrastructure Improvement and Sewer Replacement Project from NM 18 along Central Ave. to Joe Harvey Blvd., east along Joe Harvey Blvd. to Grimes Street, and north along Grimes Street to Millen Drive. Mr. Woomeer stated this project is addressing deficiencies with the current sewer system by replacing aging and collapsing piping and including accessibility, drainage, and road improvements along the route.

There being no discussion, Commissioner Penick moved to approve Resolution No. 6847 as presented. Commissioner Newman seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Calderón yes, Taylor yes, Gerth yes, Penick yes, Cobb yes. The motion carried. A copy of the resolution and supporting documentation are attached and made a part of these minutes.

*Resolution No. 6848 - Authorizing an Agreement with the State of New Mexico Environment Department for 2019 Legislative Appropriation in the Amount of \$750,000.00 for the Water and Sewer System Extension Project Adjacent to US 62/180.*

Mr. Woomeer explained the resolution and stated a State of New Mexico 2019 Legislative Special Appropriation in the amount of \$750,000.00 has been awarded for the City of Hobbs Water and Sewer System Extension Project. He stated this grant is for planning, design, and construction to extend water and sewer systems adjacent to Highway 62/180 and the Lea County Airport. Mr. Woomeer stated this project will encourage future growth by allowing current and future occupants to connect into City water and sewer services and provide the

City with a source of additional revenue. He added this would allow the tie-in of the Lea County Airport to water and sewer services.

Commissioner Newman moved to approve Resolution No. 6848 as presented. Commissioner Penick seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Calderón yes, Taylor yes, Gerth yes, Penick yes, Cobb yes. The motion carried. A copy of the resolution and supporting documentation are attached and made a part of these minutes.

*Resolution No. 6849 - Authorizing an Agreement with the State of New Mexico Environment Department for 2019 Legislative Appropriation in the Amount of \$750,000.00 for the Aerobic Digester Facility Replacement Project.*

Mr. Woomer explained the resolution and stated a State of New Mexico 2019 Legislative Special Appropriation in the amount of \$750,000.00 has been awarded for the City of Hobbs Wastewater Treatment Facility Aerobic Digester Replacement Project. He stated this grant is for construction, purchase, and installation of pumping equipment for the new aerobic digester basins that are currently under construction. He added this project is also funded through a CWSRF #064 Loan and Local Utilities Enterprise Funds and is addressing deficiencies with the current facility by constructing and equipping new, larger aerobic digester basins that will allow for greater operational reliability and additional treatment capacity that will accommodate community growth into the future. Mr. Woomer expressed his appreciation to the Senate and House members who carried the projects to the Legislature. He stated the aerobic digester is scheduled for completion by the end of the year.

Commissioner Newman moved to approve Resolution No. 6849 authorizing an agreement with the State of New Mexico Environment Department for 2019 Legislative Appropriation in the amount of \$750,000.00 for the Aerobic Digester Facility Replacement Project. Commissioner Mills seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Calderón yes, Taylor yes, Gerth yes, Penick yes, Cobb yes. The motion carried. A copy of the resolution and supporting 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 September 16, 2019.

Acting City Manager/Fire Chief Gomez stated the State will have revenue in excess of \$900 million for projects across the State.

Acting City Manager/Fire Chief Gomez thanked Mr. McDaniel for his presentation of the NMRPA Awards and congratulated Mayor Cobb on being voted the 2019 Elected Official of the Year.



Acting City Manager/Fire Chief Gomez stated the Veteran's Committee, made up of himself, Mr. Robert Lujan, Ms. Baker, Commissioner Penick and Ms. Angela Courter, Senior Center Coordinator, recently traveled to view nearby Veteran memorials.

Acting City Manager/Fire Chief Gomez introduced Mr. John Ortolano, who will serve as the new Police Chief. He stated Deputy Police Chief Brian Dunlap has served as Acting Police Chief since the retirement of Police Chief Chris McCall approximately six months ago. He thanked Deputy Chief Dunlap for stepping up and serving in this capacity.

Police Chief Ortolano stated he is glad to be in Hobbs and he is looking forward to serving the community.

Acting City Manager/Fire Chief Gomez reminded the Commission of the large item pickup scheduled for September 14, 2019. He stated residents from Broadway Street north to Sanger Street can place large household items on the curb by 7:00 a.m. and City crews will haul it away at no charge.

Commissioner Gerth thanked everyone who attended the Commission meeting. He also expressed his appreciation to Deputy Police Chief Dunlap for his duties as Acting Police Chief.

Commissioner Mills expressed his hope for a successful Legislative Session. He stated he lives near two large schools, and he has concerns regarding the flow of traffic in regards to the pedestrian traffic to the schools. He stated the City needs to focus on traffic and pedestrian safety.

Commissioner Taylor echoed his concerns and stated there are school-aged children crossing the Seminole Highway near the apartment buildings which is very unsafe due to all of the traffic.

Commissioner Taylor thanked Deputy Police Chief Dunlap for his service as Acting Police Chief and welcomed Police Chief Ortolano.

Commissioner Penick thanked everyone for their attendance at the meeting. He stated he receives at least two calls per week from citizens wanting speed humps to slow down traffic in their neighborhoods.

Mayor Cobb thanked everyone for their attendance. He also expressed his appreciation to Deputy Police Chief Dunlap for his service to the City.

**Adjournment**

There being no further business or comments, Commissioner Newman moved that the meeting adjourn. Commissioner Gerth 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 7:50 p.m.

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SAM D. COBB, Mayor

ATTEST:

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JAN FLETCHER, City Clerk

Minutes of the special meeting of the Hobbs City Commission held on Monday, September 9, 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 5:00 p.m. and welcomed everyone in attendance to the meeting. The Deputy City Clerk called the roll and the following answered present:

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

Also present: Manny Gomez, Acting City Manager/Fire Chief  
Efren Cortez, City Attorney  
Valerie Chacon, Assistant City Attorney  
John Ortolano, Police Chief  
Shane Blevins, Police Lieutenant  
Bryan Wagner, Parks and Open Spaces Director  
Tim Woomer, Utilities Director  
Nicholas Goulet, Human Resources Director  
Shelia Baker, General Services Director  
Meghan Mooney, Communications Director  
Robert Hamilton, Reference Librarian  
Ron Roberts, Information Technology Director  
Mellisa Ramos, Clerk Assistant  
Sandra Boltshauser, Clerk Record Specialist  
Mollie Maldonado, Deputy City Clerk  
33 citizens

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

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

### **Public Comments**

There were no comments from the public.

### **Action Items**

Purpose of today's special meeting is to interview applicants for the position of Municipal Judge and appoint a replacement. The current Municipal Judge, Benjamin Harrison, has resigned his position and the City Commission must appoint someone to fill the position within 30 days according to the City Charter. This individual will serve as Municipal Judge until someone is elected at the regular municipal election in March, 2020, to fill the remainder of Judge Harrison's term which expires in March of 2022.

Mayor Cobb briefly explained the interview process. He stated the applicants will be asked to draw numbers to determine the order in which the interviews will take place. He stated all applicants will then be escorted to a private room and brought individually into the open Commission meeting for their public interview. He requested that the applicants refrain from using any electronic devices while waiting in the private room.

Mr. Efen Cortez, City Attorney, stated applicants were required to submit a letter of interest and a resumé. He stated any other documentation submitted in addition to these requirements will not be allowed for consideration and will be stricken from the record.

At this time, each applicant drew a number to determine the order for the interviews as follows:

1. Bobby Arther
2. Karen Wilcox
3. Shannon Carter-Arguello
4. Antonio De La Fuente
5. Mike Stone

Public interviews were conducted by the Commission. Applicants answered questions posed by the Commission such as why they wanted to serve as Municipal Judge, previous administrative and budgetary experience, alternative means of sentencing, whether they would be influenced by others, the role of Municipal Court in a City organization, any plans to improve the operation of Municipal Court and whether they had an existing employment commitment that would affect their ability to give a full-time commitment as the Municipal Judge.

Mayor Cobb thanked all of the applicants for their interest in the position of Municipal Judge.

Resolution No. 6850 - Authorizing the Appointment of a Municipal Judge

Commissioner Newman nominated Mr. Bobby Arther to serve as Municipal Judge. Commissioner Gerth seconded the motion and the vote was recorded as follows: Newman yes, Mills abstain, Calderón no, Taylor no, Penick yes, Gerth yes, Cobb yes. The motion carried. A copy of the resolution is attached and made a part of these minutes.

Ms. Mollie Maldonado, Deputy City Clerk, administered the oath of office to Judge Arther.

**Comments by City Commissioners, City Manager**

None

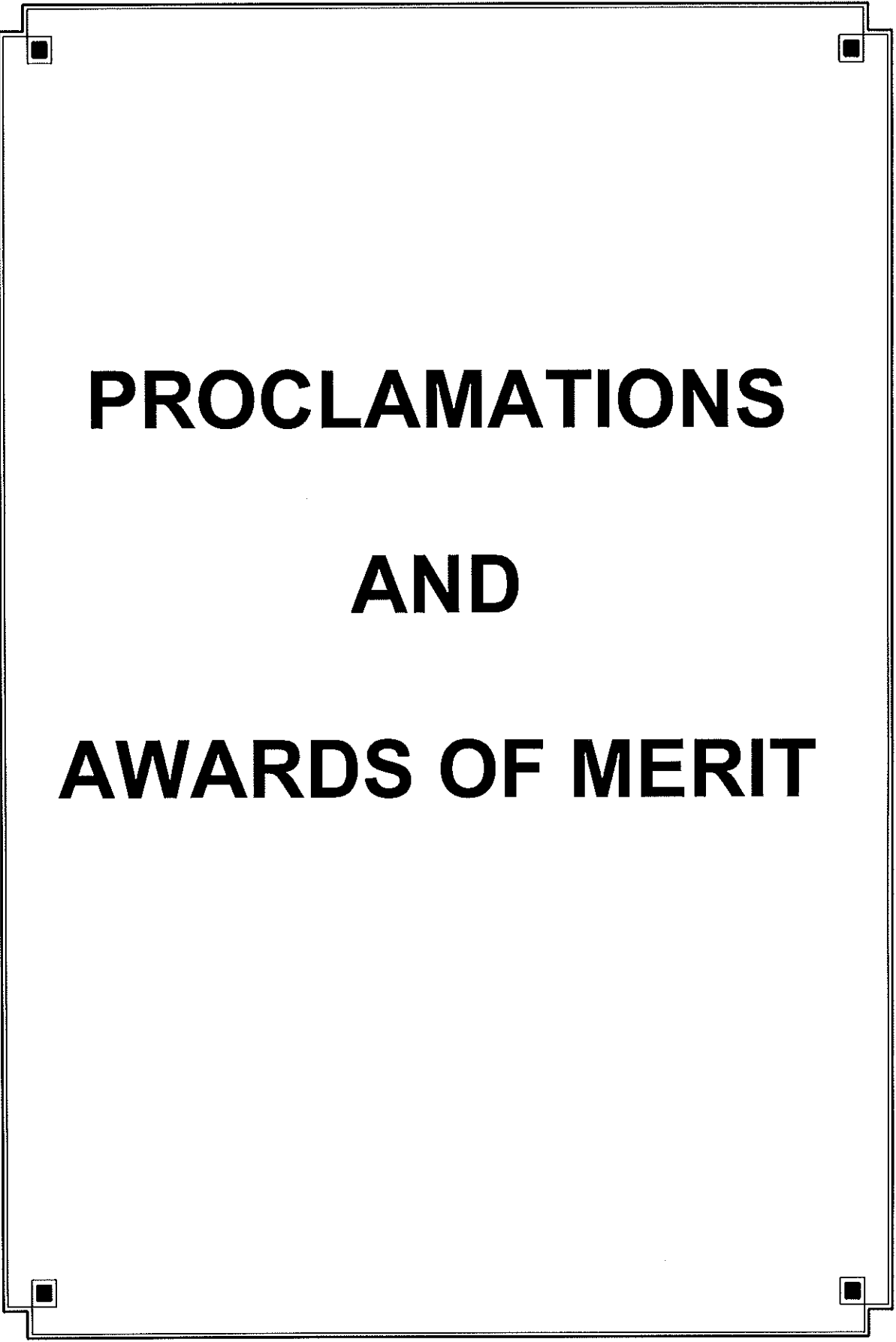
**Adjournment**

There being no further business or comments, Commissioner Newman moved that the meeting adjourn. Commissioner Gerth 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 5:49 p.m.

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

ATTEST:

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



**PROCLAMATIONS**

**AND**

**AWARDS OF MERIT**

## September Milestones

### 5 years

Raymond Bonilla	Community Services	09/22/2014
Adrian Lujan	Parks	09/28/2014
Jarrod Purvis	HFD	09/29/2014
Dustin Seay	HPD	09/08/2014
Veronica Sosa	Parks	09/22/2014

### 15 years

Tennie Clay	HPD	09/28/2004
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### 25 years

Kim Savage	Water Office	09/26/1994
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# **ACTION ITEMS**





# CITY OF HOBBS

COMMISSION STAFF SUMMARY FORM

MEETING DATE: September 16, 2019

**SUBJECT: Resolution Regarding the Transfer of Ownership of Liquor License No. 2584 from Hobbs Oil Patch Inn, LLC, to Jitter Enterprises, LLC, d/b/a Derrick Lounge and Saxony Steak Room located at 501 North Marland, Hobbs, New Mexico**

DEPT. OF ORIGIN: City Clerk's Office  
DATE SUBMITTED: September 10, 2019  
SUBMITTED BY: Jan Fletcher, City Clerk

**Summary:**

Hobbs Oil Patch Inn, LLC, has applied to the State of New Mexico, Alcohol and Gaming Division for transfer of ownership of Liquor License No. 2584 as referenced above. The application has received preliminary approval from the State of New Mexico and was received by the City Clerk's Office on August 12, 2019. A public hearing must be held by the City within forty-five (45) days from receipt of such notice. The City has duly published notice of the hearing in the *Hobbs News-Sun* and properly notified the applicant of such hearing by certified mail.

**Fiscal Impact:**

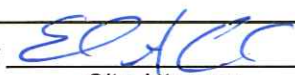
Reviewed By:   
Finance Department

The applicant has paid the required \$250.00 administrative fee to the City.

**Attachments:**

1. Application packet from State of New Mexico, Alcohol and Gaming Division
2. Affidavit of Publication - Notice of Public Hearing
3. Area Map
4. Resolution

**Legal Review:**

Approved As To Form:   
City Attorney

**Recommendation:**

Motion to approve or disapprove the transfer of ownership; second; vote.

