

# Commission Meeting Agenda



## *Mayor*

Samuel D. Cobb

## *City Commission*

Marshall R. Newman

Cynthia D. Calderon

Patricia A. Taylor

Joseph D. Calderón

Garry A. Buie

Don R. Gerth

## *Acting City Manager*

Manny Gomez

***September 18, 2017***



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

**Monday, September 18, 2017 - 6:00 p.m.**

Sam D. Cobb, Mayor

Marshall R. Newman  
Commissioner - District 1

Cynthia D. Calderon  
Commissioner - District 2

Patricia A. Taylor  
Commissioner - District 3

Joseph D. Calderón  
Commissioner - District 4

Garry A. Buie  
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 5, 2017, Regular Commission Meeting

**PROCLAMATIONS AND AWARDS OF MERIT**

2. Recognition of Fire Chief Manny Gomez as Recipient of the "Fire Chief of the Year Award" by the New Mexico State Fire Fighters' Association  
(Mayor Sam Cobb)

**PUBLIC COMMENTS** (For non-agenda items.)

**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.)*

None

**DISCUSSION**

3. Update on the New Mexico Hospitality Association's Regional Tourism Economic Summit Scheduled in Hobbs on September 27, 2017 *(Meghan Mooney)*
4. Report on Donation and Delivery of Items to Hurricane Harvey Victims in Liberty County, Texas *(Hobbs Firefighters: Adam Marinovich, Ralph Gonzalez, Tony Alarcon)*

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

5. Consideration of Approval to Update the Minimum Qualifications for the Position of City Manager *(Mayor Sam Cobb)*
6. Consideration of Approval of Bid No. 1558-17 for 2016 Hobbs CDBG Infrastructure Improvements and Recommendation to Accept Bid from Ramirez & Sons, Inc., in the Amount of \$846,834.80 Upon Concurrence by the New Mexico Department of Finance and Administration *(Todd Randall)*
7. Resolution No. 6588 - Approving a Development Agreement with French Brothers, Inc., Concerning the Development of Market Rate Single-Family Housing Located Within the Zia Crossing Subdivision *(Kevin Robinson)*
8. Resolution No. 6589 - Authorizing a Memorandum of Agreement with the New Mexico Department of Transportation (NMDOT) for Public Transportation for FY 17-18 *(Jan Fletcher)*
9. **FINAL ADOPTION:** Ordinance No. 1107 - Authorizing the City of Hobbs to Enter Into a Loan Agreement with the New Mexico Environment Department in the Amount of \$6,314,300 to Finance the Design and Construction of New Aerobic Digestion Basins at the City of Hobbs Wastewater Reclamation Facility *(Tim Woomer)*
10. Resolution No. 6590 - Authorizing the Assignment of Official Representatives and Signatory Authorities for a Loan Agreement with the New Mexico Environment Department for the Design and Construction of New Aerobic Digestion Basins at the Wastewater Reclamation Facility *(Tim Woomer)*

## **COMMENTS BY CITY COMMISSIONERS, CITY MANAGER**

### 11. Next Meeting Date:

- ▶ Regular Meeting - ***Monday, October 2, 2017***, 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 18, 2017

**SUBJECT: City Commission Meeting Minutes**

DEPT. OF ORIGIN: City Clerk's Office  
DATE SUBMITTED: September 13, 2017  
SUBMITTED BY: Jan Fletcher, City Clerk

**Summary:**

The following minutes are submitted for approval:

- ▶ Regular Commission Meeting of September 5, 2017

**Fiscal Impact:**

Reviewed By: \_\_\_\_\_  
Finance Department

N/A

**Attachments:**

Minutes as referenced under "Summary".

**Legal Review:**

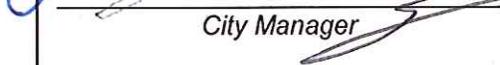
Approved As To Form: \_\_\_\_\_  
City Attorney

**Recommendation:**

Motion to approve the minutes as presented.

Approved For Submittal By:

  
\_\_\_\_\_  
Department Director

  
\_\_\_\_\_  
City Manager

CITY CLERK'S USE ONLY  
COMMISSION ACTION TAKEN

Resolution No. \_\_\_\_\_  
Ordinance No. \_\_\_\_\_  
Approved \_\_\_\_\_  
Other \_\_\_\_\_

Continued To: \_\_\_\_\_  
Referred To: \_\_\_\_\_  
Denied \_\_\_\_\_  
File No. \_\_\_\_\_

Minutes of the regular meeting of the Hobbs City Commission held on Monday, September 5, 2017, 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 Cynthia Calderon  
Commissioner Patricia A. Taylor  
Commissioner Joseph D. Calderón  
Commissioner Garry A. Buie  
Commissioner Don Gerth

Also present: Manny Gomez, Acting City Manager and Fire Chief  
Mike Stone, City Attorney  
Brian Dunlap, Deputy Police Chief  
Charles Cunningham, Police Captain  
Barry Young, Deputy Fire Chief  
Raymond Bonilla, Community Services Director  
Art De La Cruz, Code Enforcement Superintendent  
Todd Randall, City Engineer  
Shelia Baker, Assistant City Engineer  
Ronny Choate, General Services Director  
Tim Woomer, Utilities Director  
Britt Lusk, Administrative Services Director  
Ron Roberts, Information Technology Director  
Deborah Corral, Assistant Finance Director  
Nyssa Rogers, Human Resources Specialist  
Doug McDaniel, Parks and Recreation Director  
Matt Hughes, Golf Superintendent  
Catherine Vorrasi, CORE Facility Director  
Meghan Mooney, Director of Communications  
Sandy Farrell, Library Director  
Ann Betzen, Risk Manager/Executive Assistant  
Sandra Boltshauser, Clerk Record Specialist  
Jan Fletcher, City Clerk  
7 citizens

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

Commissioner Taylor delivered the invocation and Commissioner Joseph Calderón led the Pledge of Allegiance.

### **Approval of Minutes**

Commissioner Joseph Calderón moved that the minutes of the regular meeting held on August 7, 2017, and special meeting held on July 31, 2017, be approved as presented. Commissioner Cynthia Calderon seconded the motion and the vote was recorded as follows: Newman yes, Cynthia Calderon yes, Joseph Calderón yes, Taylor yes, Buie yes, Gerth yes, Cobb yes. The motion carried.

### **Closed Session**

The City Commission convened in closed executive session on Thursday, August 24, 2017, at 5:00 p.m., for the discussion of limited personnel matters, specifically the hiring of a City Manager . The matters discussed in the closed meeting were limited only to discussion of limited personnel matters, specifically the hiring of a City Manager. No action was taken during the meeting.

