

Commission Meeting Agenda



Mayor

Samuel D. Cobb

City Commission

R. Finn Smith – District 1

Christopher R. Mills – District 2

Larron B. Fields – District 3

Joseph D. Calderón – District 4

Dwayne Penick – District 5

Don R. Gerth – District 6

City Manager

Manny Gomez

September 28, 2022



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

Wednesday, September 28, 2022 – 6:00 p.m.

Sam D. Cobb, Mayor

R. Finn Smith
Commissioner – District 1

Joseph D. Calderón
Commissioner – District 4

Christopher R. Mills
Commissioner – District 2

Dwayne Penick
Commissioner – District 5

Larron B. Fields
Commissioner – District 3

Don R. Gerth
Commissioner – District 6

A G E N D A

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

CALL TO ORDER AND ROLL CALL

INVOCATION AND PLEDGE OF ALLEGIANCE

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.)*

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

1. Resolution No. 7257 – Authorizing the Mayor to Execute an Acknowledgement and Approval Form Relating to General Liability Insurance Renewal for 2022-2023 *(Nicholas Goulet, Human Resources Director; Selena Estrada, Risk Manager; and Daniels Insurance Agency)*
2. Resolution No. 7258 – Authorizing the Mayor to Execute an Agreement with S & H Enterprises, Inc., to Supply Industrial Process Water *(Valerie Chacon, Deputy City Attorney)*

COMMENTS BY CITY COMMISSIONERS, CITY MANAGER

3. Next Meeting Date:

- City Commission:
Regular Meeting – ***Monday, October 3, 2022, 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) 397-9200 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.



ACTION ITEMS



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: 09-28-2022

SUBJECT: A Resolution Authorizing the Mayor to Execute an Acknowledgement and Approval Form Relating to General Liability Insurance Renewal for 2022-2023.

DEPT. OF ORIGIN: Human Resource/Risk Management
DATE SUBMITTED: 09-22-2022
SUBMITTED BY: Nicholas Goulet/Selena Estrada

Summary:

General Liability coverages expire on October 1, 2022. Daniels insurance has provided quotes to continue coverages effective October 1, 2022 through September 30, 2022. Based on the quotes provided, coverages offered and proposed terms, recommendation is made to bind coverage as proposed:

- Commercial Property: Liberty Mutual Fire Insurance Company
Auto Physical Damage: Liberty Mutual Fire Insurance Company
Auto/General Liability: APR - Homesite Insurance Company
Law Enforcement Liability: QBE Specialty Insurance Company
Law Enforcement Excess: Kinsale Insurance Company
Cyber Liability: Axis Insurance Company
Crime: The Hartford Fire Insurance Company
Airport Liability: ACE Property and Casualty Insurance Company
Public Officials/Employment Practices: Indian Harbor Insurance Company
Public Officials/Employment Practices Excess: Kinsale Insurance Company

Fiscal Impact:

Reviewed By: [Signature]
Finance Department

2022/2023 Budget is set as follows:
Required Insurance (Actual Cost): \$1,443,861.58
Required Insurance (Budgeted): \$1,572,400.00
Fees (Daniels Insurance/CCMSI): \$119,003.69
Claims By Others: \$244,064.47
Total Budgeted: \$1,935,468.16

Attachments:

Legal Review:

Approved As To Form: [Signature]
City Attorney

Recommendation:

Approved For Submittal By:

[Signature] Department Director
[Signature] 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. 7257

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AND APPROVE THE
GENERAL LIABILITY INSURANCE RENEWAL FOR 2022-2023

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be, and hereby is authorized to execute on behalf of the City of Hobbs, the renewal of General Liability Insurance for 2022-2023 and instructing Daniels Insurance to bind coverage selected by the City of Hobbs.

PASSED, ADOPTED AND APPROVED this 28th day of September, 2022.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: September 28, 2022

SUBJECT: A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH S&H ENTERPRISES, INC., TO SUPPLY INDUSTRIAL PROCESS WATER

DEPT. OF ORIGIN: Legal Department
DATE SUBMITTED: September 23, 2022
SUBMITTED BY: Valerie S. Chacon, Deputy City Attorney

Summary:

- City proposes to execute an agreement with S & H Enterprises, Inc., to sell reclaimed effluent water in the amounts of a minimum of two million (2,000,000) gallons per day for the Summer Months (May, June, July, August) and a minimum of one million (1,000,000) gallons per day for the Winter Months (September, October, November, December, January, February, March, April).
S & H shall pay City a total of \$9,000.00 per month for the term of this agreement.
City is not obligated under the terms of this Agreement to sell, but may sell, any effluent water above the amounts outlined above. Purchaser must submit a request to City for any effluent water above the amounts outlined above. In the event Purchaser seeks to purchase more effluent water than is outlined above, Purchaser may do so pursuant to the Paragraph 1 of the contract:
City reserves right to limit delivery of effluent water to the purchaser, at quantities below the two million (2,000,000) gallons per day in the summer months and one million (1,000,000) gallons per day for the Winter Months, if City Commission votes in the affirmative to reduce delivery, and if no other effluent water is available for City facilities, in this event, cost incurred to the purchaser will be set at \$.10 per 1,000 gallons per day, for the that delivery
The term of this agreement is for five (5) years, renewable for one additional five (5) year term.

Fiscal Impact:

Reviewed By: Finance Department

S&H will pay the City of Hobbs the contract sum of \$9,000.00 per month during the term of this agreement and an additional price of \$0.10 per 1,000 gallons for amounts in excess of the initial two million (2,000,000) gallons per day for the Summer Months (May, June, July, August)

Attachments:

Resolution Authorizing the Mayor to Execute an Agreement with S&H Enterprises, Inc., to supply Industrial Process Water

Legal Review:

Approved As To Form: EACC City Attorney

Recommendation:

The Commission should consider approval of this matter.

Approved for Submittal By:

EACC Department Director

City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 7258

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH
S&H ENTERPRISES, INC., TO SUPPLY INDUSTRIAL PROCESS WATER

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that Mayor and City Manager are hereby authorized to execute an Agreement to supply industrial process water to S&H Enterprises, Inc., at a point east of the City's twenty (20) inch pipeline on the Eunice Highway, upon the terms and conditions set forth in said Agreement, a copy of which is attached hereto and incorporated herein.

PASSED, ADOPTED AND APPROVED this 28th day of September, 2022.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



**CITY OF HOBBS
INDUSTRIAL PROCESS WATER
PURCHASE AGREEMENT**

THIS AGREEMENT is made the 19TH day of September, 2022, by and between the City of Hobbs, New Mexico, a municipal corporation located in Lea County, New Mexico (hereinafter referred to as "City") and S&H Enterprises, Inc. a New Mexico corporation with a principle place of business of 1400 W. Bender Blvd., Hobbs, New Mexico 88240 (hereinafter referred to as "Purchaser").

WHEREAS, the City obtains its potable water from groundwater wells located throughout the City and the outlying area; and

WHEREAS, groundwater stores in the Ogallala Aquifer continue to be exhausted without significant recharge; and

WHEREAS, the City owns and operates the City of Hobbs Wastewater Reclamation Facility located at 1301 S. 5th St. which meets State of New Mexico regulatory requirements for effluent reuse; and

WHEREAS, in order to conserve the limited supply of water, the City continues to move forward to expand its Effluent Reuse Program; and

WHEREAS, the City's Effluent Reuse Program targets those users that are immediately prepared to receive effluent water for irrigation, construction and commercial purposes; and

WHEREAS, the City has continued to seek purchasers for effluent water and enter into purchase agreements with the purchasers; and

NOW THEREFORE, for and in consideration of the mutual covenants, promises and agreements herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. Price and Quantity.

City sells to Purchaser and Purchaser buys from City, an effluent of industrial process water from waste water produced by the City's Wastewater Reclamation Facility ("effluent water") in an amount as follows:

A minimum of two million (2,000,000) gallons per day for the Summer Months (May, June, July, August) and a minimum of one million (1,000,000) gallons per day for the Winter Months (September, October, November, December, January, February, March, April).

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Purchaser shall pay City a total of \$9,000.00 per month for the term of this agreement. The monthly purchase price shall be payable on or before the fifteenth day of each month.

City is not obligated under the terms of this Agreement to sell, but may sell, any effluent water above the amounts outlined above. Purchaser must submit a request to City for any effluent water above the amounts outlined above. In the event Purchaser seeks to purchase more effluent water than is outlined above, Purchaser may do so pursuant to the following amounts and rates:

An indeterminate amount in excess of the initial two million (2,000,000) gallons per day at a price of \$0.10 per 1,000 gallons for the Summer Months (May, June, July, August) and an indeterminate amount in excess of the initial one million (1,000,000) gallons per day at a price of \$0.00 per 1,000 gallons for the Winter Months (September, October, November, December, January, February, March, April).