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. 6851

A RESOLUTION REGARDING THE  
TRANSFER OF OWNERSHIP OF LIQUOR LICENSE NO. 2584  
TO JITTER ENTERPRISES, LLC, D/B/A  
DERRICK LOUNGE AND SAXONY STEAK ROOM  
LOCATED AT 501 NORTH MARLAND, HOBBS, NEW MEXICO.

WHEREAS, the City of Hobbs has received the following application for transfer of ownership of Liquor License No. 2584:

Owner of Existing License: Hobbs Oi Patch Inn, LLC  
Current D/B/A Name: Derrick Lounge and Saxony Steak Room  
Premises Address: 501 North Marland Blvd.  
Hobbs, NM 88240

Applicant Name: Jitter Enterprises, LLC  
Applicant D/B/A Name: Derrick Lounge and Saxony Steak Room  
Premises Address: 501 North Marland  
Hobbs, NM 88240

WHEREAS, the State of New Mexico, Alcohol and Gaming Division, has granted preliminary approval to the application for transfer of ownership of the liquor license as requested and a duly advertised public hearing is being held by the governing body of the City of Hobbs on September 16, 2019, on the question of whether or not the proposed transfer of ownership of the license should be granted.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the transfer of ownership of Liquor License No. 2584 from Hobbs Oil Patch Inn, LLC, to Jitter Enterprises, LLC, d/b/a Derrick Lounge and Saxony Steak Room, 501 North Marland, Hobbs, New Mexico, be and is hereby \_\_\_\_\_ (*approved or disapproved*).

PASSED, ADOPTED AND APPROVED this 16<sup>th</sup> day of September, 2019.

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

ATTEST:

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



New Mexico Regulation and Licensing Department  
ALCOHOLIC BEVERAGE CONTROL

PO Box 25101 • Santa Fe, New Mexico 87504-5101  
Phone (505) 476-4875 • Fax (505) 476-4595 • www.rld.state.nm.us/abc

August 6, 2019

Certified Mail No.: 9171 9690 0935 0078 2603 34

Michelle Lujan Grisham  
Governor

Marguerite Salazar  
Superintendent

Claudia Armijo  
Deputy Superintendent

Daniel Rubin  
General Counsel

Andrew Vallejos  
Director

City of Hobbs  
Attn: Jan Fletcher  
200 East Broadway  
Hobbs, NM 88240

RECEIVED

AUG 12 2019

OFFICE OF THE CITY CLERK  
HOBBS, NEW MEXICO

Lic. No. /Appl. No.: License No. 2584  
Name of Applicant: Jitter Enterprises, LLC  
Doing Business As: Derrick Lounge and Saxony Steak Room  
Proposed Location: 501 N Marland Blvd., Hobbs, NM 88240

Greetings:

The Director of the Alcoholic Beverage Control "ABC" has reviewed the referenced Application and granted **Preliminary Approval**. It is being forwarded to you for Local Option District approval or disapproval of the Liquor License Application.

While the law states that "within forty-five (45) days after receipt of a Notice from the Alcoholic Beverage Control, the governing body shall hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer", we recognize the potential for conflict between the requirement for publication of 30-day notice and the 45-day hearing requirement. Should the Local Governing Body be unable to meet one of these requirements, please send a Request for Waiver/Extension by email to the assigned ABC Hearing Officer listed on page 2.

**Notice of the Public Hearing** required by the Liquor Control Act shall be given by the governing body by publishing a notice of the date, time, and place of the hearing twice during the 30 days prior to the hearing in a newspaper of general circulation within the territorial limits of the governing body. **The first notice must be published at least thirty (30) days before the hearing. Both publications must occur before a hearing can be conducted.** The notice shall include:

- (A) Name and address of the Applicant/Licensee;
- (B) The action proposed to be taken by the Alcoholic Beverage Control;
- (C) The location of the licensed premises.

In addition, if the Local Option District has a website, the Notice shall also be published on the website.

The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. **A record shall be made** of the hearing.

**THE APPLICANT IS SEEKING A TRANSFER OF OWNERSHIP OF INTER-LOCAL DISPENSER LIQUOR LICENSE NO. 2584.**

Alcoholic Beverage Control  
(505) 476-4875

Boards and Commissions Division  
(505) 476-4600

Construction Industries Division  
(505) 476-4700

Financial Institutions Division  
(505) 476-4885

Manufactured Housing Division  
(505) 476-4770

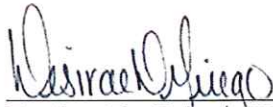
Securities Division  
(505) 476-4580

Administrative Services Division  
(505) 476-4800

**Within thirty (30) days** after the Public Hearing, the governing body shall notify the Alcoholic Beverage Control of their decision to approve or disapprove the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notices of publication. **If the Governing Body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may issue the license.**

If the Governing Body disapproves the issuance or transfer of the license, it shall notify the Alcoholic Beverage Control within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to the Alcoholic Beverage Control with the Notice of Disapproval (*Page 1 of the Application, noting disapproval*).

Respectfully,



Desirae D. Griego, Hearing Officer

New Mexico Regulation & Licensing Dept. | Alcoholic Beverage Control

Phone: (505) 476-4552 Fax: (505) 476-4595

Email: [Desirae.Griego@state.nm.us](mailto:Desirae.Griego@state.nm.us)

Enclosures:

1. Original Page 1 of the Application (*must be signed and returned w/notices of publication*)
2. Copy of Page 2 of the Application
3. Copy of the Zoning Statement



New Mexico Regulation and Licensing Department | Alcohol and Gaming Division  
 PO Box 25101 Santa Fe, NM 87504-5101 | Phone: (505) 476-4875 Fax: (505) 476-4875



AGD USE ONLY: Payment| Application Fee \$ 200 Received on: 4-18-19 Receipt No. 2178344  
 Application Number: \_\_\_\_\_ Local Option District: \_\_\_\_\_

**TRANSFER OF DISPENSER-TYPE LIQUOR LICENSE APPLICATION**

\$200.00 Application Fee, non-refundable.

License No. 2584 Type of License: Dispenser Inter-local

Check appropriate boxes:

Application is for:  Transfer of Ownership  Transfer of Ownership and Location  Transfer of Location Only

Record Owner of Existing License: Hobbs Oil Patch Inn, LLC

Current D/B/A Name: Derrick Lounge and Saxony Steak Room

Current Premises Address: 501 N Marland Blvd

Current L.O.D.: 501 N Marland Blvd Is License moving out of Local Option District?  Yes  No

APPLICANT IS:  Individual  Limited Liability Company  Corporation  Partnership (General/Limited)

NAME of Individual/Company: \_\_\_\_\_ ADDRESS (including city, state, zip) \_\_\_\_\_

Jitter Enterprises, LLC 1001 E Harmon Ave Tucumcari, NM 88401

D/B/A Name to be used: Derrick Lounge and Saxony Steak Room Business Phone #: 575-379 3251

Email Address (required): nepester@aol.com

Physical location where license is to be used: (Include Street # / Highway # / State Road, City, State, and Zip Code)

501 N Marland Blvd Hobbs, NM 88240

County of: Lea  
 Mailing Address: 1001 E Harmon Ave 1001 E Harmon Ave Tucumcari, NM 88401

Are alcoholic beverages currently being dispensed at the proposed location?  Yes  No If Yes, License # / Type: \_\_\_\_\_

Agent/Contact Person: Kim Araiza Phone#: 505-270-6005 Email: nepester@aol.com

I, (print name) Kim Araiza as (title) Member of Jitter Enterprises, LLC

being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s) that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may cause the license to be revoked at any time.

Sign before a Notary Public:

Signature of Applicant: Kim Araiza Date: 4/15/19

NOTARY PUBLIC USE ONLY: (State of New Mexico, County of Ouay)

SUBSCRIBED AND SWORN TO before me this 15th day of April, 2019

By: \_\_\_\_\_ Notary Public: Francesca Aragon My Commission Expires: 01/27/2022



FOR LOCAL OPTION DISTRICT USE ONLY: Local Governing Body of: \_\_\_\_\_  
 Public Hearing held on \_\_\_\_\_, 20\_\_\_\_. Check one:  Approved  Disapproved

Signature and Title of City/County Official: \_\_\_\_\_

FOR ALCOHOL AND GAMING DIVISION USE ONLY: \_\_\_\_\_ Approved \_\_\_\_\_ Disapproved \_\_\_\_\_

Signed by Director: \_\_\_\_\_ Date: \_\_\_\_\_



**PREMISES LOCATION, OWNERSHIP, AND DESCRIPTION**  
NMSA 60-6B-10

1. The land and building which is proposed to be the licensed premises is: (check one)

- Owned by Applicant, copy of deed/document attached
- Leased by Applicant, copy of lease/document attached
- Other (provide details):

2. If the land and building are not owned by Applicant, indicate the following:

A. Owner(s): **Jitter Properties, LLC**

B. Date and Term of Lease: **Five years from Purchase of Property by Jitter Properties, LLC**

3. Premises location is Zoned (example C-1, see Zoning Statement):

**Zoning Statement attached**, which must be obtained from the Local Government, listing the proposed location by address, Type of Zone, state whether alcoholic beverages are allowed at proposed location, and if applicable, whether packaged sales, patio service and/or manufacturing is allowable. If there is no zoning in the proposed location, attach Statement from the local government, indicating there is no zoning.

4. Distance\* from nearest Church: (Property line of church to closest point of licensed premises - shortest distance)

Name of Church: *Chooselife Church*

Miles/feet: *3.3 Miles*

Address/location of Church: *700 N Del Paso Street*

5. Distance\* from nearest School: (Property line of school to closest point of licensed premises - shortest distance)

Name of School: *Murray Elementary School*

Miles/feet: *3 Miles*

Address/location of School: *510 N Del Paso Street*

6. Distance from military installation\* (Property line of military installation to closest point of licensed premises - shortest distance.)

Name of Military Installation, circle one: Kirtland Air Force Base (Albuquerque), White Sands Missile Range (Las Cruces),  
Miles: **127** Holloman Air Force Base (Alamogordo), **Cannon Air Force Base (Clovis)**

7. Attach Detailed Floor Plan, must include the Total Square Footage of premises; List nearest cross street; Show which direction is North; Show each level (floor) where alcoholic beverages will be sold or consumed, exterior walls, doors, and interior walls; Patio Area with type of barrier used; Highlight Bonded Areas. The floor plan should be no larger than 8 1/2 x 11 inches and **must be labeled** with designated areas highlighted, which will reflect the proposed Licensed Premises.

8. Type of Operation:  Hotel     Lounge     Package Grocery     Restaurant     Racetrack
- Small Brewer     Craft Distiller     Winery     Wholesaler
- Other (specify):

\*NOTE: If the distance is beyond 300 feet, but less than 400 feet, a Registered Engineer or Licensed Surveyor must complete a Survey Certificate showing the exact distance.



## PLANNING DEPARTMENT

200 E. Broadway Street, Hobbs, NM 88240  
Ph. 1-505-397-9237 Fax 1-505-397-9227

March 12, 2019

Jitter Enterprises, LLC  
1001 E. Harmon Ave  
Tucumcari, NM 88401

RE: Zoning Certification for 501 N. Marland Blvd. in Hobbs, New Mexico.

Dear Ms. Araiza:

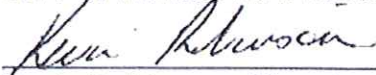
Pursuant to your request for a current zoning certification for 501 N. Marland Blvd. in Hobbs, New Mexico, please be advised that the City of Hobbs has not adopted a zoning ordinance to regulate land uses and location of different types of development or specific business uses throughout the City at this time. Consequently, the City of Hobbs has no current regulations which govern zoning districts and/or land uses, or use of buildings or use of vacant land. Therefore, the proposed land use as referred to herein on the above referenced property in Hobbs is considered a use by right as of this date of March 12, 2019. Therefore, the proposed property use is in conformance with applicable zoning law as of this date.

Please note that the City does have a Major Thoroughfare Plan, Subdivision Regulations, Flood Zone, Fire Zone, Landscaping Regulations, Building Code, Liquor License and other development regulations that must be followed for improvements and changes in building occupancy types, including yard setback requirements. This letter is in regards to that portion of the above referenced real property that exists within the corporate limits of the City of Hobbs, NM on March 12, 2019.

If you have any questions or need further information, please contact me at (575) 397-9351.

Sincerely,

CITY OF HOBBS, NEW MEXICO

  
Kevin Robinson - Planning Department



## NOTICE OF PUBLIC LIQUOR HEARING

NOTICE IS HEREBY GIVEN that the City Commission of the City of Hobbs, New Mexico, will hold a public hearing on **Monday, September 16, 2019, at 6:00 p.m.**, in the City Commission Chamber at City Hall, First Floor Annex, 200 East Broadway, Hobbs, New Mexico, for the purpose of considering the application for a liquor license as set forth below and to hear any protests and objections to the granting thereof. Protests and objections may be made by any interested persons at the time, date and place of hearing.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in the hearing, please contact Jan Fletcher at least three days before the hearing date at (575) 397-9207.

Liquor License Number: 2584

Applicant: Jitter Enterprises, LLC

D/B/A: Derrick Lounge and Saxony Steak Room

Location: 501 North Marland Blvd., Hobbs NM, 88240

The request is for a Transfer of Ownership of Liquor License No. 2584. The license is currently owned by Hobbs Oil Patch Inn, LLC, at 501 North Marland Blvd. in Hobbs, New Mexico.

DATED this 14<sup>th</sup> day of August, 2019.



SAM D. COBB, Mayor



# Affidavit of Publication


STATE OF NEW MEXICO  
COUNTY OF LEA

I, Daniel Russell, Publisher of the Hobbs News-Sun, a newspaper published at Hobbs, New Mexico, solemnly swear that the clipping attached hereto was published in the regular and entire issue of said newspaper, and not a supplement thereof for a period of 2 issue(s).

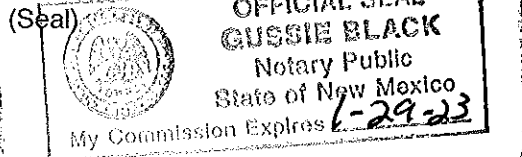
Beginning with the issue dated  
August 15, 2019  
and ending with the issue dated  
August 29, 2019.

  
\_\_\_\_\_  
Publisher

Sworn and subscribed to before me this  
29th day of August 2019.