The City Commission convened in closed executive session on Monday, September 5, 2017, at 5:00 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, pursuant to §10-15-1(H)(7), N.M.S.A., 1978, specifically the following cases:

1. Smith vs. City of Hobbs
2. Trujillo vs. City of Hobbs
3. Contreras vs. State of NM and City of Hobbs
4. Lopez vs. City of Hobbs
5. Hill vs. City of Hobbs
6. Martinez vs. City of Hobbs
7. Flores vs. City of Hobbs
8. Sanchez vs. City of Hobbs
9. State of New Mexico Land Office vs. City of Hobbs
10. Johnson vs. City of Hobbs
11. City of Hobbs vs. Kennedy

The matters discussed in the closed meeting were limited only to 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, pursuant to §10-15-1(H)(7), N.M.S.A., 1978. No action was taken during the meeting.

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

There were no proclamations or awards of merit.

### **Public Comments**

Ms. Pat Huntley announced that the Lea County Humane Society Animal Transports is having a used shoe drive as a fundraiser for the Animal Transports Program. She stated new and gently used shoes are being collected as a fundraiser for the program that transports dogs and cats received at the City of Hobbs Animal Adoption Center and Lea County Humane Society to areas that are less populated with animals. She stated they have teamed up with Funds2Org, who will provide the opportunity to raise money for the transport program. Ms. Huntly stated shoes can be dropped off at the following locations: Hobbs Animal Adoption Center, Dal Paso Animal Hospital, PetSense, Western Heritage Museum, Mail Services, Etc., Dog Daze of Summer Event, City Hall Parks & Recreation Office, Lovington Animal Shelter and Lovington City Hall.

Mr. Doug McDaniel, Parks and Recreation Director, introduced Ms. Catherine Vorrasi, who has been named the CORE Facility Director. He stated Ms. Vorrasi is from Tucson, Arizona, where she has been the Sports & Aquatics Director and Director of Sales and Member Engagement at the Northwest YMCA for the last two years. Prior to that, she was the Program and Facility Manager at the Oro Valley Aquatic Center in Arizona for seven years. Mr. McDaniel stated Ms. Vorrasi has also worked as a Program Director at the YMCA in Reston, Virginia. Ms. Vorrasi is an Olympic-caliber swimmer and narrowly missed out on qualifying for both the 2004 and 2016 US Olympic Swim Teams. He further stated her contacts with USA Swimming will be an asset in bringing USA Swimming affiliated meets to the CORE.

Ms. Vorrasi thanked the Commission and expressed her excitement to be in Hobbs.

In response to Mayor Cobb's question, Ms. Vorrasi stated she will be attending the US Aquatic Sports Convention in Dallas, Texas, to spread the word about the CORE. Mr. McDaniel stated the Parks and Recreation Department has sent 1,500 promotional items to US Aquatic Sports Convention to distribute to attendees.

### **Consent Agenda**

There were no items presented for the Consent Agenda.

## **Discussion**

### **Presentation of an Update Related to the City of Hobbs' Financial Transparency Website**

Ms. Deb Corral, Assistant Finance Director, presented an update related to the City's Financial Transparency Website. She stated the program has been updated which created a new look to the website. She reviewed the website and gave a demonstration of the program capabilities and all of its features.

In answer to Commissioner Newman's inquiry, Ms. Corral clarified that all of the payments made will be viewable and updated weekly. She stated the recapitulation currently provided to him by the Finance Department is now viewable to everyone on the website with the click of a few buttons.

In response to Commissioner Gerth's question, Ms. Corral stated payments made to employees for travel reimbursement will be viewable on the website but not employee payroll checks.

Mayor Cobb stated all citizens can access and use the Financial Transparency Website. Ms. Corral agreed and stated it can be found on the City's website listed under the Finance Department.

Commissioner Taylor stated the Financial Transparency Website looks very sharp.

Commissioner Buie stated the transparency of the website is fantastic. He added it is just what is needed to keep the citizens informed.

## **Action Items**

### **Resolution No. 6586 - Authorizing the Removal of Uncollectible Returned Checks Prior to June 20, 2013, from Various City Services Totaling \$2,980.16**

Ms. Corral explained the resolution and stated the City has uncollectible returned checks dated prior to June 30, 2013, totaling \$2,980.16 which need to be written off. She further stated collection of these checks has been attempted and they are four years or older. Ms. Corral stated the City wishes to remove them from the books and a resolution of the governing body is required to do so.

In response to Commissioner Taylor's inquiry, Ms. Corral stated the City makes its own collection efforts and does not use a collection agency.

There being no further discussion, Commissioner Taylor moved to approve Resolution No. 6586 as presented. Commissioner Cynthia Calderon seconded the motion and the vote was recorded as follows: Newman yes, Cynthia Calderon yes, Joseph Calderón yes, Taylor yes, Buie yes, Gerth yes, Cobb yes. The motion carried. A copy of resolution is attached and made a part of these minutes.

*Resolution No. 6587 - Relating to the Disposition of Obsolete, Worn-Out, and Unusable Personal Property, Specifically 12 H&K Rifles and 12 Gem Tech Suppressors, Used by the Hobbs Police Department and Authorizing Deletion from the Public Inventory*

Deputy Police Chief Brian Dunlap explained the resolution and stated the Hobbs Police Department would like to trade in 12 H & K Rifles and 12 Gem Tech Suppressors for new rifles and suppressors. He stated the current equipment is ten years old and being used by HPD SWAT.

In response to Commissioner Gerth's question, Deputy Chief Dunlap stated the weapons are used frequently.

There being no further discussion, Commissioner Newman moved to approve Resolution No. 6587 as presented. Commissioner Buie seconded the motion and the vote was recorded as follows: Newman yes, Cynthia Calderon yes, Joseph Calderón yes, Taylor yes, Buie yes, Gerth yes, Cobb yes. The motion carried. A copy of the resolution is attached and made a part of these minutes.

**Comments by City Commissioners, City Manager**

Fire Chief Manny Gomez, Acting City Manager, updated the Commission on the CAD system nearing completion at the Lea County Communications Authority. He stated the CAD system was approved in January, 2017. He stated the training is nearing completion and the staff at dispatch held a mock drill on August 30-31, 2017. Chief Gomez stated the system is scheduled to go live on September 12, 2017, at 8:00 a.m. He emphasized to the Commission that back-up plans are in place should there be any problems.