It is specifically understood by the Parties that at no time will the City provide Purchaser with water from its current distribution system and shall only be required to provide effluent water from the City's Wastewater Reclamation Facility. The effluent water contemplated herein is not approved or accepted for human consumption. The City reserves right to limit delivery of effluent water to the purchaser, at quantities below the two million (2,000,000) gallons per day in the summer months and one million (1,000,000) gallons per day for the Winter Months, if City Commission votes in the affirmative to reduce delivery, and if no other effluent water is available for City facilities. Upon this unexpected occurrence, and in fact, the Purchaser receives less than the minimum amount of water delivery as stated above, the cost incurred to the purchaser will be set at \$.10 per 1,000 gallons per day, for the that delivery.

2. Term and Termination.

This Agreement shall commence upon execution by both Parties. The initial term of this Agreement is for: five (5) years from the date of execution. In partial consideration for amounts paid under this Agreement, City does grant Purchaser, its successors and assignees the first option to renew this Agreement. The renewal shall be for a term of five (5) years and shall be subject to the same terms and conditions set forth in this Agreement for the initial term, except as may be provided otherwise in this Agreement with regard to price of effluent water ("renewal term"). Purchaser may exercise this option by giving City written notice at least ninety (90) days prior to the expiration of the initial term.

Commencing on the date of the renewal term, if any, which is five (5) years after the commencement of this Agreement, the rates outlined in Section 1 above shall be automatically adjusted by a percentage equal to the annual percent change in the average Consumer Price Index for All Urban Consumers: Water Sewer Trash ("CPI"), as published by the Bureau of Labor Statistics, for the 12-month period ending the previous December 31 (compared to the average CPI for the next previous 12-month period ending December 31). At least thirty (30) days prior to the commencement of the renewal term, City shall notify Purchaser of the CPI adjustment to take effect on the commencement of the renewal term and shall provide Purchaser with its computations therefor. Adjustments to the rates shall be made in units of one cent

(\$0.01). Fractions less than one cent (\$0.01) shall not be considered when adjusting. The CPI adjustment made prior to the commencement of the renewal term shall be the rate for the remainder of the renewal term.

City and Purchaser understand that City's primary obligation is to provide water to the residents of Hobbs, New Mexico, and as such, this Agreement may be terminated by City at any time with ninety (90) days' notice to Purchaser in the event City experiences: extraordinary drought wherein effluent water is needed for other City facilities and no other effluent water is available, loss of, or damage to, City's Wastewater Reclamation Facility; loss of, or damage to, City's effluent water distribution line(s) that service Purchaser; loss of, or damage to, Purchaser's infrastructure or facilities which substantially impairs City from delivering effluent water to Purchaser; or the State of New Mexico or the United States' government in any way prohibit either party from fulfilling its obligation under this Agreement.

Either party shall have the right to cancel this Agreement if for more than ninety (90) days either party is in violation of any of the terms and conditions of this Agreement or the discharge plan as issued to either party by the New Mexico Environment Department. In the event the New Mexico Environment Department does not issue a discharge plan to Purchaser, this Agreement will automatically terminate upon the unsuccessful conclusion of all of Purchaser's applicable appeals, if any.

In the event of termination of this Agreement for any reason, Purchaser shall be required to pay, at a minimum, the amount owed as of the last day of service by City. Following termination, City shall submit a final invoice to Purchaser. Purchaser shall be responsible for remitting all final amounts within thirty (30) days of receipt of said invoice.

3. Discharge Plan Required.

Purchaser shall be required to obtain a discharge plan from the New Mexico Environment Department. Deliveries under the terms of this Agreement shall only begin within thirty (30) days of the issuance of a discharge plan to Purchaser by the New Mexico Environment Department. City and Purchaser agree to and shall at all times adhere to and comply with all the requirements as mandated by the New Mexico Environment Department as it relates to the discharge plan currently or in the future granted to the City as well as the discharge plan granted to Purchaser. Purchaser agrees to provide a true and correct copy of any discharge plan as issued to Purchaser by the New Mexico Environment Department.

City agrees to provide and be responsible for laboratory analysis and preparation of test results as follows:

- A. Purchaser shall provide sampling and City shall provide, at no charge, testing of total dissolved solids (TDS), chlorides and nitrates, as set forth in the discharge plan issued to Purchaser.
- B. City, at no charge, will provide monthly testing of the effluent water as it relates to sodium content and fecal coliform counts.

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4. Delivery Points and Pressure.