  
\_\_\_\_\_  
Business Manager

My commission expires  
January 29, 2023



This newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Laws of 1937 and payment of fees for said

LEGAL	LEGAL
<b>LEGAL NOTICE</b> AUGUST 15 and 29, 2019	
<b>NOTICE OF PUBLIC LIQUOR HEARING</b>	
NOTICE IS HEREBY GIVEN that the City Commission of the City of Hobbs, New Mexico, will hold a public hearing on <b>Monday, September 16, 2019, at 6:00 p.m.</b> , in the City Commission Chamber at City Hall, First Floor Annex, 200 East Broadway, Hobbs, New Mexico, for the purpose of considering the application for a liquor license as set forth below and to hear any protests and objections to the granting thereof. Protests and objections may be made by any interested persons at the time, date and place of hearing.	
NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in the hearing, please contact Jan Fletcher at least three days before the hearing date at (575) 397-9207.	
Liquor License Number: 2584 Applicant: Jitter Enterprises, LLC D/B/A: Derrick Lounge and Saxony Steak Room Location: 501 North Marland Blvd., Hobbs NM, 88240 <u>The request is for a Transfer of Ownership of Liquor License No. 2584. The license is currently owned by Hobbs Oil Patch Inn, LLC, at 501 North Marland Blvd. in Hobbs, New Mexico.</u>	
DATED this 14th day of August, 2019.	
/s/ Sam D. Cobb SAM D. COBB, Mayor	
#34568	

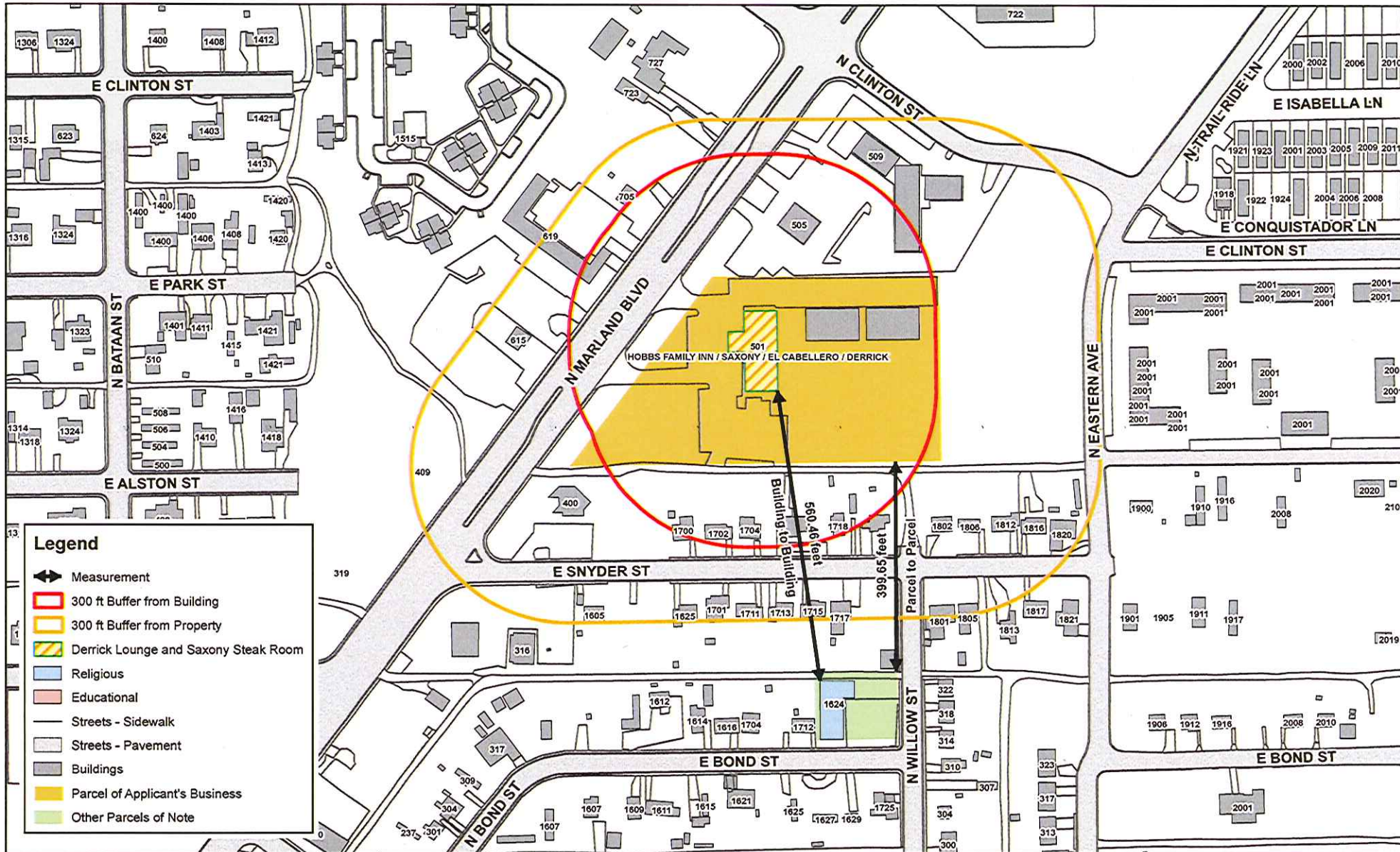
67108146

00232166

CITY OF HOBBS FINANCE DEPT  
200 E. BROADWAY ST  
HOBBS, NM 88240

# Derrick Lounge and Saxony Steak Room

## 300 ft Buffer Zone Map for Liquor License



City of Hobbs GIS Division

SY

Date: 8/19/2019

1 inch = 250 feet

Time: 11:57:20 AM

**DISCLAIMER: THE CITY OF HOBBS MAKES NO WARRANTY, REPRESENTATION OR GUARANTEE OF ANY KIND REGARDING ANY GIS DATA PROVIDED HEREIN OR THE SOURCES OF SUCH DATA. THE CITY OF HOBBS SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DATA CONTAINED WITHIN THIS PRODUCT IS PROVIDED BY THE CITY OF HOBBS FOR INFORMATIONAL PURPOSES ONLY AND NOT IN COMPLIANCE WITH ANY LEGAL REQUIRED SURVEYING STANDARD.**



# CITY OF HOBBS

## COMMISSION STAFF SUMMARY FORM

MEETING DATE: September 16, 2019

**SUBJECT:** Authorizing a First Amendment to FY 18-19 Memorandum of Agreement with the New Mexico Department of Transportation (NMDOT) Related to Public Transportation Services

DEPT. OF ORIGIN: City Clerk's Office  
DATE SUBMITTED: September 10, 2019  
SUBMITTED BY: Jan Fletcher, City Clerk

**Summary:**

The NMDOT and the City of Hobbs entered into Memorandum of Agreement No. M01596 on October 1, 2018, for operation of public transportation services. The City was awarded capital funding under the Agreement for parking lot paving and installation of gates on the North side of the Hobbs Express property at 424 W. Broadway. Additional time is needed to design and complete the project and the term of the Agreement is being extended to September 30, 2020.

**Fiscal Impact:**

Reviewed By: 

Finance Department

Funds for the project are budgeted in Fund 27, Line Item No. 274027-43008. A total amount of \$62,111.07 remains in capital grant funding for this expenditure.

**Attachments:**

Resolution

**Legal Review:**

Approved As To Form: 

City Attorney

**Recommendation:**

Approval of resolution

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. \_\_\_\_\_

CITY OF HOBBS

RESOLUTION NO. 6852

A RESOLUTION AUTHORIZING A FIRST AMENDMENT TO  
FY 18-19 MEMORANDUM OF AGREEMENT WITH THE  
NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT)  
RELATED TO PUBLIC TRANSPORTATION SERVICES

WHEREAS, the NMDOT and the City of Hobbs entered into a Memorandum of Agreement designated as Contract No. M01596 on October 1, 2018, under 49 U.S.C. Section 5311, for operation of public transportation services; and

WHEREAS, the City was awarded capital funding under the Agreement for parking lot improvements and additional time is needed during FY 20 to complete the project; and

WHEREAS, the original Agreement provides that it may be amended by written consent of both parties and it has become necessary to extend the term of the Agreement to September 30, 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be, and he hereby is, authorized and directed to take all necessary and appropriate action to effectuate this resolution and specifically to execute, on behalf of the City of Hobbs, a First Amendment to Memorandum of Agreement with the NMDOT to extend the term of the original agreement to September 30, 2020. A copy of the Memorandum of Agreement and First Amendment is attached hereto and incorporated herein by reference.

PASSED, ADOPTED AND APPROVED this 16<sup>th</sup> day of September, 2019.

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

ATTEST:

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

**FISCAL YEAR 2019 (FY 19)**  
**FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT**  
**BETWEEN**  
**THE NEW MEXICO DEPARTMENT OF TRANSPORTATION**  
**AND**  
**CITY OF HOBBS**

---

This First Amendment is to the Memorandum of Agreement (Agreement) between the STATE OF NEW MEXICO, acting through its DEPARTMENT OF TRANSPORTATION (Department) and CITY OF HOBBS (Subrecipient). This first amendment is effective as of the date of the last party to sign it on the signature page below.

**Recitals**

Whereas, the Department and the Subrecipient entered into a Memorandum of Agreement designated as Contract No. M01596, on October 1, 2018;

Whereas, Section 48 allows the parties to alter the Agreement by written consent of both parties hereto;

Whereas, the Subrecipient has not begun work on the Parking Lot Paving and Gates;

Whereas, the completion date for the renovation has been delayed until Fiscal Year 2020;

Whereas, the current agreement is set to expire September 30, 2019;

Whereas, it is necessary to extend the term of the Agreement to September 30, 2020; and

Whereas, 49 U.S.C. 5311 Program funds are available to assist the Subrecipient with the above costs with no increase to the dollar amount.

Now, therefore, the parties agree as follows:

1. Replace Section 2. Cost of Program in the original Agreement with the following:

**Cost of Program.**

The Department shall provide partial funding to the Subrecipient to cover expenses of the Program as described in the approved Operations Profile from October 1, 2018 to September 30, 2020 in an amount described below:

**Subaward FY 19**

<b>City of Hobbs</b>	<b>Total</b>	<b>Federal</b>	<b>Local</b>
Administration (80/20)	\$ 83,701.33	\$ 66,961.06	\$ 16,740.27
Operating (50/50)	\$ 709,242.59	\$ 354,621.30	\$ 354,621.30
Capital to Subgrantee (80/20)	\$ 179,500.00	\$ 143,600.00	\$ 35,900.00
<b>Total Administration, Operating and Capital</b>	<b>\$ 972,443.92</b>	<b>\$ 565,182.36</b>	<b>\$ 407,261.56</b>

Vehicle purchases must be under contract with a vendor by March 31, 2019, with a copy of the contract and signed buyer's order provided to the Department. Vehicle purchase funds that are not obligated by contract by March 31, 2019, may revert to the Department. Any remaining Capital federal funds, pertaining to the facility renovation, that are not expended by September 30, 2020 will revert to the Department.

This program is funded with grants provided by the FTA Section 5311 Rural Transit Funds, Catalog of Federal Domestic Assistance under number 20.509 and FTA Section 5339(a) Buses and Bus Facilities Formula, Catalog of Federal Domestic Assistance number 20.526 (See Attachment A). The Department's share of Program expenses shall be obtained from the federal government. State funds will not be earmarked or disbursed to fund the Program. The Department shall not be responsible for any other costs incurred by the Subrecipient. The Subrecipient shall take all actions necessary to fund its share of the Program.

2. Replace Section 6. Term, in the original Agreement with the following:

**Term.**

This Agreement is effective on October 1, 2018. All Capital costs incurred, pertaining to the Parking Lot Paving and Gates, under this agreement from October 1, 2018 to September 30, 2020 may be reimbursed. This Agreement shall expire September 30, 2020 or when Federal funding is expended, whichever occurs first.

**The remainder of this page is intentionally left blank.**

In Witness Whereof, each party is signing this First Amendment on the date stated below that party's signature.

**New Mexico Department of  
Transportation**

**City of Hobbs**

\_\_\_\_\_  
Michael Sandoval, NMDOT Cabinet Secretary

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title (please print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form and Legal Sufficiency by the Department's Office of General Counsel.

*Cynthia A. Christ*  
\_\_\_\_\_  
Assistant General Counsel

*8-11-19*  
\_\_\_\_\_  
Date



# CITY OF HOBBS

## COMMISSION STAFF SUMMARY FORM

MEETING DATE: September 16, 2019

**SUBJECT: Resolution Authorizing a Memorandum of Agreement Between the New Mexico Department of Transportation and the City of Hobbs for Public Transportation for FY 19-20**

DEPT. OF ORIGIN: City Clerk's Office  
DATE SUBMITTED: September 10, 2019  
SUBMITTED BY: Jan Fletcher, City Clerk

**Summary:**

The attached Memorandum of Agreement is for continued operation of Public Transportation Services for the Federal FY 19-20 beginning October 1, 2019, through September 30, 2020.

This is a formulary grant whereby the costs of the program are shared as follows:

Administrative	20% City	80% State
Operating	50% City	50% State
Capital	20% City	80% State

**Fiscal Impact:**


Reviewed By:   
Finance Department

The City's FY 19-20 Revised Budget approved by DFA includes \$1,260,757.47 for personnel, operating and capital expenditures. The total grant revenue and fares for FY 19-20 are projected at \$1,221,669.99 which includes carryover revenue due to the fiscal year timing differences.

**Attachments:**

Resolution Authorizing the Mayor to Execute a Memorandum of Agreement with NMDOT

**Legal Review:**

Approved As To Form:   
City Attorney

**Recommendation:**

Motion to approve the resolution.

Approved For Submittal By:  
  
Department Director  
  
City Manager

CITY CLERK'S USE ONLY COMMISSION ACTION TAKEN	
Resolution No. _____	Continued To: _____
Ordinance No. _____	Referred To: _____
Approved _____	Denied _____
Other _____	File No. _____



CITY OF HOBBS

RESOLUTION NO. 6853

A RESOLUTION AUTHORIZING AN AGREEMENT  
FOR FY 19-20 WITH THE NEW MEXICO DEPARTMENT OF  
TRANSPORTATION (NMDOT), TRANSIT AND RAIL DIVISION,  
FOR PUBLIC TRANSPORTATION SERVICES

WHEREAS, the State of New Mexico, under 49 U.S.C. Section 5311, authorizes Federal assistance to local communities for public transportation in rural and non-urbanized areas; and

WHEREAS, the City of Hobbs applied for financial assistance for administrative, operating and capital funding for public transportation services, which was approved by the NMDOT and the Federal Transit Administration (FTA).

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be, and he hereby is, authorized and directed to take all necessary and appropriate action to effectuate this resolution and specifically to execute, on behalf of the City of Hobbs, a Memorandum of Agreement with the NMDOT for funding for public transportation services. A copy of the Memorandum of Agreement is attached hereto and incorporated herein by reference.