Chief Gomez stated the City of Hobbs received a direct request from Liberty County, Texas, which is located between Houston, Texas and Beaumont, Texas, for cleaning supplies, hygiene kits and school supplies as a result of the flooding and damage from Hurricane Harvey. He stated items are being collected and can be dropped off at the City Clerk's Office and Fire Station #3.

Chief Gomez stated he has had two good weeks of collaboration with the City Department Heads and his next step will be reaching out to the workforce to assess the

direction of the City. He expressed his appreciation to the Commission for allowing him this opportunity to serve as Acting City Manager.

Commissioner Gerth thanked everyone for attending the meeting.

Commissioner Cynthia Calderon expressed her appreciation to everyone for the update to the transparency website.

Commissioner Taylor agreed and stated the City is providing clarity to its citizens.

Commissioner Joseph Calderón commended Deputy Chief Dunlap and the HPD officers for being very polite when he was recently pulled over.

Commissioner Joseph Calderón also commended Commissioner Buie and former City Manager J. J. Murphy on their assistance with sending migrant students from Brownfield, Texas, to Santa Fe, New Mexico.

Commissioner Buie stated he has noticed the heavy traffic turning from the Lovington Highway onto Silver Street. He encouraged those drivers to pay more attention to the children and families in the area and to slow down.

Commissioner Newman commended the Environmental Department for enforcing the weed ordinance equally as he recently received his own warning notice about overgrown weeds.

In response to Commissioner Newman's inquiry, Ms. Shelia Baker stated the City is currently working on the speed data on Silver Street.

Mayor Cobb thanked everyone for attending the meeting.

### **Adjournment**

There being no further discussion or business, Commissioner Joseph Calderón moved that the meeting adjourn. Commissioner Newman seconded the motion. The vote was recorded as follows: Newman yes, Cynthia Calderon yes, Taylor yes, Joseph Calderón yes, Buie yes, Gerth yes, Cobb yes. The motion carried. The meeting adjourned at 7:10 p.m.

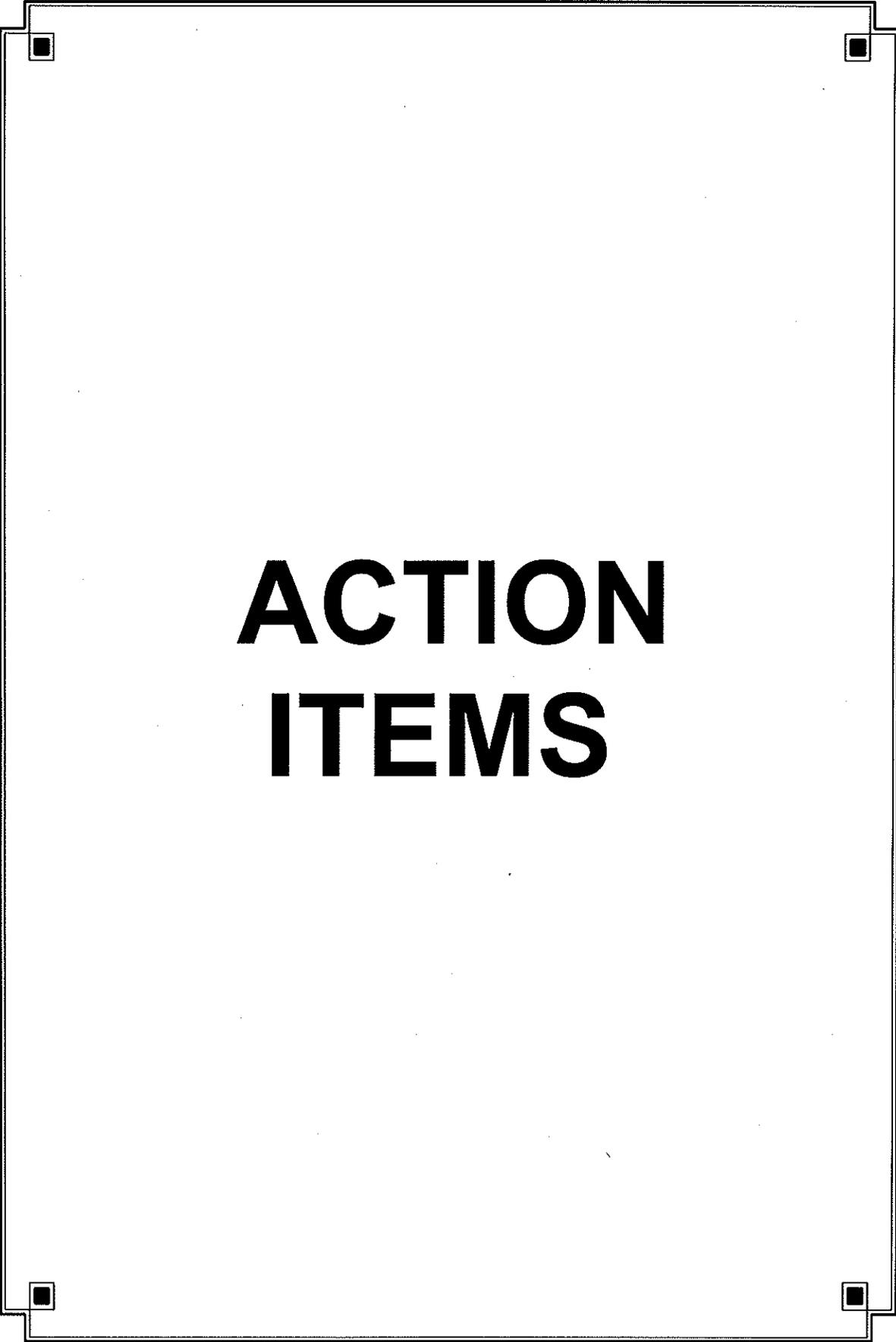
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SAM D. COBB, Mayor

ATTEST:

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JAN FLETCHER, City Clerk



# **ACTION ITEMS**



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: September 18, 2017

SUBJECT: Updating Minimum Qualifications for a City Manager  
DEPT. OF ORIGIN: Human Resources  
DATE SUBMITTED: September 13, 2017  
SUBMITTED BY: Nicholas Goulet, HR Director

**Summary:** The Commission last updated job qualifications for the City Manager position over five (5) years ago. The review of minimum qualifications is a process that is timely based on the departure of the previous City Manager. This is the first step in the process for recruitment for the hiring of the next City Manager.

**RECOMENDATION**

Staff requests an update of the City Manager qualifications as proposed in the attached document.

**Fiscal Impact:**

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

Finance Department

There is no fiscal impact at this time.

**Attachments:**

**Legal Review:**

Approved As To Form: \_\_\_\_\_

City Attorney

**Recommendation:**

Approval of the request to update minimum qualification for the City Manager position.