Purchaser shall provide, construct, and maintain all equipment, pipeline and facilities necessary to receive the effluent water at a mutually agreeable location adjacent to City's effluent water distribution line. Purchaser shall be solely responsible for bringing their effluent water distribution system to City's effluent water distribution to ensure delivery of effluent water from City. Pressure at the point of delivery shall not be guaranteed by City. The initial tap, valve, and meter necessary to connect Purchaser's effluent distribution line to City's effluent distribution line will be determined by City and shall be provided by City at no cost to Purchaser. Any additional tap, valve, or meter requested by Purchaser for any reason, including damage to the same, shall be at Purchaser's own cost and expense and Purchaser shall be required to provide all labor, tap, valve, and meter necessary to effectuate connection to City's effluent distribution line. All work, of any kind, that in any way impacts the City's distribution line or property adjacent to the same shall be approved by the City prior to commencement of work. City may temporarily cease delivery in the event Purchaser's effluent water distribution system fails, is compromised, or otherwise presents any risk to City or City's infrastructure. Purchaser shall have a five (5) day grace period in which to repair any equipment or system problems which prevent the taking of effluent water as provided herein. If after said five (5) days Purchaser has not rectified any said defect or fails to take the quantities of effluent water as specified herein, then Purchaser will be assessed \$100 damages per day as liquidated damages.

5. Condition of Effluent Water.

It is specifically understood by the Parties that at no time will the City provide Purchaser with water from its current potable water distribution system and shall only be required to provide effluent water from the City's Wastewater Reclamation Facility. The effluent water contemplated herein is not approved or accepted for human consumption. Purchaser shall bear all responsibility and liability in any way associated with any possible human consumption of effluent water received by Purchaser from City, after receipt of the same.

6. Delivery of Possession.

City shall deliver effluent water to Purchaser utilizing the City's subsurface effluent water distribution lines. Upon transfer of effluent water from City's effluent water distribution lines to Purchaser's effluent water distribution infrastructure, Purchaser shall be deemed to have received the effluent water for purposes of this Agreement. Purchaser thereafter bears any and all responsibility or liability in any way associated with the effluent water or any resulting damages that may occur.

7. Damage to City's Infrastructure.

In the event Purchaser causes any damage whatsoever to City's infrastructure, including but not limited to, City's valves, meters, or lines, Purchaser shall be responsible for reimbursing City in full for cost of repair. Furthermore, Purchaser has an obligation to immediately notify City of all damage to City's infrastructure and take immediate measures to mitigate the resulting harm. Should Purchaser fail to immediately notify City of all damage to City's infrastructure, said

failure to notify shall serve as prima facie proof of culpability under and theory of tort or breach of contract.

If at the inception of this Lease or at any time thereafter (including any renewal) all or any part of the Leased Premises shall be damaged or destroyed through any cause attributed in any way to Lessee, other than a weather event or act of God, Lessee shall be responsible for all repairs and costs associated with the repair of the same. In making any repairs, Lessee shall first notify Lessor of the damage and provide a timeline for repairs. Lessor shall cooperate with Lessee in allowing all repairs to be made in a timely fashion. Lessee shall as soon as practical, inform Lessor of any and all damage attributed to a weather event or act of God and Lessor shall be responsible for all repairs and costs associated with the repair of the same.

8. Payment of Assessments.

Purchaser shall pay as they become due all assessments, of any kind, to the City's Utilities Department, Attn: Utilities Director. If Purchaser defaults in paying any such amounts, City may, at its sole discretion assess a late payment fee of up to 5% of the amount then due. Should the account remain unpaid for ninety (90) days or more, City may cease delivery of effluent water and may, at its sole discretion, terminate this Agreement. City also reserves the right to take all legal measures appropriate and necessary to recoup any amounts owed and any other damages that may result. Purchaser shall not pledge, in any manner, the City's performance or property as collateral or otherwise allow any liens or mortgages to attach to any portion of the City's property whatsoever.

9. Right of Entry.

City or its agent has a right to enter upon Purchaser's property to inspect City's connections, lines, or other infrastructure or to make repairs of the same. Where feasible, City shall provide Purchaser at least 48-hours advanced notice prior to entering upon Purchaser's property. In an emergency, such as a flooding or line break, City or its agent may enter the premises without securing Purchaser's prior permission but shall give Purchaser notice of entry as soon thereafter as practicable.