PASSED, ADOPTED AND APPROVED this 16<sup>th</sup> day of September, 2019.

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

ATTEST:

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

FISCAL YEAR 2020 (FY 20)

MEMORANDUM OF AGREEMENT

BETWEEN

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

AND

CITY OF HOBBS

---

This Agreement is between the **STATE OF NEW MEXICO**, acting through its **DEPARTMENT OF TRANSPORTATION**, Transit and Rail Division (Department), and the **CITY OF HOBBS** (Subrecipient). This Agreement is effective as of the date of the last party to sign it on the signature page below

**RECITALS**

**Whereas**, 49 U.S.C. Section 5311 provides federal assistance for public transportation in rural and non-urbanized areas by way of a formula grant program administered by each state;

**Whereas**, 49 U.S.C. Section 5339 provides federal assistance for buses and bus-related equipment and facilities by way of a formula grant program administered by each state;

**Whereas**, the State of New Mexico participates in the 49 U.S.C. Section 5311 and 49 U.S.C. Section 5339 Programs collectively referred to herein as the Program;

**Whereas**, the Governor of the State of New Mexico designated the Department to administer the Program funds; and

**Whereas**, the Subrecipient applied for financial assistance for public transportation services, which was approved by the Department and the Federal Transit Administration (FTA).

Now, therefore, pursuant to Section 67-3-69 NMSA 1978, the parties agree as follows:

**1. Scope of Program.**

- A. **Operations Profile.** The Subrecipient shall provide transportation services to the public within its service area as specified in the Operations Profile, which is incorporated by reference and is on file with the Department and the Subrecipient.
- B. **Use of Capital Equipment.** The Subrecipient agrees that any capital equipment, purchased under this Agreement, shall be used to provide public transportation service within the area described in the Operations Profile. If the equipment is not used in this manner or withdrawn from service, the Subrecipient shall notify the Department in writing, five (5) working days of such event, and shall return the Program equipment in accordance with *Section 15. Use of Program Equipment.*
- C. **Use of Program Funds.** The services described in the Operations Profile shall remain intact throughout the term of this Agreement. The Subrecipient must notify and seek approval from the Department if there will be an elimination or a reduction of services greater than twenty percent (20%). Notice must be in writing, either hand delivered or sent by U.S. Certified Mail, five (5) working days prior to the reduction or elimination services. Failure to provide notice shall give the Department cause for termination, as described in *Section 7. Termination for Cause.*
- D. **Policy Manuals.** The Subrecipient shall develop, adopt, and publish a Drug and Alcohol Policy Manual as described in *Section 30. Drug and Alcohol Testing.*

- E. **Fare Schedule.** The fare schedule, which must be approved by the Subrecipient's governing body, shall be stated in the approved Operations Profile. The Department must also approve all fare schedules in writing.
- F. **Advertising.** The Subrecipient shall conduct an advertising program to increase ridership on all trips. Acceptable advertising includes but is not limited to: fliers and handbills; signs and posters; radio announcements; press releases and articles in local and organization newspapers, bulletins, and newsletters. In addition, the name of the service together with the words "Public Transportation" shall be prominently displayed on all vehicle(s) and be readable at a distance of no less than thirty (30) feet. Painted or affixed signing with a decal is acceptable. Magnetic signs are not acceptable. The name shall indicate that the service is a transportation system open to the public. The Subrecipient must have a telephone number established and operative during hours of transportation services so that the public can access information. All methods of advertising and the signs on the vehicles shall include the telephone number.
- G. **Personnel.** The Subrecipient shall provide to the Department the name of the Program Director and a list of primary duties within fifteen (15) days of execution of this Agreement. If the program director should change, the Subrecipient shall inform the Department in writing, either hand-delivered or sent by U.S. certified mail, fifteen (15) working days prior to the personnel change.

**2. Cost of Program.**

The Department shall provide partial funding to the Subrecipient to cover expenses of the Program as described in the approved Operations Profile from October 1, 2019 to September 30, 2020 in an amount described below:

**Subaward FY 20**

<b>City of Hobbs</b>	<b>Total</b>	<b>Federal</b>	<b>Local</b>
Administration (80/20) Section 5311	\$ 87,886.40	\$ 70,309.12	\$ 17,577.28
Operating (50/50) Section 5311	\$ 765,246.00	\$ 382,623.00	\$ 382,623.00
Capital to Subgrantee (80/20) Section 5339	\$ 126,299.74	\$ 101,039.79	\$ 25,259.95
<b>Total Administration, Operating and Capital</b>	<b>\$ 979,432.14</b>	<b>\$ 553,971.91</b>	<b>\$ 425,460.23</b>

Vehicle purchases must be under contract with a vendor by March 31, 2020, with a copy of the contract and signed buyer's order provided to the Department. Vehicle purchase funds that are not obligated by contract by March 31, 2020, may revert to the Department. Any remaining federal funds that are not expended by September 30, 2020 will revert to the Department.

This program is funded with grants provided by the FTA Section 5311 Rural Transit Funds, Catalog of Federal Domestic Assistance number 20.509 and FTA Section 5339(a) Buses and Bus Facilities Formula, Catalog of Federal Domestic Assistance number 20.526. (See Attachment A.) The Department's share of Program expenses shall be obtained from the federal government. State funds will not be earmarked or disbursed to fund the Program. The Department shall not be responsible for any other costs incurred by the Subrecipient. The Subrecipient shall take all actions necessary to fund its share of the Program.

**3. Method of Payment.**

The Department shall either reimburse the Subrecipient or pay the vendor on behalf of the Subrecipient for the Department's share of the Program costs upon receipt of invoices, with sufficient supporting documentation as determined and approved by the Department, indicating that expenses have been paid and/or money is owed.

Subrecipients that receive administration and/or operating assistance are to submit Budget Summary Reports on a monthly basis, to be received by the Department by the 25th day of the following month. These invoices shall be submitted electronically to the Department utilizing BlackCat. All expenses must be actual and listed on the invoice as charged. Rounding up or down, other than the total, is not permitted. Only those expenses or percentage thereof, properly documented and deemed eligible, shall be reimbursed. Accurate ridership numbers documenting the service provided shall be submitted with each monthly invoice. The Department may withhold payment of monthly invoices that are incorrect and/or incomplete.

**4. Costs.**

- A. Eligible Costs are those costs attributable to and allowed under the Program and the provisions of 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards.
- B. Capital costs incurred by the Subrecipient prior to the effective date of this Agreement or after termination are not eligible for reimbursement. However, operating and administrative costs incurred retroactive to October 1, 2019, the Agreement initiation date, are eligible for reimbursement. Operating or administrative costs incurred after the termination date shall not be eligible for reimbursement.
- C. Within sixty (60) days after completion of this Agreement, the Subrecipient shall submit a final invoice to the Department for Administration and Operating expenses and a financial statement showing the total expense of the Program. Subrecipient shall have the twenty percent (20%) matching capital funds encumbered at the time the vehicle order is placed with the vendor and a copy of the Purchase Order must be sent to the Department under this active Agreement. The Subrecipient's twenty percent (20%) match for capital expenses shall be provided in cash from sources other than federal funds.

**5. State General Appropriation Funds Not Obligated.**

Nothing in this Agreement shall be construed as obligating state general appropriation funds for payment of any debt or liability arising under this Agreement. The parties expressly acknowledge that all payments made under this Agreement are from federal funds appropriated for these purposes.

**6. Term.**

This Agreement becomes effective upon the signature of all parties or on October 1, 2019, whichever is later. The effective date is the date the last party signed the Agreement on the signature page below. All costs incurred under this agreement from October 1, 2019 to September 30, 2020 may be reimbursed. This Agreement shall expire September 30, 2020 or when Federal funding is expended, whichever occurs first.

**7. Termination for Cause.**

The Department has the option to terminate this Agreement if the Subrecipient fails to comply with any provision. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Subrecipients breaches on which the termination is based.

The Department may provide the Subrecipient a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Subrecipient has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Subrecipient has not begun and proceeded in good faith to correct the breach, the Department may declare the Subrecipient in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law. Upon termination of this Agreement, the Subrecipient shall return the Program equipment as specified in *Section 1. Scope of the Program*.

**8. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Congress of the United States. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice from the Department to the Subrecipient. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Subrecipient and shall be final.

**9. Termination Management, Allowable Costs.**

In the event of termination, neither party may nullify obligations already incurred for performance or failure to perform. The Subrecipient shall be paid for all the allowable costs incurred prior to the date of termination, subject to audit verification by the Department or its duly authorized representative.

The Subrecipient shall not be paid for any costs incurred that are inconsistent with, or contrary to, the terms and conditions of this Agreement.

**10. Breach and Dispute Resolution.**

Disputes which cannot be resolved informally by the parties shall be decided in writing by a representative of the Department's Transit and Rail Division. The Subrecipient has ten (10) days from receipt of the decision to file a

written appeal with the Transit and Rail Division. Upon appeal, the Subrecipient will be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Transit and Rail Division on appeal shall be binding.

**11. Procurement Requirements and Buy America.**

The Subrecipient shall purchase Program equipment pursuant to procedures established by the United States Department of Transportation (U.S. DOT), the FTA, applicable New Mexico State Law, and the standards set forth in: Third Party Contracting Guidance, FTA Circular 4220.1F; Americans with Disabilities Act of 1990, Pub. L. No. 101-336; and Pre-Award and Post-Delivery Audits of Rolling Stock Purchases, 49 C.F.R. Part 663.

The Subrecipient agrees to comply with 49 U.S.C. Section 5323(j)(1) as amended by Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), Fixing America's Surface Transportation Act (FAST Act) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661 to the extent those regulations are consistent with MAP-21 and FAST Act provisions, and subsequent amendments to those regulations that may be promulgated.

*Prior to awarding a bid award or execution of a contract for services or capital equipment in excess of \$10,000, the Subrecipient shall seek concurrence in writing from the Department.*

**12. Rolling Stock.**

In acquiring rolling stock, the Subrecipient agrees that the parties are bound by the following provisions:

- A. **Method of Acquisition.** In compliance with 49 U.S.C. Section 5325(f), the Recipient agrees that any third party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.
- B. **Multi-year Options.** In accordance with 49 U.S.C. Section 5325(e)(1), a Recipient procuring rolling stock financed with Federal assistance under 49 U.S.C. Chapter 53 may not enter into a multiyear contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts.
- C. **Pre-Award and Post-Delivery Audits.** The Recipient agrees to comply with the requirements of 49 U.S.C. Section 5323(m) and FTA regulations, "Pre Award and Post Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and any amendments to those regulations that may be promulgated.
- D. **Bus Testing.** To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. Section 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

**13. Insurance.**

The Subrecipient shall maintain liability, comprehensive, collision, and uninsured motorist insurance adequate to protect the Program equipment, and satisfactory to the Department. The Department shall be named as an additional insured and a loss payee on Subrecipient's policy for each vehicle on which the Department has a lien. A certificate of insurance must be provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance. The Subrecipient shall provide the Department documentation of subsequent renewals and shall keep on file a copy of the insurance policy, which shall be accessible to the Department.

The Subrecipient shall require contractors and subcontractors hired to perform the services under this Agreement to have a commercial general liability insurance policy. The Department shall be named as an additional insured on the contractor's and subcontractor's policy and a certificate of insurance must be provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance.

The Subrecipient shall require contractors and subcontractors hired to perform services under this Agreement to indemnify, defend and hold harmless the State of New Mexico, the Department, its officers, agents and employees from and against all suits, actions or claims of any character brought because of any injury, including death or damages arising out of contractors' or subcontractors' construction or maintenance activities pursuant to this

Agreement, as memorialized herein and subject to any additional permit that may be required of the contractor or subcontractor to perform said activities.

**14. New Mexico Tort Claims Act.**

As between the Department and the Subrecipient, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by the common law of the New Mexico Tort Claims Act.

**15. Use of Program Equipment.**

- A. A Program Vehicle Inventory must be completed for each vehicle used in the program, within thirty (30) days of delivery. Post Delivery Inspection forms shall be completed before the vehicle is placed into service. The forms shall be uploaded to the corresponding vehicle inventory in BlackCat. Vehicle Inventory shall be reported and updated within BlackCat on a quarterly schedule, and as changes to the vehicle inventory occur.
- B. The Subrecipient shall maintain a current written fleet maintenance plan that includes procedures for preventive and defect maintenance, warranty tracking and claims recovery, and recall notification and follow-up. Warranty tracking and claims recovery shall be reported in BlackCat and updated as claims are processed. Recall notifications shall be reported in BlackCat as they are received and updated as repairs are completed.
- C. The Subrecipient shall follow the equipment manufacturer's minimum standards and recommended preventive maintenance schedules. The Subrecipient shall maintain the equipment in a clean, safe, and mechanically sound condition. The Department or its authorized representative has the right to conduct periodic inspections during normal business hours for the purpose of confirming property maintenance pursuant to this clause. The Subrecipient shall prepare reports describing usage, any modifications, and other related information for such periods of time and frequency as may be prescribed by the Department.
- D. The Subrecipient shall keep daily Pre/Post Trip Inspection Records before and after the use of each transit vehicle.
- E. Each vehicle must contain a fire extinguisher, first aid kit (including a blood borne pathogens/biohazard kit), fluorescent triangles and/or safety flares, reflective vests for drivers, flashlights, and web cutters/seat belt cutters, while the vehicle is in operation.
- F. Program Facilities Inventory must be completed for each facility used in the Program. The Program Facility Inventory shall be reported and updated within BlackCat on an Annual schedule, and, as changes to the facility inventory occur.
- G. The Subrecipient shall maintain a current written facility maintenance plan that includes procedures for preventive and defect maintenance, warranty tracking and claims recovery, and recall notification and follow-up.
- H. The Program equipment shall be used to provide public transportation service within the described service area and in the manner described in *Section 1. Scope of Program*.
- I. Failure to use the equipment as described in *Section 1. Scope of Program* shall be considered a material breach of contract subject to the provisions of *Section 7. Termination for Cause*.
- J. The Subrecipient shall notify the Department immediately of vehicular/facilities accidents, thefts, or vandalism involving Program equipment. All supporting documentation relating to the incident, including police reports, damage assessments, insurance claims, shall be reported and uploaded in BlackCat to the

corresponding inventory record. Failure to notify the Department shall be considered a material breach of contract subject to the provisions of *Section 7. Termination for Cause*.