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 Manager  
Administration  
Minimum of \$140,000 annually (DOEE)**

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**ESSENTIAL DUTIES**

As the Chief Administrative Officer, the City Manager performs high level administrative, technical, and professional work in directing and supervising the administration of City Government.

**MINIMUM QUALIFICATIONS**

Education and Experience:

- Bachelor's Degree in Public Administration, Business Administration or a related field with ten (10) years of increasingly responsible experience managing a governmental entity, with seven years of senior management experience at a departmental level or higher.
- OR-
- Master's Degree in Public Administration, Business Administration or a related field with seven (7) years of increasingly responsible experience managing a governmental entity, with five years of senior management experience at a departmental level or higher.

In addition:

- Experience managing a community or area with a population of at least 30,000 people, or a General Fund budget of \$50M with an overall budget of \$100M plus, or a minimum of 300 government employees.
- Public labor union/ Negotiation experience preferred, but not required.
- New Mexico government experience preferred, but not required.
- Established, verifiable history of successful partnerships with community leaders and related entities.
- Established, verifiable history of successful public/private partnerships and interaction with non-profit organizations.
- Management of public information and relations.

Knowledge, Skills and Abilities:

- A. Considerable knowledge of modern policies and practices of public administration.
- B. Skill in preparing and administering governmental budgets; skill in strategic planning; directing and administering governmental programs.
- C. Ability to prepare and analyze comprehensive reports; ability to carry out assigned projects to their completion; ability to communicate effectively both verbally and in writing with employees, City officials and the public; ability to establish and maintain effective working relationships; ability to efficiently and effectively administer a municipal government.

Licensing and Certifications:

- A. Valid State issued Driver's License
- B. Residency requirement: must reside within the five (5) mile planning radius of the City. Requirement must be met within 12 months from date of employment.



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: September 18, 2017

**SUBJECT: CONSIDERATION OF AWARDING BID No 1558-17 FOR 2016 HOBBS CDBG INFRASTRUCTURE IMPROVEMENTS CDBG GRANT NO. 16-C-NR-I-01-G-03**

**DEPT. OF ORIGIN:** Engineering Department  
**DATE SUBMITTED:** 9-12-17  
**SUBMITTED BY:** Todd Randall, City Engineer

**Summary:**

Bids were opened at 2:00 PM on Friday, September 8, 2017 for the 2016 Hobbs CDBG Infrastructure Improvements Project, CDBG Grant Number 16-C-NR-I-01-G-03. The project consists of complete pavement reconstruction as well as curb and gutter, sidewalk and ADA improvements in a residential area. The project will construct street & drainage improvements on Humble Street from Dal Paso to the alley east of Jefferson and on First, Farquhar and Jefferson from the alley north of Humble to Main St.

An advertisement was placed in the local newspaper. Three bids were submitted.

| Company              | Total Bid      |
|----------------------|----------------|
| J&H Services, Inc.   | \$ 949,313.00  |
| Constructors, Inc.   | \$1,154,505.00 |
| Ramirez & Sons, Inc. | \$ 846,834.80  |

Ramirez & Sons, Inc. is the lowest bidder. They are properly licensed and their registration with the NMDWS is current. Ramirez & Sons, Inc. has completed projects for the City of Hobbs in the past and is a proven and reputable contractor.

In accordance with the above narrative, it is the recommendation of the Engineering Department that the Total Bid for construction of the project be awarded to Ramirez & Sons, Inc., as low bidder in the amount of the total bid amount of \$846,834.80 (not including tax), upon DFA concurrence.

**Fiscal Impact:**

Reviewed By: [Signature]  
Finance Department

|                              |                                       |
|------------------------------|---------------------------------------|
| Estimated Construction Cost: | \$904,525.42                          |
| Admin/Testing/Other:         | \$ 50,000.00                          |
| Estimated Total Cost         | \$954,525.42                          |
| FY 18 Budgeted Amount:       | \$1,149,449.47 (\$500,000 CDBG Funds) |
| Budgeted Line Item:          | 37-374037-44901-00232                 |

**Attachments:** Bid Tabulation Sheet / Vicinity Map

**Legal Review:**

Approved As To Form: [Signature]  
City Attorney

**Recommendation: Consideration of Awarding Bid 1558-17 for the 2016 Hobbs CDBG Infrastructure Improvements Project to Ramirez & Sons, Inc, upon DFA concurrence.**

Approved For Submittal By:

[Signature]  
Department Director

[Signature]  
City Manager

**CITY CLERK'S USE ONLY  
COMMISSION ACTION TAKEN**

Resolution No. \_\_\_\_\_  
Ordinance No. \_\_\_\_\_  
Approved \_\_\_\_\_  
Other \_\_\_\_\_

Continued To: \_\_\_\_\_  
Referred To: \_\_\_\_\_  
File No. \_\_\_\_\_  
Denied