10. No Right to Assign.

Purchaser may not assign this Agreement for any reason. In the event Purchaser identifies a subsidiary, partner, cooperative, or any other business entity that may be better suited to fulfill Purchaser's obligations under this Agreement, City and Purchaser may mutually terminate this Agreement and waive all time requirements herein. City may, but is not required to, enter into a separate Agreement with the other business entity.

11. Duty to Insure and Indemnity.

During the term of this Agreement and any extension thereof, Purchaser shall provide coverage for liability of Purchaser and its employees, agents, officers, and assigns, and for its infrastructure and improvements. During the term of this Agreement and any extension thereof,

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Purchaser shall maintain in force a policy or policies of insurance providing comprehensive general liability coverage of not less than \$1,000,000.00 limit per occurrence, including coverage for property damage, bodily injury and wrongful death. Such insurance policy or policies shall name the City of Hobbs, its branches, agencies, instrumentalities, and public employees as additional insured. All policies contemplated herein shall be primary. Purchaser shall provide certificates of coverage evidencing compliance with this section which shall be attached to this Agreement at the time of execution. Purchaser shall notify City within ten (10) calendar days after cancellation or expiration of any required coverage. Purchaser shall indemnify and hold harmless the City of Hobbs, its agents, employees, officers, and elected officials against any and all claims in any way associated with Purchaser's business or the use of the effluent water for the same. By entering into this Agreement, Purchaser waives or disclaims any cause of action it would otherwise have pursuant to NMSA 1978, § 41-4-8. Purchaser shall notify City within ten (10) calendar days of any action at law that may be brought against Purchaser in any way associated with their use of the effluent water.

12. Amendments to be in Writing and Approved.

This Agreement shall not be altered or amended except by instrument in writing executed by both the City and Purchaser and approved by the City of Hobbs City Commission via resolution.

13. Address for Notices, Payment of Assessments, etc.

Notices required under this Agreement, assessments and payments shall be made at the following address, except as changed by written notice to the opposite party:

<p>To the CITY: City of Hobbs 200 E. Broadway Hobbs, NM 88240 (575) 397-9226 (575) 391-7876 Email-</p>	<p>To the PURCHASER:</p>	<p>S&H Enterprises, Inc. 1400 W. Bender Blvd Hobbs, NM 88240 [phone] [fax] [email]</p>
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14. Merger of Prior Agreement.

This Agreement incorporates all of the conditions, agreements and understandings between the Parties concerning the subject matter of this Agreement, and all such conditions, agreements and understandings have been merged into this written Agreement. No prior condition, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

15. Certificates and Documents Incorporated.

All certificates and documentation required by the provisions of this Agreement shall be attached to the Agreement at the time of execution, and are hereby incorporated in this written Agreement to the extent they are consistent with its terms and conditions.

Handwritten initials

16. Environmental Safety.

Purchaser warrants that the premises have undergone, if required, an environmental study the results of which show that the premises comply with all state environmental regulations. City shall disclose any and all known or suspected hazards that result from any environmental study to Purchaser prior to Purchaser taking possession of the effluent water. City shall not be held liable, in any cause of action, for hazardous conditions City was not aware of, after due diligence, at the time of transfer of the effluent water to Purchaser.

17. Notice.

The Procurement Code (NMSA 1978, §§ 13-1-28 through 13-1-199) imposes civil and misdemeanor criminal penalties for its violation. Additionally, the Hobbs Municipal Code Chapter 3 shall be adhered to at all times in negotiating and contracting by the City of Hobbs. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

18. Miscellaneous.

This Agreement shall be interpreted pursuant to the laws of the State of New Mexico. Venue and Jurisdiction shall lie exclusively in the Fifth Judicial District Court, Lea County, New Mexico.

If any provision of this Agreement shall be deemed by a court of competent jurisdiction as illegal, unenforceable, or unconstitutional, the remainder of the Agreement shall remain valid and enforceable as written.

By entering into this Agreement, the City of Hobbs in no way waives or foregoes any protections afforded under the New Mexico Tort Claims Act (NMSA 1978, § 41-4-1, et seq.) or any other theories of law that afford immunity to government agencies and their officers and employees.

[All Necessary Signatures on the Next Page]

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

ATTEST:

THE CITY OF HOBBS, NEW MEXICO

By: _____
SAM D. COBB, Mayor

By: _____
JAN FLETCHER, City Clerk

By: _____
TOBY SPEARS, Finance Director

ATTEST:

S&H ENTERPRISES, INC.

By:  _____
GARY M. SCHUBERT, President

_____ Date

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

EFREN A. CORTEZ, City Attorney