- K. All program equipment that is damaged in an accident, by vandalism, or weather is to be repaired or replaced depending on the physical and monetary extent of the damage and according to its scheduled final disposition.
- L. If the Subrecipient wants to remove any Program equipment from service or dispose of such equipment either as a result of planned withdrawal, casualty loss, or transfer, the Subrecipient shall submit a completed disposition or transfer request in BlackCat including all relevant and required supporting documentation. Subrecipients may also contact the Department to obtain specific disposition instructions.
- M. The Department may require that Program equipment purchased under FTA programs, on which liens are held, be returned to the Department. Such Program equipment shall be returned in good working condition within ten (10) working days or as stipulated by the Department. If the Subrecipient fails to return the equipment, the Department, as the recorded lien holder, shall have the right to immediately repossess the vehicle(s) by whatever means available to it under New Mexico law.
- N. Upon termination of the Agreement under *Section 7. Termination for Cause*, the Subrecipient shall not be eligible for reimbursement of any costs associated with the vehicle(s) purchase or be entitled to damages arising from Program operations, except that the Subrecipient shall be reimbursed for its pro-rata share of the Program equipment's depreciated value as determined by the Straight Line Depreciation method.
- O. The Subrecipient agrees that no modifications will be made to Program vehicle(s) with liens held by the Department without prior written approval of the Department. If unapproved modifications are made, the Subrecipient is responsible for the cost of restoring the vehicle(s) to its original condition.

**16. Charter Bus Requirements.**

The Subrecipient agrees to comply with 49 U.S.C. Section 5323(d) and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. Part 604.9. Any charter service provided under one of the exceptions must be "incidental." For example, it must not interfere with or detract from the provision of mass transportation.

**17. School Bus Requirements.**

Pursuant to 49 U.S.C. Section 5323(f) and 49 C.F.R. Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub recipients may not use federally funded equipment, vehicles, or facilities.

**18. Certificate of Title for Vehicles.**

Any title to capital equipment the Subrecipient purchases will reflect in a lien in favor of the Department. The liens will remain in effect according to the following schedule:

Category	Typical Characteristics		Minimum Life ' (either years or miles)	
	Approx. GVW	Average Cost	Years	Miles
Heavy-Duty Large Bus	33,000 to 40,000lbs	\$325,000 to over \$600,000	15	625,000
Medium-Duty and Purpose-Built Bus	16,000 to 26,000lbs	\$75,000 to \$175,000	10	285,000
Light-Duty Mid-Sized Bus	10,000 to 16,000lbs	\$50,000 to \$65,000	8	240,000
Light-Duty Small Bus, Cutaways, and Modified Van	6,000 to 14,000	\$30,000 to \$40,000	7	175,000

The Subrecipient shall pay all costs associated with obtaining, securing, and maintaining titles and liens including the payment of all applicable taxes and fees.

**19. Duration of Lien.**

The Subrecipient shall not pledge or collateralize any vehicles purchased under this Agreement without written authorization from the Department. This restriction is in effect from the date a title certificate is issued to when the Department releases the lien pursuant to *Section 18. Certificate of Title for Vehicles*. For specifics on disposition of vehicles after title lien is released, please refer to the Vehicle Title Release and Disposition sections of the *New Mexico State Management Plan for the Administration of Federal Transit Grants*.

**20. Operation Reporting Requirements.**

- A. **Monthly Budget Summary Reporting.** The Subrecipient shall submit a monthly invoice/report using BlackCat to include financial expenditures and ridership information, as described in *Section 3. Method of Payment*. This monthly invoice shall be submitted to the Department by the 25<sup>th</sup> of the following month.
- B. **Quarterly Vehicle/Facility Reporting.** The Program Vehicle/Facilities Inventory shall be reported and updated within the Electronic Grants Management Performance System (BlackCat) on a quarterly schedule, and as changes to the vehicle/facilities inventory occur.
- C. **Drug and Alcohol Quarterly Testing Report.** The Subrecipient will submit a quarterly Testing Report in BlackCat for each quarter of the calendar year. Reports are due January 10, April 10, July 10, and October 10 respectively.
- D. **Semi-annual DBE Reporting.** The Subrecipient will submit to the Department a semi-annual DBE Report due May 15 (for the period October 1 to March 31) and due November 15 (for the period April 1 to September 30).
- E. **National Transit Database (NTD) Rural Report.** The Subrecipient will submit to the Department an annual NTD report, as required by 49 U.S.C. Section 5335, due December 15. New and updated regulations require transit agencies reporting to the NTD to include condition information on assets reported to the database.
- F. **Drug and Alcohol Management Information System (MIS) Data.** The Subrecipient will submit drug and alcohol testing data for the previous calendar year using the Management Information System (MIS) Data Collection Form to the Department before March 1 of each year.
- G. **Drug and Alcohol Compliance Review/Report** The Subrecipient will participate in an annual Drug and Alcohol Compliance Review by the Department. Once a final report has been issued, the Subrecipient will



implement corrective actions, including supportive documentation, for all deficiencies cited in the final report and respond to all recommendations within ninety (90) days of the report's issuance.

- H. **Technical Assistance and Compliance Review/Report.** The Subrecipient will participate in a biennial Technical Assistance and Compliance Review by the Department. Once a final report has been issued, the Subrecipient will implement corrective actions, including supportive documentation, for all deficiencies cited in the final report and respond to all recommendations in the final report within ninety (90) days of the report's issuance.
- I. **Transit Asset Management (TAM) Reporting.** The Subrecipient will participate in a group TAM Plan sponsored by The Department (49 U.S.C. 625). All TAM plan participants must sign a TAM Plan Approval Statement. The group plan is implemented over a four-year time horizon, beginning October 1, 2019. TAM reporting requires participants to maintain updated asset/facility inventories and condition assessments in BlackCat.

The Department may withhold payment of monthly invoices if reports are not submitted in a timely manner, are incorrect and/or incomplete. The Subrecipient's failure to submit reports in a timely manner on the dates specified shall be a material breach of this Agreement and shall be subject to termination as provided in *Section 7. Termination for Cause.*

**21. Retention of Records.**

The Subrecipient shall maintain all books, documents, papers, accounting records, reports and other evidence pertaining to costs incurred in the Program for three (3) years after the date of termination or expiration of this Agreement.

**22. Access to Records.**

The Subrecipient shall grant authorized representatives of the Department, the state and the federal government access to books, documents, papers, reports, and records of the Subrecipient or its contractors or subcontractors, which are directly pertinent to this Agreement, for the purpose of making audits, examination excerpts, and transcriptions. The Subrecipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Subrecipient shall reimburse the Department for any expenditure for which it received payment or reimbursement, as applicable, which is disallowed by an audit exception by the Department, the state or federal government.

**23. Privacy Act.**

The Subrecipient agrees to comply with, and to assure the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. Section 552a. Among other things, the Subrecipient agrees to obtain the express consent of the federal government before the Subrecipient or its employees operate a system of records on behalf of the federal government. The Subrecipient understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

The Subrecipient agrees to include these requirements in each contract and subcontract to administer any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by FTA.

**24. Audit.**

The Subrecipient shall ensure that an annual audit of the Program based on the Subrecipient's fiscal year shall be conducted pursuant to 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards. The Subrecipient, prior to initiation of the audit, shall seek written approval from the Department of the auditing firm. The Subrecipient agrees to provide the Department with a copy of the audit report concerning any portion of the Agreement period as soon as it is released, but in no case later than six (6) months following the close of the local fiscal year. Audit costs are an eligible administrative expense. Should the Subrecipient fail to produce the annual audit, the Department may, at its option, commission such an audit payable out of Program Funds.

**25. Audit Exceptions.**

If federal or state audit exceptions are made, the Subrecipient shall reimburse all costs incurred by the State and the Department associated with defending against the exceptions, which includes but is not limited to costs of performing a new audit or a follow-up audit, court costs, attorneys' fees, travel costs, penalty assessments.

Immediately upon notification from the Department, the Subrecipient shall reimburse the amount of the audit exception and any other related costs directly to the Department. In the notification, the Department may inform the Subrecipient of the Department's election to withhold an amount equal to the payment owed under this Section from any future distribution owed to Subrecipient under this Agreement.

**26. Third Party Beneficiaries.**

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**27. Contracting and Assignment.**

The Subrecipient shall not contract or permit to have subcontracted any portion of this Agreement without prior written approval of the Department. No such contracting or subcontracting shall relieve the Subrecipient from its obligations and liabilities under this Agreement, nor shall any contracting or subcontracting obligate payment from the Department.

Except to a successor in kind, the Subrecipient shall not assign or transfer any interest in this Agreement or assign any claim for money due or to become due under this Agreement without the prior written approval of the Department.

Should contract(s), subcontract(s) or an assignment be authorized by the Department, the contractor(s), subcontractor(s) and assignor(s) shall be subject to all provisions of this Agreement. It shall be the Subrecipient's responsibility to duly inform the contractor(s), subcontractor(s) and assignor(s) by means of a contract or other legally binding document stipulating responsibility to this Agreement.

Contractors, subcontractors and assignors of FTA funds must meet applicable Disadvantaged Business Enterprise (DBE) Program requirements when funds are used in whole or in part to finance procurements for applicable products and services. To that end, contractors and subcontractors with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients*, which is attached as Certification 1.

**28. No Federal Government Obligation to Third Parties.**

A. The Department and Subrecipient acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the federal government, the federal government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Department, Subrecipient, or any other party (whether or not a party to the Agreement or any contract or subcontract) pertaining to any matter resulting from the Agreement.

B. The Subrecipient agrees to include the above clause in each contract or subcontract financed in whole or in part with federal assistance provided by FTA. It further agrees that the clause shall not be modified, except to identify the contractor or subcontractor who will be subject to its provisions.

**29. Training.**

The Subrecipient shall ensure that all drivers described in the Operations Profile are trained in the following programs, by an approved contractor: first aid, cardiopulmonary resuscitation (CPR), blood borne pathogens, defensive driving, crisis management, and passenger safety, sensitivity and wheelchair securement. All new drivers must be trained and certified in the above listed areas within six (6) months of their date of hire and recertified every three (3) years. For the cardiopulmonary resuscitation (CPR) training, the drivers must be

recertified every two (2) years. All full time, part time, substitute/fill-in, or volunteer vehicle operators shall have in their possession valid certifications (driver's license) while operating a public transportation vehicle.

Should the Subrecipient fail to satisfy the terms and conditions as outlined, the Subrecipient may be found to be in breach of contract and subject to the provisions of *Section 7. Termination for Cause*.

**30. Drug and Alcohol Testing.**

- A. The Subrecipient will implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 40 and 655; produce documentation necessary to establish its compliance; permit authorized representatives of the U.S. DOT or the Department to inspect the facilities and records associated with the drug and alcohol testing program; and review the testing process. The Subrecipient will submit for review and approval, a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Subrecipient agrees to participate in the Department's consortium.
- B. The Subrecipient will submit drug and alcohol testing data for the previous calendar year using the Management Information System (MIS) Data Collection Form to the Department before March 1 of each year.
- C. The Subrecipient will submit a Quarterly Testing Report in BlackCat for each quarter of the calendar year. Reports are due January 10, April 10, July 10, and October 10 respectively.
- D. The Subrecipient will participate in an annual Drug and Alcohol Compliance Review by the Department. Once a final report has been issued, the Subrecipient will implement corrective actions, including supportive documentation, for all deficiencies cited in the final report and respond to all recommendations within ninety (90) days of the report's issuance.

**31. Labor Warranty.**

The Subrecipient agrees that it will comply with the terms and conditions of the Special 49 U.S.C. Section 5333(B) Warranty for Application to the Small Urban and Rural Program. The Subrecipient will assume all legal and financial responsibility relative to compliance with the terms and conditions of the Warranty.

**32. Transit Employee Protection Guidelines.**

The Subrecipient agrees to protect transit employees pursuant to Section 5333(b) of Title 49 U.S. Code (formerly Section 13(c) of the Federal Transit Act). The Subrecipient shall provide for the preservation of rights and benefits of employees under existing collective bargaining agreements, continuation of collective bargaining rights, and protection of individual employees against a worsening of their positions in relation to their employment, assurances of employment to employees of acquired transit systems, priority of reemployment, and paid training or retraining programs.

**33. Civil Rights Laws and Regulations Compliance.**

The Subrecipient shall comply with all federal, state and local laws and ordinances applicable to the work called for under this Agreement.

- A. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, disability, or other protected class. The Subrecipient shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue. The Nondiscrimination Assurance is attached as **Assurance 3**.
- B. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Agreement:

1. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Subrecipient agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Subrecipient agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including gender identity and sexual orientation). Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.
  2. **Age.** In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 623 and Federal transit law at 49 U.S.C. Section 5332, the Subrecipient agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subrecipient shall comply with any implementing requirements FTA may issue.
  3. **Disabilities.** In accordance with Section 102 of the Americans with Disabilities Act, 42 U.S.C. Section 12112, the Subrecipient agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.
- C. The Subrecipient shall include these requirements in each contract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.
  - D. For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA at <https://www.transit.dot.gov/funding/procurement/third-party-procurement/contract-clauses>.
  - E. The Subrecipient also agrees to ensure that these requirements are included in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- 34. Disadvantaged Business Enterprise (DBE) Policy.**
- A. This Agreement is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Department's proposed overall goal for FTA participation for the 2020 fiscal year is 1.59%, through race-neutral means.
  - B. The Subrecipient shall not discriminate on the basis of race, color, national origin, sex, or other protected class in the performance of the Agreement. The Subrecipient shall carry out applicable requirements of 49 CFR Part 26 in the administration of the Program. Failure by the Subrecipient to carry out these requirements is a material breach of the Agreement, which may result in the termination or other such remedy as the Department deems appropriate. Each contract the Subrecipient signs with a contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
  - C. The Subrecipient agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds. In this regard, all recipients or contractors shall take all necessary and

reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, sex, or other protected class in the award and performance of U.S. DOT assisted contracts. The Subrecipient will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- D. The Subrecipient is required to pay its contractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the awarded contractor's receipt of payment for that work from the Department.
- E. The Subrecipient must promptly notify the Department, whenever a DBE contractor is terminated or fails to complete its work, and must make good faith efforts to engage another DBE contractor to perform at least the same amount of work. The Subrecipient may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Department.

A subrecipient of FTA funds must meet applicable DBE requirements when funds are used in whole or in part to finance procurements of and contracts for applicable products and services. A subrecipient with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients*, which is attached as Certification 1.

**35. ADA Access.**

The Subrecipient shall comply with 49 U.S.C. Section 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Subrecipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, with 29 U.S.C. Section 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sections 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, 42 U.S.C. Sections 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities.