| ITEM NO. | DESCRIPTION   | UNIT | QTY  | UNIT PRICE   | TOTAL COST    | UNIT PRICE   | TOTAL COST    | UNIT PRICE   | TOTAL COST    |
|----------|---|------|------|--------------|---------------|--------------|---------------|--------------|---------------|
| 203000   | UNCLASSIFIED EXCAVATION                                     | CY   | 2000 | \$ 10.00     | \$ 20,000.00  | \$ 18.00     | \$ 36,000.00  | \$ 6.00      | \$ 12,000.00  |
| 203200   | SUBEXCAVATION   | CY   | 875  | \$ 15.50     | \$ 13,562.50  | \$ 15.00     | \$ 13,125.00  | \$ 7.00      | \$ 6,125.00   |
| 207000   | SUBGRADE PREPARATION  | SY   | 8810 | \$ 3.25      | \$ 28,632.50  | \$ 2.00      | \$ 17,620.00  | \$ 2.25      | \$ 19,822.50  |
| 303160   | BASE COURSE 6"  | SY   | 8810 | \$ 10.40     | \$ 91,624.00  | \$ 9.50      | \$ 83,695.00  | \$ 6.93      | \$ 61,053.30  |
| 408100   | PRIME COAT MATERIAL   | TON  | 10   | \$ 700.00    | \$ 7,000.00   | \$ 500.00    | \$ 5,000.00   | \$ 881.00    | \$ 8,810.00   |
| 423270   | 2-1/2" HMA SP IV COMPLETE                                   | SY   | 8210 | \$ 19.50     | \$ 160,095.00 | \$ 13.00     | \$ 106,730.00 | \$ 14.00     | \$ 114,940.00 |
| 451080   | CONCRETE PAVEMENT - 8"                                      | SY   | 600  | \$ 65.00     | \$ 39,000.00  | \$ 110.00    | \$ 66,000.00  | \$ 85.50     | \$ 51,300.00  |
| 533000   | REPAIR OF CONCRETE STRUCTURES                               | SY   | 12   | \$ 680.00    | \$ 8,160.00   | \$ 900.00    | \$ 10,800.00  | \$ 100.00    | \$ 1,200.00   |
| 570024   | 24" CORRUGATED HDPE PIPE                                    | LF   | 20   | \$ 48.00     | \$ 960.00     | \$ 100.00    | \$ 2,000.00   | \$ 68.57     | \$ 1,371.40   |
| 570630   | 43" x 26" REINFORCED CONCRETE STORM DRAIN CULVERT ARCH PIPE | LF   | 680  | \$ 212.70    | \$ 144,636.00 | \$ 200.00    | \$ 136,000.00 | \$ 224.57    | \$ 152,707.60 |
| 570640   | 58" x 36" REINFORCED CONCRETE STORM DRAIN CULVERT ARCH PIPE | LF   | 20   | \$ 315.00    | \$ 6,300.00   | \$ 310.00    | \$ 6,200.00   | \$ 351.00    | \$ 7,020.00   |
| 601000   | REMOVAL OF STRUCTURES AND OBSTRUCTIONS                      | LS   | 1    | \$ 75,000.00 | \$ 75,000.00  | \$ 65,000.00 | \$ 65,000.00  | \$ 53,724.00 | \$ 53,724.00  |
| 603281   | SWPPP DESIGN, IMPLEMENTATION & MANAGEMENT                   | LS   | 1    | \$ 12,500.00 | \$ 12,500.00  | \$ 4,000.00  | \$ 4,000.00   | \$ 3,524.00  | \$ 3,524.00   |
| 607199   | REMOVE AND REBUILD FENCE                                    | LS   | 1    | \$ 11,500.00 | \$ 11,500.00  | \$ 20,000.00 | \$ 20,000.00  | \$ 6,720.00  | \$ 6,720.00   |
| 608004   | CONCRETE SIDEWALK 4"  | SY   | 1810 | \$ 41.80     | \$ 75,658.00  | \$ 75.00     | \$ 135,750.00 | \$ 41.26     | \$ 74,680.60  |
| 608106   | DRIVE PAD 6"  | SY   | 1355 | \$ 51.80     | \$ 70,189.00  | \$ 85.00     | \$ 115,175.00 | \$ 50.76     | \$ 68,779.80  |
| 608118   | CONCRETE FILLET - 8"  | SY   | 270  | \$ 61.40     | \$ 16,578.00  | \$ 98.00     | \$ 25,920.00  | \$ 52.20     | \$ 14,094.00  |
| 609109   | PINNED CURB   | LF   | 300  | \$ 18.80     | \$ 5,640.00   | \$ 45.00     | \$ 13,500.00  | \$ 31.25     | \$ 9,375.00   |
| 609330   | CONCRETE SLOPED CURB AND GUTTER 6" x 30"                    | LF   | 600  | \$ 25.00     | \$ 15,000.00  | \$ 35.00     | \$ 21,000.00  | \$ 20.98     | \$ 12,588.00  |
| 609500   | STANDARD CURB & GUTTER                                      | LF   | 2300 | \$ 18.80     | \$ 43,240.00  | \$ 32.00     | \$ 73,600.00  | \$ 19.50     | \$ 44,850.00  |
| 609696   | CONCRETE VALLEY GUTTER 8" X 60"                             | LF   | 60   | \$ 59.00     | \$ 3,540.00   | \$ 60.00     | \$ 3,600.00   | \$ 38.52     | \$ 2,311.20   |
| 609706   | CONCRETE LAYDOWN CURB 6"                                    | LF   | 950  | \$ 15.50     | \$ 14,725.00  | \$ 32.00     | \$ 30,400.00  | \$ 19.50     | \$ 18,525.00  |
| 618000   | TRAFFIC CONTROL MANAGEMENT                                  | LS   | 1    | \$ 10,000.00 | \$ 10,000.00  | \$ 50,000.00 | \$ 50,000.00  | \$ 24,000.00 | \$ 24,000.00  |
| 662400   | MANHOLE ADJUSTMENT  | EA   | 6    | \$ 688.00    | \$ 4,128.00   | \$ 500.00    | \$ 3,000.00   | \$ 525.00    | \$ 3,150.00   |
| 662500   | MANHOLE FRAME AND COVER                                     | EA   | 6    | \$ 800.00    | \$ 4,800.00   | \$ 750.00    | \$ 4,500.00   | \$ 732.00    | \$ 4,392.00   |
| 663855   | ADJUST VALVE BOX TO GRADE                                   | EA   | 10   | \$ 270.00    | \$ 2,700.00   | \$ 300.00    | \$ 3,000.00   | \$ 180.00    | \$ 1,800.00   |
| 663890   | VALVE BOX WITH COVER  | EA   | 10   | \$ 200.00    | \$ 2,000.00   | \$ 500.00    | \$ 5,000.00   | \$ 268.40    | \$ 2,684.00   |
| 663944   | SANITARY SEWER SERVICE LATERAL - 4"                         | LF   | 240  | \$ 30.75     | \$ 7,380.00   | \$ 30.00     | \$ 7,200.00   | \$ 19.00     | \$ 4,560.00   |
| 663965   | SANITARY SEWER SERVICE CONNECTION - 4"                      | EA   | 12   | \$ 800.00    | \$ 9,600.00   | \$ 1,500.00  | \$ 18,000.00  | \$ 172.00    | \$ 2,064.00   |
| 667004   | MISCELLANEOUS LANDSCAPING                                   | LS   | 1    | \$ 17,500.00 | \$ 17,500.00  | \$ 7,500.00  | \$ 7,500.00   | \$ 8,716.00  | \$ 8,716.00   |
| 667110   | MAILBOX INSTALLATION - SINGLE                               | EA   | 17   | \$ 460.00    | \$ 7,820.00   | \$ 400.00    | \$ 6,800.00   | \$ 168.00    | \$ 2,856.00   |
| 701000   | PANEL SIGNS   | S.F. | 86   | \$ 15.50     | \$ 1,333.00   | \$ 37.00     | \$ 3,182.00   | \$ 90.30     | \$ 7,765.80   |
| 701100   | STEEL POST AND BASE POST FOR PANEL SIGNS                    | L.F. | 144  | \$ 6.75      | \$ 972.00     | \$ 12.00     | \$ 1,728.00   | \$ 145.05    | \$ 20,887.20  |
| 701200   | TRIANGULAR SLIP BASE SYSTEM                                 | EA   | 12   | \$ 320.00    | \$ 3,840.00   | \$ 290.00    | \$ 3,480.00   | \$ 13.20     | \$ 158.40     |
| 801000   | CONSTRUCTION STAKING BY THE CONTRACTOR                      | LS   | 1    | \$ 13,700.00 | \$ 13,700.00  | \$ 50,000.00 | \$ 50,000.00  | \$ 18,280.00 | \$ 18,280.00  |