**36. Program Fraud and False or Fraudulent Statements or Related Acts.**

- A. The Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. Sections 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this program. The Subrecipient certifies or affirms the truthfulness and accuracy of any statement it makes pertaining to the resultant Agreement or the FTA assisted program for which this work is being performed. The Subrecipient further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the federal government deems appropriate.
- B. The Subrecipient also acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification to the federal government under a contract connected with a program that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. Section 5307, the federal government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Subrecipient, to the extent the federal government deems appropriate.
- C. The Subrecipient certifies to abide by these clauses and include the clauses in each subcontract financed in whole or in part with Federal Transit Administration funds. The Subrecipient further agrees that these clauses shall not be modified, except to identify the contractor or subcontractor subject to its provisions.
- D. All claims for compensation reimbursement and payment of any amounts due pursuant to this Agreement are governed by the Fraud Against Taxpayers Act, NMSA 1978, Sections 44-9-1 through 44-9-14.

**37. Lobbying.**

A subrecipient receiving \$100,000 or more of 49 U.S.C. Section 5311 funds shall file the Lobbying Certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." **The Lobbying Certification is attached as Certification 2.** The Subrecipient must certify that it has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. Section 1352.

If the Subrecipient hires a third-party contractor, the contractor must provide the Lobbying Certification to the Subrecipient. Each tier below the contractor shall also provide a Lobbying Certification. Such disclosures are forwarded from tier to tier up to the Subrecipient.

**38. Officials Not to Benefit.**

Neither any member of the New Mexico Legislature nor any member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom. The provisions of this clause shall be extended to all public employees, officers, or tribal council members.

**39. Energy Conservation.**

The Subrecipient agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**40. Clean Water and Air Requirements.**

A. The Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, 33U.S.C. Sections 1251 *et seq.*, and the Clean Air Act, 42 U.S.C. Sections 7401 *et seq.* The Subrecipient agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate United States Environmental Protection Agency Regional Office.

B. The Subrecipient agrees to include these requirements in each contract or subcontract exceeding \$100,000.00 and financed in whole or in part with federal assistance provided by the FTA.

**41. Debarment and Suspension.**

Executive Order No. 12549, "Debarment and Suspension of Participants in Federal Programs," February 18, 1986, 31 U.S.C. Section 6101 note, as amended by Executive Order No. 12689, "Debarment and Suspension," August 16, 1989 31 U.S.C. Section 6101 note, as implemented by 2 C.F.R. Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200 prohibits FTA subrecipients from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts. Subrecipients shall include the certification and instruction language contained at 2 C.F.R. Part 1200 in all Invitations for Bids and Requests for Proposals (for inclusion by contractors and subcontractors in their bids or proposals) for all contracts expected to equal or exceed \$25,000.00, regardless of the type of contract to be awarded.

The Subrecipient is required to verify that none of the Subrecipient's principals or affiliates are excluded or disqualified as defined, as defined by 2 C.F.R. Part 1200. By signing and submitting this Agreement, the Subrecipient certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder/Subrecipient or proposer/Subrecipient knowingly rendered an erroneous certification, in addition to remedies available to the Department, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder/Subrecipient or proposer/Subrecipient agrees to comply with the requirements of 2 C.F.R. Part 1200 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder/Subrecipient or proposer/Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**42. Central Contractor Registration Requirements.**

Prior to payment of invoices and receipt of vehicles and equipment, the Subrecipient must register and maintain current registration in the Central Contractor Registration website, <http://www.sam.gov>. Registration requires having a Dun and Bradstreet Data Universal Number (DUNS), see <http://www.dnb.com>. The Department will not provide vehicles, or make payments, until the Subrecipient demonstrates that it is registered with the System for Award Management (SAM) website.

**43. Federal Grant Reporting Requirements.**

Under the Federal Funding Accountability and Transparency Act, the Department is required to report on projects or activities, which are awarded federal grants of \$25,000 or more. This information will be made available to the public on [www.USAspending.gov](http://www.USAspending.gov).

The type of information the Department is required to report includes:

- Name of Subrecipient receiving the award,
- Amount of Award,
- Funding Agency,
- NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants,
- Program source,
- Award title descriptive of the purpose of the funding action,
- Location of the Subrecipient, which includes the Congressional District,
- Place of performance of the program or activity, which includes the Congressional District,
- Unique identifier—DUNS—of the Subrecipient and its parent organization, if one exists, and
- Total compensation and names of the top five executives of the Subrecipient. This information is required, if the Subrecipient in the preceding year received eighty (80) percent or more of its annual gross revenues in federal awards, which exceeds \$25 million annually, and the public has no access to this information under the Securities Exchange Act or the Internal Revenue Code.

The Department will extract as much information as possible from the Subrecipient's grant application and standard reports. However, the Subrecipient will be required to provide additional information, which includes the total compensation and names of the Subrecipient's top five executives, if applicable. As specified earlier in Section 42, "Central Contractor Registration Requirements," of this Agreement, the Subrecipient shall register with the SAM and DUNS websites and provide that information to the Department.

**44. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

**45. Scope of Agreement.**

This Agreement incorporates all of the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreements or understandings of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

**46. Applicable Law and Venue; Federal Changes.**

The Subrecipient shall comply with all federal, state and local laws, ordinances, rules, warranties, assurances, and regulations applicable to the performance of this Agreement. This includes all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current year's Master Agreement between the Department and the FTA. The Subrecipient shall make as part of this Agreement between the Department and the Subrecipient the assurances and warranties which were signed as part of the grant award. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

**47. Incorporation of FTA Terms.**

Provisions of this Agreement include, in part, certain Standard Terms and Conditions required by the U.S. DOT. All contractual provisions required by the U.S. DOT, as set forth in FTA Circulars 4220.1F, and 9040.1F, are

incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Subrecipient shall not perform any act, fail to perform any act, or refuse to comply with any Department request, which would cause the Department to be in violation of FTA terms and conditions, as referenced in the current Federal Transit Administration Master Agreement shall prevail and be the instrument governing the receipt of Federal assistance from the Federal Transit Administration. The Master Agreement can be viewed on the web at <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>.

**48. Amendment.**

The terms of this Agreement may be altered, modified or amended by an instrument in writing executed by the parties. Specifically excluded from this requirement are revisions to transportation services and fare schedules identified in the Operations Profile. *Section 1. Scope of Program, Paragraphs C and E*, details how such changes are to be approved and documented.

**The remainder of this page is intentionally left blank.**



In witness whereof, each party is signing this Agreement on the date stated below that party's signature. This Agreement becomes effective on the date the last party signed the Agreement.

New Mexico Department of Transportation

CITY OF HOBBS



Michael Sandoval, Cabinet Secretary

Signature

Name/Title (please print)



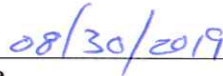
Date

Date

Approved as to Form and Legal Sufficiency by the Department's Office of General Counsel.



NMDOT Assistant General Counsel



Date

**FEDERAL REQUIREMENTS FOR PASS-THROUGH ENTITIES**

ATTACHMENT A-1

§200.331 Requirements for pass-through entities.

**All pass-through entities must:**

Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

**Federal Award Identification.**

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Hobbs, City of
(ii) Subrecipient's unique entity identifier (DUNS);	079339222
(iii) Federal Award Identification Number (FAIN);	NM-2018-016-00
(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	7/16/2018
(v) Subaward Period of Performance Start and End Date;	10-01-2018 thru 09-30-2019
(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;	Administrative \$67,511.00 Operating \$382,623.00
(vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;	Administrative \$67,511.00 Operating \$382,623.00
(viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;	Administrative \$67,511.00 Operating \$382,623.00
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	FY18 5311 Rural Transit Appropriation for FY19 Program Funding Award
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;	Federal Transit Administration, New Mexico Department of Transportation David Harris - 505 -699-4350, DavidC.Harris@state.nm.us P.O. Box 1149 Santa Fe, NM 87501-1149
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	20.509
(xii) Identification of whether the award is R&D; and	No R&D
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	N/A

ATTACHMENT A-2

**§200.331 Requirements for pass-through entities.**

**All pass-through entities must:**

Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

**Federal Award Identification.**

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	<b>Hobbs, City of</b>
(ii) Subrecipient's unique entity identifier (DUNS);	<b>079339222</b>
(iii) Federal Award Identification Number (FAIN);	<b>TBD</b>
(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	<b>7/3/2019</b>
(v) Subaward Period of Performance Start and End Date;	<b>10-01-2019 thru 09-30-2020</b>
(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;	<b>Administrative \$2,798.12 Operating \$0.00</b>
(vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;	<b>Administrative \$2,798.12 Operating \$0.00</b>
(viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;	<b>Administrative \$2,798.12 Operating \$0.00</b>
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	<b>FY19 5311 Rural Transit Appropriation for FY20 Program Funding Award</b>
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;	<b>Federal Transit Administration, New Mexico Department of Transportation David Harris - 505 -699-4350, DavidC.Harris@state.nm.us P.O. Box 1149 Santa Fe, NM 87501-1149</b>
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	<b>20.509</b>
(xii) Identification of whether the award is R&D; and	<b>No R&amp;D</b>
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	<b>N/A</b>

ATTACHMENT A-3

§200.331 Requirements for pass-through entities.

All pass-through entities must:

Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

Federal Award Identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Hobbs, City of
(ii) Subrecipient's unique entity identifier (DUNS);	079339222
(iii) Federal Award Identification Number (FAIN);	NM-2019-022-00
(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	7/16/2018
(v) Subaward Period of Performance Start and End Date;	10-01-2019 thru 09-30-2020
(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;	Capital \$101,039.79
(vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;	Capital \$101,039.79
(viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;	Capital \$101,039.79
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	FY18 5339(a) Buses and Bus Facilities Formula Appropriation for FY20 Program Funding Award
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;	Federal Transit Administration, New Mexico Department of Transportation David Harris - 505 -699-4350, DavidC.Harris@state.nm.us P.O. Box 1149 Santa Fe, NM 87501-1149
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	20.526
(xii) Identification of whether the award is R&D; and	No R&D
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 indirect (F&A) costs).	N/A

**NEW MEXICO DEPARTMENT OF TRANSPORTATION  
TRANSIT AND RAIL DIVISION**

**DISADVANTAGED BUSINESS ENTERPRISE  
RACE-NEUTRAL IMPLEMENTATION AGREEMENT  
FOR  
FEDERAL TRANSIT ADMINISTRATION SUBRECIPIENTS**

**INTRODUCTION AND INSTRUCTIONS:**

The New Mexico Department of Transportation (NMDOT) Transit and Rail Division, through the NMDOT Office of Equal Opportunity Programs (OEOP), must ensure that Subrecipient of Federal Transit Administration (FTA) funds meet applicable DBE requirements when funds are used in whole or in part to finance procurement and contracts of products and service(s). To that end, Subrecipient with contracting opportunities must submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients* (Agreement).

Please read the entire Agreement before completing, and do not change or add to the wording of the Agreement. The Agreement is incorporated into and becomes a material part of your contract with NMDOT, and Subrecipients are responsible for complying with the requirements contained therein.

**DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT for CITY OF HOBBS; hereinafter referred to as "Subrecipient."**

**I. Definition of Terms**

The terms used in this agreement have the meanings defined in 49 CFR Part 26.5.

**II. OBJECTIVE/POLICY STATEMENT (§26/1, 26/23)**

The Subrecipient intends to receive federal financial assistance from the U.S. Department of Transportation (USDOT) through the New Mexico Department of Transportation (NMDOT), and as a condition of receiving this assistance, the Subrecipient will sign the New Mexico Department of Transportation's Disadvantaged Business Enterprise Race Neutral Implementation Agreement (hereinafter referred to as Agreement).

The Subrecipient must implement a policy to ensure that DBEs, as defined in 49 CFR Part 26 (also referred to as the DBE Program), have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

To ensure nondiscrimination in the award and administration of DOT-assisted procurement and contracts of products and services contracts.

To create a level playing field on which DBE's can compete fairly for DOT-assisted procurement and contracts of products and services contracts.

To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.

To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.

To help remove barriers to the participation of DBEs in DOT-assisted procurement and contracts of products and services contracts.

To assist the development of firms that can compete successfully in the market place outside the DBE Program.

**III. Nondiscrimination (§26.7)**

Subrecipient will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. Subrecipient will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

**IV. Race-Neutral Means of Meeting the Annual DBE Goal (§26.51)**

Subrecipient will assist NMDOT to achieve its Overall Statewide DBE Goal by race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

## DISADVANTAGE BUSINESS ENTERPRISE CERTIFICATION 1

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has been historically low;
8. Ensuring distribution of the New Mexico DBE directory, through print and electronic means, to the widest feasible universe of potential contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Subrecipient will encourage utilization of DBE contractors whenever possible on its USDOT-assisted contracts. New Mexico Certified DBE firms and the fields of work in which they participate are listed in the electronic web-based DBE Directory located at <https://nmdot.dbesystem.com>

### **V. Quotas (§26.43)**

Subrecipient will not use quotas or set-asides in any way in the administration of the DBE Program.

### **VI. DBE Liaison Officer (§26.25)**



Subrecipient must designate a DBE Liaison Officer (DBELO). The DBELO is responsible for implementing the DBE Program as it pertains to the Subrecipient and ensures that the Subrecipient is fully and properly advised concerning DBE Program matters.

**VII. Federal Financial Assistance Agreement Assurance (§26.13)**

The Subrecipient will sign the following assurance, applicable to and to be included in all USDOT-assisted procurements and contracts for products and services:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

**VIII. Required Contract Clauses (§§26.13, 26.29)**

Subrecipient assures that the following clauses will be included in each USDOT-assisted prime contract:

A. Contract Assurance

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted procurement and contracts of products and services contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

B. Prompt Payment

Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay to any subcontractor not later than 10 days of receipt of each progress payment. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the NMDOT's prior written approval. Any violation of this Section shall subject the violating contractor or subcontractor to penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment of Retainage

## DISADVANTAGE BUSINESS ENTERPRISE CERTIFICATION 1

Subrecipient shall include either (1), (2), or (3) of the following provisions in their USDOT-assisted contracts to ensure prompt and full payment of retainage (withheld funds) to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **IX. Bidders List (§26.11)**

The Subrecipient will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its USDOT-assisted procurement and contracts for products and services. The bidders list will include the name, address and telephone number of each quoting firm and whether the quoter is a New Mexico certified DBE. Subrecipient will include language in its procurement documents that requires each bidding Contractor, at the time that bids are submitted, to list the quotes received for the project as detailed above.

### **X. Reporting**

DISADVANTAGE BUSINESS ENTERPRISE CERTIFICATION 1

Subrecipient will report bidders list and related DBE information to the NMDOT Transit and Rail Division or the NMDOT Office of Equal Opportunity Programs upon request.