\$ 949,313.00

\$ 1,154,505.00

\$ 846,834.80

# AGREEMENT BETWEEN OWNER AND CONTRACTOR

AGREEMENT FORMS - LUMP SUM PRICE OR UNIT PRICE  
Section 00510

Contract No. \_\_\_\_\_



Distribution to:

- Owner
- Contractor
- Architect/Engineer
- Finance Dept.
- CDBG Project Manager

[Disclaimer: Changes and/or modifications made to this document, other than the typical construction items for which the contractor is bidding and/or will contract for, without the written consent of the Local Government Division, DFA shall render this document null and void]

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the parties as follows:

**THE OWNER:**

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

Telephone: 575-397-9200  
Fax: 575-397-9227

E-mail address: trandall@hobbsnm.org

**THE CONTRACTOR:**

Telephone: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
Fax: 505- \_\_\_\_\_ - \_\_\_\_\_

E-mail address: \_\_\_\_\_

For the following Project: 2016 Hobbs CDBG Infrastructure Improvements

Project Number: 16-C-NR-I-01-G-03

**ENGINEER OF RECORD:**

Todd Randall, City Engineer  
200 E. Broadway St.  
Hobbs, NM 88240  
Telephone: 575-397-9232  
Fax: 575-397-9227

E-mail address: trandall@hobbsnm.org

**RECITALS**

**WHEREAS**, the State of New Mexico Small Cities CDBG Program; and

**WHEREAS**, the Owner, through its Mayor/ Chairman, is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100 NMSA 1978; and

**WHEREAS**, the Owner has let this contract according to the established state and local purchasing procedures for contracts of the type and amount let; and

**WHEREAS**, award of the construction contract on this Project was approved by the Governing Body at its meeting of \_\_\_\_\_, 20\_\_;

The OWNER and the CONTRACTOR agree as set forth below.

**ARTICLE 1  
THE CONTRACT DOCUMENTS**

1.1 The Contract Documents consist of the following:

- Bid Form
- This Agreement
- Performance Bond
- Labor and Material Payment Bonds
- Agent's Affidavit
- Certificate of Insurance
- Assignment of Antitrust Claims
- Table A Subcontracts Breakdown
- Table B Estimated Project Workforce Breakdown
- Notice of Award
- Notice to Proceed
- Conditions of the Contract (General, Supplementary and Other Conditions)
- Drawings
- Specifications
- All Addenda Issued Prior to and
- All Modifications Issued after Execution of this Agreement
- Federal requirements, certifications and forms required by the CDBG program

These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 7 of this Agreement.

**ARTICLE 2  
THE WORK**

2.1 The Contractor shall perform all the Work required by the Contract for the following:

The City of Hobbs, NM, located in Lea County, will construct street & drainage improvements at Latitude 32.693437, Longitude -103.125107 on Humble Street from Dal Paso to the alley east of Jefferson and on First, Farquhar and Jefferson from the alley north of Humble to Main St. Improvements consist of approximately: 830 CY removal of existing roadway section followed by construction: approximately 9750 SY subgrade preparation, base course, pavement; approximately 2400 linear feet of concrete sidewalk; approximately 3850 linear feet of curb and gutter and some utility work and signage.

**ARTICLE 3  
TIME OF COMMENCEMENT  
AND SUBSTANTIAL COMPLETION**

3.1 The Work to be performed under the contract shall commence not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion shall be achieved not later than \_\_\_\_\_ calendar days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

3.2 Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified in this article, the Contractor agrees, in partial consideration for the award of the Contract, to pay to the Owner the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of the Contract.

**ARTICLE 4  
CONTRACT SUM**

4.1 The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract, the Contract Sum of

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

4.2 The Contract sum is determined as follows:

|                       |    |       |
|-----------------------|----|-------|
| Base Bid              | \$ | _____ |
| Alternatives (if any) | \$ | _____ |
| NM GRT @ _____ %      | \$ | _____ |
| Contract Sum          | \$ | _____ |

**ARTICLE 5  
PROGRESS PAYMENTS**

5.1 Based upon Applications for Payment submitted to the Architect/Engineer by the Contractor and Certificates for Payment issued by the Architect/Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract for the period ending the 5<sup>th</sup> day of the month as follows:

5.2 Not later than twenty-one (21) working days following receipt by the Owner of an undisputed Application for Payment or as stated in Paragraph 25 of the Supplemental General Conditions, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; less such amounts as the Architect/Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents (Section 57-28-5 NMSA 1978).

5.2.1 When making payments, an owner, contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed. For additional information regarding retainage and the Prompt Payment Act refer to Section 57-28-5 NMSA 1978.

**ARTICLE 6  
FINAL PAYMENT**

6.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within thirty (30) calendar days after notification of the Owner by the Architect/Engineer that all incomplete and unacceptable work that was noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Architect/Engineer and final monitoring and close-out by the Funding Agency. In addition, the Contractor shall provide to the Owner a certified

statement of Release of Liens (*AIA Document G706A or approved form*) and Consent of Surety.

**ARTICLE 7  
GENERAL AND SPECIAL PROVISIONS**

7.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.

7.2 Terms used in this Agreement that are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

7.3 As between the parties to this Agreement. As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work; and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the Owner's approval of the Final Certificate of Payment.

7.4 The Contractor shall hold harmless and indemnify the Owner against any and all injury, loss, or damage, including cost of defense - including but not limited to court costs and attorneys' fees - arising out of the negligent acts, errors, or omissions of the Contractor.

7.5 This Agreement shall not become effective until approved by the governing body; and signed by all parties required to sign this Agreement and reviewed by the Funding Agency.

7.6 The Contractor and his agents and employees are independent contractors and are not employees of the Owner. The Contractor and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.

7.7 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, his officers and employees from his liabilities and obligations arising from or under this Agreement, including but not limited to all damages, losses, costs, liability, and expenses, including but not limited to attorneys' fees and costs of litigation that the Contractor may incur.

7.8 The Contractor agrees not to purport to bind Owner to any obligation not assumed herein by Owner unless

the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7.9 Notices. All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid - in the instance of notice of termination of work also by certified mail - and addressed as shown on the title page of this Agreement.

7.10 Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided.

7.11 Gender - Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

7.12 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

7.13 This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.

7.14 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of this Agreement shall be attached to this Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

7.15 Separability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

7.16 Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party;

nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

7.17 Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements 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.

7.18 Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

7.19 Words and Phrases. Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.

7.20 Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.

7.21 Pursuant to §13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico, including §§30-14-1, 30-24-2, and 30-41-1 through 30-41-3 NMSA 1978, which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, §§13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.

7.22 The Contract Documents, which constitute the entire Contract between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

7.23 The following documents bound in the Project Manual:

| <u>Documents</u>                       | <u>Pages</u> |
|--|--------------|
| Bid Form                               | 4A-21        |
| Agreement between Owner and Contractor | 4A-39        |
| Performance Bond                       | 4A-44        |
| Labor and Material Payment Bond        | 4A-46        |

|   |          |
|---|----------|
| Agent's Affidavit                             | 4A-28/49 |
| Certificate of Insurance                      | 4A-51    |
| Assignment of Antitrust Claims                | 4A-52    |
| Table A Subcontracts Breakdown                | 4A-54    |
| Table B Estimated Project Workforce Breakdown | 4A-55    |
| General Conditions                            | 4A-57    |
| Supplementary Conditions                      | 4A-71    |
| Technical Specifications - Division 1-16      |          |

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Approved by the Governing Body at its meeting of \_\_\_\_\_, 20\_\_

**OWNER:**

\_\_\_\_\_

Mayor/Chairperson

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

Reviewed:

As to Legal Form and Sufficiency

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

Title: \_\_\_\_\_

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

As to Budget Sufficiency

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

Title: \_\_\_\_\_

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

**APPROVED:** This Agreement is entered into as of the day and year first written above.

**CONTRACTOR:**

\_\_\_\_\_

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

Title: \_\_\_\_\_

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

Federal Tax ID N°: \_\_\_\_\_

State Tax ID N°: \_\_\_\_\_

**AGENCY CONCURRENCE:**

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

Title: \_\_\_\_\_

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

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we (1) \_\_\_\_\_ a (2) \_\_\_\_\_ hereinafter called "PRINCIPAL" and (3) of \_\_\_\_\_, State of \_\_\_\_\_, hereinafter called the "SURETY", are held and firmly bound unto (4) City of Hobbs, New Mexico, a New Mexico municipal corporation, Lea County, New Mexico, hereinafter called "OWNER", in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, personal representatives, and successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

### 2016 HOBBS CDBG INFRASTRUCTURE IMPROVEMENTS

NOW, THEREFORE, if the principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations, or addition to these terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed as an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

ATTEST:

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Principal-Secretary

(SEAL)

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

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Principal Address

\_\_\_\_\_  
Surety

ATTEST:

By:\_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
Surety Address

(SEAL)

\_\_\_\_\_  
Witness as to Surety

Note: Date of Bond must not be prior to date of contract.

- (1) Correct name of Contractor.
- (2) A corporation, a partnership, or an individual as case may be.
- (3) Correct name of Surety.
- (4) Correct name of Owner.
- (5) If Contractor is partnership, all partners should execute Bond.

## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we (1) \_\_\_\_\_, a (2) \_\_\_\_\_, hereinafter called "Principal", and (3) \_\_\_\_\_ of \_\_\_\_\_, State of \_\_\_\_\_, hereinafter called the "Surety", are held and firmly bound unto (4) City of Hobbs, a New Mexico municipal corporation, Lea County, New Mexico, hereinafter called "Owner", in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, personal representatives, and successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

### 2016 HOBBS CDBG INFRASTRUCTURE IMPROVEMENTS

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including, but not limited to, all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment, and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Principal-Secretary

(SEAL)

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

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Principal Address

\_\_\_\_\_  
Surety

ATTEST:

Attorney-in-Fact

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
Surety Address

(SEAL)

\_\_\_\_\_  
Witness as to Surety

Note: Date of Bond must not be prior to date of contract.

- (1) Correct name of Contractor.
- (2) A corporation, partnership, or individual, as case may be.
- (3) Correct name of Surety.
- (4) Correct name of Owner.
- (5) If Contractor is partnership, all partners should execute Bond.

This bond is issued simultaneously with Performance Bond in favor of contracting agency for the faithful performance of the contract.

# RIDER TO BONDS

BONDS, CERTIFICATES AND NOTICES  
Section 00621

This Form Must Be  
Used By Surety

Performance Bond N<sup>o</sup>. \_\_\_\_\_ Labor & Material Payment Bond N<sup>o</sup>. \_\_\_\_\_

Obligee (Owner): \_\_\_\_\_

Surety \_\_\_\_\_

Surety's New Mexico Agent:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone N<sup>o</sup>. (\_\_\_\_) \_\_\_\_\_

The Surety and Principal stipulate as follows:

Whenever, in the judgment of the Owner, the Surety on this bond shall be insolvent, or for any cause is not a proper or sufficient Surety, the Owner may require the Contractor to furnish a new or additional bond or security within ten (10) days; and thereupon, if the Owner shall so order, security shall be furnished. If such new or additional bond or security is not furnished within said time, the Owner may, at its option, take over and Surety, either doing the Work on force account, or letting the same by contract, and shall be entitled to use any equipment, materials and supplies of the delinquent Contractor in completing said Work.

The Surety hereby stipulates and agrees that no properly authorized Change Order altering Contract Time, Contract Sum, Conditions of the Contract, or the scope of nature of the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive any notice of such change.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Principal) (Seal)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Surety) (Seal)

\_\_\_\_\_  
(Title)



## **GUARANTY BOND/MAINTENANCE BOND**

BONDS, CERTIFICATES, AND NOTICES  
Section 00600

### **GUARANTY BOND**

Section 00630

### **MAINTENANCE BOND**

Section 00640

(Instructions: This is a listing of forms that are not supplied. If required by the Owner or the Architect/Engineer as part of the Bidding Documents, this page should be replaced by the appropriate forms - special mention under Section 7, Instructions to Bidders, and on the Bid Form, if applicable, should be made by the Architect/Engineer.)

## INSURANCE CERTIFICATE

<<<*This sheet shall be replaced with the awarded contractor's Certificate of Insurance*>>>

### **Insurance Coverage:**

The Contractor shall obtain, and provide proof thereof, to the Owner the following insurance coverage:

### **General Liability as follows:**

Premises, operations, explosions and collapse hazard, underground hazard, contractual insurance, products with completed operations, broad form property damage, independent contractors and personal injury. The limits of liability shall be no less than \$1,000,000 combined single limit for bodily injury and property damage.