Subrecipient will complete and submit annually to the NMDOT Office of Equal Opportunity Programs the NMDOT Annual Profile Registration Form. This Form will be mailed to Subrecipient.

Subrecipient will compile and provide such other information related to its procurements and the DBE Program as deemed necessary by the NMDOT Transit and Rail Division or the NMDOT Office of Equal Opportunity Programs.

**XI. Incorporation of Agreement**

This Agreement is incorporated into Subrecipient's financial assistance agreement with NMDOT by reference and made a part of that agreement.

Date:
Signature of Subrecipient Official
Phone Number:
Printed Name of Subrecipient Official

**LOBBYING CERTIFICATION**

*An Applicant that submits or intends to submit an application to FTA for Federal assistance exceeding \$100,000 is required to provide the following certification. FTA may not award Federal assistance exceeding \$100,000 until the Applicant provides this certification.*

- A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to FTA for Federal assistance exceeding \$100,000:
  - (1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and
  - (2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352; and
  - (3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts under grants, loans, and cooperative agreements).
  
- B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

**AFFIRMATION OF APPLICANT**

Name of Applicant: \_\_\_\_\_

Printed Name of Authorized Representative: \_\_\_\_\_

Relationship of Authorized Representative: \_\_\_\_\_

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

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

Printed Name of Signing Official: \_\_\_\_\_

**NEW MEXICO DEPARTMENT OF TRANSPORTATION  
TRANSIT AND RAIL DIVISION**

**NONDISCRIMINATION ASSURANCE AGREEMENT  
FOR  
FEDERAL TRANSIT ADMINISTRATION SUBRECIPIENTS**

**INTRODUCTION AND INSTRUCTIONS:**

Please read the entire Agreement before completing, and do not change or add to the wording of the Agreement. The Agreement is incorporated into and becomes a material part of your contract with NMDOT, and Subrecipients are responsible for complying with the requirements contained therein.

On behalf of this Agreement, the **CITY OF HOBBS**; hereinafter referred to as "**Subrecipient**" assures that:

1. Subrecipient will comply with the following laws, regulations, and requirements so that no person in the United States will be denied the benefits of, or otherwise be subjected to discrimination in, any U.S. DOT or FTA assisted program or activity (particularly in the level and quality of transportation services and transportation-related benefits) based on race, color, national origin, religion, sex, disability, or age including:

- a. Federal transit laws, specifically 49 U.S.C. § 5332 (prohibiting discrimination based on race, color, religion, national origin, sex (including gender identity), disability, age, employment, or business opportunity),
- b. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d,
- c. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (prohibiting discrimination based on race, color, religion, sex, (including gender identity and sexual orientation) or national origin,
- d. Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs,
- e. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., f. U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25,
- g. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, et seq.,
- h. The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.,
- i. U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR part 21,
- j. U.S. DOT regulations, specifically 49 CFR parts 27, 37, 38, and 39, and
- k. Any other applicable federal statutes that may be signed into law, federal regulations that may be issued, or federal requirements that may be imposed.

2. Subrecipient will comply with federal guidance implementing federal nondiscrimination laws, regulations, or requirements, except as FTA determines otherwise in writing.

## 3. As required by 49 CFR § 21.7:

a. Subrecipient will comply with 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 in the manner that:

- (1) Subrecipient implements its Award,
- (2) Subrecipient undertakes property acquisitions, and
- (3) Subrecipient operates all parts of its facilities, as well as its facilities operated in connection with its Award.

b. This assurance applies to its Award and to all parts of its facilities, as well as its facilities used to implement its Award.

c. Subrecipient will promptly take the necessary actions to carry out this assurance, including the following:

- (1) Notifying the public that discrimination complaints about transportation-related services or benefits may be filed with U.S. DOT or FTA Headquarters Office of Civil Rights, and
- (2) Submitting information about its compliance with these provisions to U.S. DOT or FTA upon their request.

d. If Subrecipient transfers U.S. DOT or FTA assisted real property, structures, or improvements to another party, any deeds and instruments recording that transfer will contain a covenant running with the land assuring nondiscrimination:

- (1) While the property is used for the purpose that the federal assistance is extended, or
- (2) While the property is used for another purpose involving the provision of similar services or benefits.

e. The United States has a right to seek judicial enforcement of any matter arising under:

- (1) Title VI of the Civil Rights Act, 42 U.S.C. § 2000d,
- (2) U.S. DOT regulations, 49 CFR part 21, or
- (3) This assurance.

f. Subrecipient will make any changes in its Title VI implementing procedures, as U.S. DOT or FTA may request, to comply with:

- (1) Title VI of the Civil Rights Act, 42 U.S.C. § 2000d,
- (2) U.S. DOT regulations, 49 CFR part 21, and
- (3) Federal transit law, 49 U.S.C. § 5332.

g. Subrecipient will comply with applicable federal guidance issued to implement federal nondiscrimination requirements, except as FTA determines otherwise in writing.

h. Subrecipient will extend the requirements of 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 to each Third Party Participant, including any:

- (1) Subrecipient,
- (2) Transferee,
- (3) Third Party Contractor or Subcontractor at any tier,
- (4) Successor in Interest,
- (5) Lessee, or
- (6) Other Participant in its Award, except FTA and the Applicant (and later, the Recipient).

i. Subrecipient will include adequate provisions to extend the requirements of 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 to each third party agreement, including each:

- (1) Subagreement at any tier,
- (2) Property transfer agreement,
- (3) Third party contract or subcontract at any tier,

- (4) Lease, or
- (5) Participation agreement.

j. The assurances you have made on your behalf remain in effect as long as FTA determines appropriate, including, for example, as long as:

- (1) Federal assistance is provided for its Award,
- (2) Subrecipient property acquired or improved with federal assistance is used for a purpose for which the federal assistance is extended, or for a purpose involving similar services or benefits,
- (3) Subrecipient retains ownership or possession of its property acquired or improved with federal assistance provided for its Award,
- (4) Subrecipient transfers property acquired or improved with federal assistance, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits, or
- (5) FTA may otherwise determine in writing.

4. As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR part 27, specifically 49 CFR § 27.9, and consistent with 49 U.S.C. § 5332, you assure that:

a. Subrecipient will comply with the following prohibitions against discrimination based on disability listed below in subsection 4.b of this Category 01.D Assurance, of which compliance is a condition of approval or extension of any FTA assistance awarded to:

- (1) Construct any facility,
- (2) Obtain any rolling stock or other equipment,
- (3) Undertake studies,
- (4) Conduct research, or
- (5) Participate in any benefit or obtain any benefit from any FTA administered program.

b. In any program or activity receiving or benefiting from federal assistance that U.S. DOT administers, no qualified individual with a disability will, because of his or her disability be:

- (1) Excluded from participation,
- (2) Denied benefits, or
- (3) Otherwise subjected to discrimination.

**AFFIRMATION OF APPLICANT**

Name of Applicant: \_\_\_\_\_

Printed Name of Authorized Representative: \_\_\_\_\_

Relationship of Authorized Representative: \_\_\_\_\_

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

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

Printed Name of Signing Official: \_\_\_\_\_



**CITY OF HOBBS**  
 COMMISSION STAFF SUMMARY FORM  
 MEETING DATE: September 16, 2019

**SUBJECT:** RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF HOBBS & THE HOBBS MUNICIPAL SCHOOLS REGARDING MIDDLE SCHOOL ATHLETIC PROGRAMS.

DEPT. OF ORIGIN: PARKS & RECREATION  
 DATE SUBMITTED: September 10, 2019  
 SUBMITTED BY: Doug McDaniel, Parks & Recreation Director

**SUMMARY:**

Starting in 1999, the City of Hobbs funded a community basketball program, which was operated by the Hobbs Municipal Schools. Prior to that date, the City both operated and funded the league. The Middle School Athletic Program has since been expanded to include basketball, football and volleyball for 6<sup>th</sup> and 7<sup>th</sup> grade students.

The Hobbs Municipal Schools will use New Mexico Activities Association certified coaches for these programs and will provide documentation of such training to the City of Hobbs. The Hobbs Municipal Schools will also provide a report of activities and participation, and the City has the right to request and/or examine these records as provided in the agreement.

Last year, this (free) program provided activities for approximately 350 girls and 450 boys.

**Fiscal Impact:**


Reviewed By:   
 Finance Department

\$75,000 budgeted in FY 20 budget in Recreation line item 01-0330-42601 (Professional Services).

**Attachments:**

- 1) Resolution authorizing agreement
- 2) Professional Services Agreement

**Legal Review:**

Approved As To Form:   
 City Attorney

**Recommendation:**

Approve Resolution authorizing the 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. 6854

A RESOLUTION APPROVING AN AGREEMENT  
BETWEEN THE CITY OF HOBBS AND THE HOBBS MUNICIPAL SCHOOLS  
REGARDNG MIDDLE SCHOOL ATHLETIC PROGRAMS

WHEREAS, beginning in 1999 the City of Hobbs has funded a community basketball program which was operated by the Hobbs Municipal Schools; and

WHEREAS, the Middle School Athletic Program has since expanded to include basketball, volleyball and football programs for 6<sup>th</sup> and 7<sup>th</sup> grade students; and

WHEREAS, the Hobbs Municipal Schools will use New Mexico Activities Association certified coaches for these programs and will provide documentation of such training to the City of Hobbs; and

WHEREAS, the Hobbs Municipal Schools will also provide a report of activities and participation, and the City has the right to request and/or examine these records as provided in the Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO that the Mayor be and hereby is, authorized and directed to execute this Professional Services Agreement between the City of Hobbs and the Hobbs Municipal Schools, a copy of which is attached hereto and incorporated herein.

PASSED, ADOPTED AND APPROVED this 16<sup>th</sup> day of September, 2019.

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

ATTEST:

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

## PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into on the \_\_\_ day of \_\_\_\_, 2019, by and between the CITY OF HOBBS, NEW MEXICO, a municipal corporation, (hereinafter referred to as "CITY") and the local School Board of Hobbs Municipal School District, (hereinafter referred to as "SCHOOLS").

NOW, THEREFORE, THE PARTIES HERETO HEREBY DO COVENANT AND AGREE AS FOLLOWS:

### I.

SCHOOLS shall operate football, volleyball, and basketball programs for 6<sup>th</sup> and 7<sup>th</sup> grade students (hereinafter referred to as "Middle School Athletic Program"). SCHOOLS shall perform the necessary services toward promoting these activities in the community, and such services shall include, but not be limited to, the following:

- A. Provide facilities to operate the Middle School Athletic Program.
- B. Provide necessary equipment as needed to fulfill requirements of the Middle School Athletic Program. This includes, but is not limited to employee uniforms, balls, helmets, jerseys, pants, protective equipment, whistles and awards associated with the program. Equipment shall be the property of SCHOOLS.
- C. Hire and maintain a program coordinator and adequate staff to service the Middle School Athletic Program. Program coordinator and staff shall be employees of SCHOOLS and shall not be employees of CITY and are not entitled to any City of Hobbs benefits, including, but not limited to, insurance, leave, worker's compensation, and/or retirement.
- D. Design and place news releases and advertising in the appropriate media, naming CITY as co-sponsor.
- E. Maintain daily records of activities and the number of participants in the program and submit a report of actual expenses at the conclusion of the program.
- F. Coordinate with the Parks and Recreation Department on an as needed basis on any issues arising from program.
- G. Trash and general cleanliness of the facility shall be the sole responsibility of the SCHOOLS. Concession stands, restroom facilities, bleachers and other gym amenities shall be operated and maintained by the SCHOOLS.
- H. Ensure that all coaches for all football, basketball and volleyball teams are New Mexico Activities Association certified coaches and SCHOOLS shall provide

documentation of such certification for all coaches to the CITY. SCHOOLS shall also ensure all coaches and associated staff receive regular training related to safety of all participants.

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

J. Provide the program free of charge to all participants, excluding equipment deposits.

II.

CITY shall not be obligated to expend funds in excess of **Seventy-five Thousand Dollars (\$75,000.00)** during the term of this Agreement. The term of this Agreement is one (1) year, commencing September 16, 2019, and terminating June 30, 2020.

CITY agrees to pay SCHOOLS for approved and accepted expenses in connection with the Middle School Athletic Program, not to exceed **Seventy-five Thousand Dollars (\$75,000.00)** for the term of this Agreement.

III.

SCHOOLS agree to expend, at a minimum, an amount equal to the amount expended by CITY under this agreement, on improvements to facilities that are used jointly by both SCHOOLS and CITY such as Hobbs High School Tennis Courts, Veterans Memorial Baseball/Softball Complex and others during the term of this agreement.

SCHOOLS agree to maintain documentation regarding the amount expended by SCHOOLS on improvements to facilities that are used jointly by both SCHOOLS and CITY and SCHOOLS further agree to provide said documentation to CITY in a timely manner.

SCHOOLS and CITY shall agree on each project, the scope of the project, and the details of the improvements to be made to the facilities that are used jointly by both SCHOOLS and CITY prior to any expenditure of money by SCHOOLS under this agreement.

SCHOOLS shall have the exclusive right to implement programs as deemed necessary. As such, SCHOOLS shall be solely responsible for any actions, inactions, or potentially tortious conduct of its personnel involved with implementing the sports programs contemplated herein.

#### IV.

SCHOOLS agree to hold CITY free and harmless from any costs determined ineligible by proper audit and SCHOOLS will not enter into any obligation which purports to be binding on CITY in any manner.

At such times and in such form as the City Manager may require, there shall be furnished to CITY such statements, records, reports, data and information as CITY may request pertaining to matters covered by this Agreement. Furthermore, at any time during normal business hours and as often as CITY may deem necessary, there shall be made available to CITY for examination, all records maintained by SCHOOLS with respect to all matters covered by this Agreement; any requested excerpts of transcripts from such records and audits of all data relating to all matters covered by this Agreement subject to the limitations set out above.

SCHOOLS covenants and agrees that it will hold and save CITY harmless from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person(s) or damage to property arising out of this Agreement of which are not a result of CITY actions or inactions.

SCHOOLS shall treat all participants with respect and will not subject anyone to discrimination or harassment because of the person's race, color, sexual orientation, national origin, age, religion, gender, gender identity, or disability.

SCHOOLS shall maintain general liability insurance in the minimum amount of \$1,000,000.00 covering any liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person(s) or damage to property during the course of execution of this agreement. SCHOOLS shall cause CITY to be named as an additional insured on said policy and shall provide a copy of said coverage to CITY. The parties agree said SCHOOLS policy shall be primary coverage in the event of a claim against SCHOOLS and CITY.

If any part or portion of this Agreement shall be in violation of the laws or Constitution of New Mexico, only such part or portion hereof shall be invalidated thereby, and any monies paid by CITY thereunder shall be repaid to it by SCHOOLS, but all other portions hereof shall remain valid and enforceable.

This Agreement shall not be effective without the written approval of the Hobbs City Commission and the Hobbs ISD School Board.

This Agreement shall continue in force for one (1) year, or until the date of expiration as outlined herein, whichever is sooner. This Agreement may be canceled by either party after giving sixty (60) days notice to the other. Such notice shall be in writing and shall be considered given when delivered to the Chief Administrative Officer of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written, effective as aforesaid.

THE CITY OF HOBBS, NEW MEXICO

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
EFREN CORTEZ, City Attorney

HOBBS MUNICIPAL SCHOOL DISTRICT

By: \_\_\_\_\_  
GARY EIDSON,  
School Board President

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Gary Eidson, Hobbs Municipal School District School Board President

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

My Commission Expires:

\_\_\_\_\_



# CITY OF HOBBS

## COMMISSION STAFF SUMMARY FORM

MEETING DATE: September 16, 2019

**SUBJECT: Memorandum of Agreement between NM Energy, Minerals, and Natural Resources Department and the City of Hobbs**

DEPT. OF ORIGIN: Fire Department  
DATE SUBMITTED: September 11, 2019  
SUBMITTED BY: Barry Young, Deputy Fire Chief

**Summary:**

The NM Energy, Minerals, and Natural Resources Department (EMNRD) has entered into a cooperative agreement with the Department of Energy (DOE) to implement the Waste Isolation Pilot Plant (WIPP) transportation safety program. Through this cooperative agreement, the EMNRD is responsible for managing funds between the State of New Mexico and the DOE Carlsbad Field Office. The MOA provides the City of Hobbs Fire Department access to funds in the amount of \$7,000 which is provided through the Cooperative Agreement. The City of Hobbs Fire Department, through the MOA, would be responsible for developing and implementing a hazardous response training program, provide compliant awareness/operations/technician level training for its personnel, and provide training as it applies to an incident involving a WIPP shipment. The terms of the MOA are contingent upon the NM Legislature, City Council, and DOE granting sufficient appropriation and authorization.

**Fiscal Impact:**


Reviewed By:   
Finance Department

City will be reimbursed quarterly for costs incurred as outlined in the MOA in an amount not to exceed \$7,000.

**Attachments:**

- 1. Resolution
- 2. Memorandum of Agreement

**Legal Review:**

Approved As To Form:   
City Attorney

**Recommendation:**

Approval of Memorandum of Agreement between NM energy, Minerals, and Natural Resources Department and the City of Hobbs.

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. 6855

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT  
BETWEEN NM ENERGY, MINERALS, AND NATURAL  
RESOURCES DEPARTMENT AND THE CITY OF HOBBS

WHEREAS, the NM Energy, Minerals and Natural Resources Department (EMNRD) has entered into a cooperative agreement with the Department of Energy (DOE) to implement the Waste Isolation Pilot Plant (WIPP) transportation safety program:  
and

WHEREAS, through this cooperative agreement the EMNRD is responsible for managing funds between the State of New Mexico and the DOE Carlsbad Office field office; and

WHEREAS, the MOA provides the City of Hobbs Fire Department access to funds in the amount of \$7,000.00 which is provided through the cooperative agreement; and

WHEREAS, the City of Hobbs Fire Department would be responsible for developing and implementing a hazardous response training program, provide compliant awareness/operation/technician level training for its personnel and provide training as it applies to an incident involving a WIPP shipment.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be and hereby is authorized and directed to execute on behalf of the City of Hobbs this resolution approving the Memorandum of Agreement between NM Energy, Minerals and Natural Resources Department and the City of Hobbs.

PASSED, APPROVED AND ADOPTED this 16<sup>th</sup> day of September, 2019.

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

ATTEST:

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



**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
AND THE CITY OF HOBBS**

**THIS MEMORANDUM OF AGREEMENT (MOA)** is entered into by and between the State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD) and the City of Hobbs (City).

**WHEREAS**, EMNRD is responsible for providing staff support to the New Mexico Radioactive Waste Consultation Task Force (Task Force) authorized pursuant to NMSA 1978, § 74-4A-1 through 74-4A-14;

**WHEREAS**, the U.S. Department of Energy (DOE) has entered into a Cooperative Agreement with EMNRD to implement the Waste Isolation Pilot Plant (WIPP) transportation safety program;

**WHEREAS**, EMNRD is responsible for management of funds provided under the Cooperative Agreement DE-EM0004167 (Cooperative Agreement) (Attachment 1) between the State of New Mexico and the U.S. Department of Energy Carlsbad Field Office (DOE-CBFO);

**WHEREAS**, EMNRD is responsible for meeting the requirements of DOE's Special Terms and Conditions for Financial Assistance Awards (Special Terms and Conditions) (Attachment 2);

**WHEREAS**, in the approved budget (Approved Budget) (Attachment 3) of the Cooperative Agreement between the State of New Mexico and DOE, EMNRD is provided funding to assure that appropriate emergency response personnel in state, local, and tribal governments and emergency response organizations along the New Mexico WIPP routes are properly and adequately equipped to safely and effectively respond to, abate and control, and assist in the mitigation of a WIPP transportation emergency;

**WHEREAS**, DOE has agreed to provide funds to off-set costs associated with a hazardous materials response to a WIPP transportation event, of which up to \$7,000.00 is allocated under this MOA for the City of Hobbs Fire Department;

**WHEREAS**, the City does not have an existing mechanism to receive funding from DOE;

**WHEREAS**, the purpose of this MOA is to provide the City access to the funds provided under the Cooperative Agreement;

**WHEREAS**, EMNRD seeks to use its experience in oversight of the Cooperative Agreement to support management of those funds provided within the Approved Budget; and

**WHEREAS**, EMNRD and the City desire to enter into this Agreement for administrative efficiency so that the funds can be expended through a single program;

**NOW, THEREFORE, THE PARTIES AGREE** as follows:

1. **EMNRD shall:**

A) provide the City with a statement of annual funding prior to June 1 of each state Fiscal Year;

B) provide management of the funds allocated under the Approved Budget to be provided to the City and to be used by the City of Hobbs Fire Department and reimburse the City for costs incurred under this MOA in an amount not to exceed seven thousand dollars (\$7,000.00), including New Mexico Governmental Gross Receipts Taxes, if applicable, and any travel necessary, for each fiscal year this MOA is in effect, subject to expected approval of the appropriate budget amounts when EMNRD submits its budget to DOE each fiscal year. Upon notification by EMNRD of available Fiscal Year funding, the City and EMNRD shall jointly develop projects that enhance the response to a WIPP transportation event;

C) reimburse the City quarterly, for expenses arising from the MOA in accordance with the Cost Principles for Local Governments located in 2 Code of Federal Regulations (C.F.R.) 200;

D) render assistance in the development of a hazardous materials and radiological response program;

E) determine if the City's project justifications and workplans are sufficient to enhance the response capability as it relates to a WIPP transportation event prior to project start, and review proposed expenditures for funding eligibility;

F) review quarterly progress reports as required under the Special Terms and Conditions; and

G) provide quarterly progress and financial reports to the DOE.

2. **The City shall:**

A) comply with the established rules and regulations in the Cooperative Agreement;

B) submit in writing to EMNRD WIPP program staff a project justification for approval on each project, and have written approval prior to expending

any funds within this MOA to include all equipment purchases, proposed travel, and training-related expenses;

C) successfully implement, in all respects, the activities outlined below:

1) develop and implement a city-wide hazardous materials emergency response training program, including response protocols (to include fire fighters, emergency medical service providers, law enforcement officers, dispatchers, emergency managers, and volunteers, and others as appropriate) that enhances the response capability of emergency responders as it pertains to hazardous materials without negatively impacting other areas of response training;

2) use funds to provide OSHA 29 C.F.R. 1910.120 (Attachment 4) compliant awareness level training for personnel that may come upon an incident while performing their normal duties; OSHA 29 C.F.R. 1910.120 compliant operations level training for responders who will likely respond to an incident to take defensive actions to protect nearby persons, property, or the environment; and OSHA 29 C.F.R. 1910.120 compliant technician level training for responders who will be likely to respond to releases or potential releases for the purpose of stopping the release;

3) provide training on instruction on the State Hazardous Materials Emergency Response Plan (Attachment 5) and emergency response as it applies to an incident involving a WIPP shipment;

4) use funds for training-related expenses that enhance the WIPP transportation safety program, including course tuition, course materials, training aids, travel and per diem for fire services related activity, and instructor fees that are incurred for the purpose of enhancing its hazardous materials emergency response capability;

5) demonstrate proficiency as it pertains to hazardous materials emergency response through mutually agreed upon participation in drills or exercises conducted by the Task Force. Funds allocated under this MOA may be used to support the local jurisdiction in preparation of and during Task Force training and exercises. Such expenses intended for WIPP training, drills, and exercises will be to the City's Fire Chief by the Department of Homeland Security and Emergency Management (DHSEM) through a separate agreement between DHSEM and the City.

6) submit detailed statements accounting for all services performed, goods obtained, and expenses incurred to EMNRD for reimbursement. If EMNRD finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of (i) written notice from the City that payment is requested, and (ii) all supporting documentation, EMNRD shall provide the City a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps the City may take to provide remedial action. Upon EMNRD's certification that the statement, supporting documentation, services, goods, or expenses have been received and accepted, EMNRD shall tender payment to the City within 30

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, EMNRD shall not incur late charges, interest, or penalties, for failure to make payment within the time specified herein;

7) provide written quarterly project performance reports to EMNRD in accordance with the Cooperative Agreement, beginning with the first report due September 30, 2019 and on the last day of the month ending the quarter thereafter throughout the duration of this MOA, and until the completion of all projects, and all funds are expended in the approved Fiscal Year;

8) provide written quarterly financial reports on the projects to EMNRD with the first report due September 30, 2019 and on the last day of the month ending the quarter thereafter throughout the duration of this MOA, and until the completion of all projects, and all funds are expended in the approved fiscal year;

9) pay all costs of the project(s) over the amount set forth in this MOA;  
and

10) maintain all equipment within the fire service organization for which it was purchased. The City may only transfer equipment purchased under this MOA upon EMNRD's written approval to a fire service organization that has an MOA with EMNRD for this funding.

4. **Term:** This MOA becomes effective on EMNRD's signature and shall be ongoing, unless terminated earlier terminated pursuant to Section 5, Termination, or Section 6, Appropriations, below.

5. **Termination:** Either party may terminate this MOA upon written notice delivered to the other at least 15 days prior to the intended termination date. By such termination, neither party may nullify or avoid any obligation required to have been performed prior to termination.

6. **Appropriations:** This MOA's terms are contingent upon the New Mexico Legislature, City Council, and DOE granting sufficient appropriation and authorization. If sufficient appropriation or authorization is not granted, either party may terminate this MOA, or in the alternative suspend performance pending approval of sufficient appropriation or authorization upon written notice from one party to the other. Either party's decision as to whether sufficient appropriations are available shall be final, binding and accepted by the other.

7. **Subcontracting**: Contractor shall not subcontract any portion of the services it performs under this Agreement or obligate itself in any manner to any third party, with respect to any rights or responsibilities under this Agreement, without EMNRD's prior written approval.

A. Contractor is required to provide EMNRD with evidence of competitive procurement for any subcontract, including records of advertisement of bid, proposals received and methods to select each subcontractor

B. Any subcontract shall include provisions necessary to allow Contractor to meet its obligations and requirements under this Agreement.

8. **Strict Accountability for Receipts and Disbursements**:

A. The City shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EMNRD, the Department of Finance and Administration, the New Mexico State Auditor, and DOE upon request, and shall maintain all such records for six years after the funding for each project has expired or has been terminated.

B. If the City receives \$750,000 or more in federal funding from all sources in the aggregate in a fiscal year, City's financial records involving services and procurement under this MOA shall be audited annually pursuant to all federal, state and local government audit requirements, and in accordance with the Single Audit Act Amendments of 1996, 2 C.F.R. 200, Subpart F – Audit Requirements, OMB Circular Compliance Supplement and Government Auditing Standards, as prescribed by the Single Audit Act of 1984, or any subsequent OMB Circular. Contractors who do not meet the \$750,000 audit threshold (Tier 7), must complete the State of New Mexico – Office of the State Auditor Certification Form for Tier 1 and Tier 2, or the Office of the State Auditor Agreed Upon Procedures (Tiers 3-6) in accordance with the Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, and 2.2.2.16 NMAC, Annual Financial Procedures Required for Local Public Bodies with Annual Revenues Less than Five Hundred Thousand Dollars. In order to comply with state audit requirements, City shall have one of the above-mentioned Forms or Agreed Upon Procedures on file with the Office of the State Auditor. City shall provide EMNRD with a copy of the independent financial audit, either in hard copy format or on disk, no more than 45 days after the audit's completion for each fiscal year this Agreement is in effect.

9. **Disposition, Division, or Distribution of Property; Return of Surplus Funds**: Upon expiration or termination of this MOA, if either party has property or funds in its possession belonging to the other, it shall return the property or funds in proportion to the parties' original contribution.

10. **Equal Opportunity Compliance**: The City agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with

all such laws of the State of New Mexico, the City 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, 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 the City is found not to be in compliance with these requirements during the life of this MOA, the City agrees to take appropriate steps to correct these deficiencies.

11. **Compliance with Funding Source Conditions:** the City shall comply with all applicable state and federal statutes and rules and regulations the funding source imposes.

12. **Insurance Coverage:** By signing this MOA, Contractor certifies that activities described in Section 1 above are covered by insurance as specified within this Section, secured in accordance with any method allowed by applicable law, including self-insurance, pooling of self-insured reserves, or insurance provided by a third party. City shall maintain continuous insurance coverage as specified below of the activities described in Section 1 above so long as this MOA is in effect. Failure to maintain such coverage is reason for this MOA's immediate termination. City shall notify EMNRD prior to cancellation or expiration of any insurance required under this MOA.

A. Worker's Compensation protection that complies with the requirements of the New Mexico Workers' Compensation Act, NMSA 1978, § 52-1-1, *et seq.*, if applicable. If City fails to comply with the Workers' Compensation Act and applicable rules when required to do so, EMNRD may terminate this MOA.

B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, § 41-4-19, as it may be amended from time to time.

13. **Liability:** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this MOA. Any liability incurred with this MOA is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended.

14. **Amendment:** This MOA shall not be altered, changed, or amended except by written instrument executed and approved by the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have herein below executed this Agreement.

**STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES  
DEPARTMENT**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Cabinet Secretary or Designee

**CITY OF HOBBS**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Printed Name and Title