### **Automobile Liability as follows:**

Owned, hired and non-owned vehicles. The limits of liability shall be no less than \$1,000,000 combined single limit bodily injury and property damage.

The City of Hobbs shall be named as an additional insured on all coverages.

Contractor shall further obtain and provide proof to the Owner of any other insurance coverage required by the statutes of the State of New Mexico or regulations of any agency of the State of New Mexico governing this type of Project.

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

Contractor covenants, warrants, and agrees that it shall indemnify, defend, save and hold the City of Hobbs, the City Commission of the City of Hobbs, its individual commissioners, its officers, employees and agents (collectively and individually as "Owner") harmless from any and all liability, damage, expense, cause of action, suits, claims, judgments, losses, costs, expenses, and liens, of every kind and nature, including, but not limited to, those arising from injury to person(s) or damage to property, arising out of, resulting from, or occurring during this project. This indemnification and hold harmless by Contractor to the City of Hobbs (Owner) shall include, but not be limited to, the City of Hobbs' (Owner's) attorney's fees and costs incurred in defending against the same, and in prosecuting any crossclaims or counterclaims required or arising therefrom.

# ASSIGNMENT OF ANTITRUST CLAIMS

(To be executed by Suppliers, Subcontractors, and Sub-Subcontractors of Contractors)

BONDS, CERTIFICATES, AND NOTICES  
Section 00661

This Form Must Be Submitted  
Within 10 Days of Bid Award

Project: \_\_\_\_\_ Project Number: \_\_\_\_\_

\_\_\_\_\_ agrees that any and all claims which it may have or may have endured for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to the Owner, but only to the extent that such overcharges are passed on to the Owner.

It is agreed that the undersigned retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the Owner, including the right to any treble damages attributable thereto.

Firm: \_\_\_\_\_

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

Signed by Individual Empowered to Obligate Supplier,  
Subcontractor, or Sub-Subcontractor

Title: \_\_\_\_\_

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

# CERTIFICATE OF OWNER'S ATTORNEY

BONDS, CERTIFICATES, AND NOTICES  
Section 00670

I, the undersigned, \_\_\_\_\_, the duly authorized and acting  
legal representative of the City of Hobbs

do hereby certify as follows:

I have examined the attached contract(s) and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligation upon the parties executing the same in accordance with terms, conditions and provisions thereof.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_ Telephone N°. \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_



**TABLE B  
ESTIMATED PROJECT WORKFORCE BREAKDOWN**

| Column 1                        | Column 2                  | Column 3   | Column 4                                | Column 5                                  |
|---------------------------------|---------------------------|--|---|---|
| Job Category                    | Total Estimated Positions | Number Positions Currently Occupied by Permanent Employees | Number Positions Not Currently Occupied | Number Positions to be filled with LIPAR* |
| Officers/Supervisors            |                           |  |   |   |
| Professionals                   |                           |  |   |   |
| Technicians                     |                           |  |   |   |
| Housing Sales/Rental Management |                           |  |   |   |
| Office Clerical                 |                           |  |   |   |
| Service Workers                 |                           |  |   |   |
| Others                          |                           |  |   |   |
| <b>TRADE:</b>                   |                           |  |   |   |
| Journeyman                      |                           |  |   |   |
| Helpers                         |                           |  |   |   |
| Apprentices                     |                           |  |   |   |
| Maximum Number of Trainees      |                           |  |   |   |
| Others                          |                           |  |   |   |
| <b>TRADE:</b>                   |                           |  |   |   |
| Journeyman                      |                           |  |   |   |
| Helpers                         |                           |  |   |   |
| Apprentices                     |                           |  |   |   |
| Maximum Number of Trainees      |                           |  |   |   |
| Others                          |                           |  |   |   |

\*Lower Income Project Area Residents. Individuals residing within the Municipality/County of \_\_\_\_\_ whose family income does not exceed 80% of the median income of the State.

\_\_\_\_\_  
Company

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**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: September 18, 2017

**SUBJECT:** CONSIDERATION TO APPROVE A DEVELOPMENT AGREEMENT WITH FRENCH BROTHERS, INC. CONCERNING THE DEVELOPMENT OF MARKET RATE SINGLE-FAMILY HOUSING.

DEPT. OF ORIGIN: Planning Division  
DATE SUBMITTED: September 12, 2017  
SUBMITTED BY: Kevin Robinson – Planning Department

**Summary:** French Brothers, Inc. has requested a Development Agreement concerning the development of single-family housing units located within the Zia Crossing Subdivision. The developer proposes to produce market rate single-family units and is requesting infrastructure incentives of the maximum amount per DA of \$100,000.00. The terms of the attached DA is based on the 2018 Housing Incentive Policy adopted per Resolution #6579.

**Fiscal Impact:**

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

*[Signature]*  
Finance Department

FY18 Budget \$500,000.00

Single Family Housing #010100-44901-170

**Attachments:** Developers Request and Development Agreement.

**Legal Review:**

Approved As To Form: \_\_\_\_\_

*[Signature]*  
City Attorney

**Recommendation:**

Commission considers approval / denial of the attached Development Agreement.

Approved For Submittal By: \_\_\_\_\_

*[Signature]*  
Department Director

*[Signature]*  
City Manager

CITY CLERK'S USE ONLY  
COMMISSION ACTION TAKEN

Resolution No. \_\_\_\_\_  
Ordinance No. \_\_\_\_\_  
Approved \_\_\_\_\_  
Other \_\_\_\_\_

Continued To: \_\_\_\_\_  
Referred To: \_\_\_\_\_  
Denied \_\_\_\_\_  
File No. \_\_\_\_\_

CITY OF HOBBS

RESOLUTION NO. 6588

**A RESOLUTION TO APPROVE A DEVELOPMENT AGREEMENT WITH FRENCH BROTHERS, INC. CONCERNING THE DEVELOPMENT OF MARKET RATE SINGLE-FAMILY.**

WHEREAS, the City of Hobbs is proposing to enter into a Development Agreement with French Brothers, Inc. concerning the development of market rate single-family housing; and

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

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

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

PASSED, ADOPTED AND APPROVED this 18th day of September, 2017.

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

ATTEST:

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

**HOUSING DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF HOBBS AND SINGLE FAMILY HOUSING DEVELOPER**

**THIS AGREEMENT** is entered into on this \_\_\_\_ day of \_\_\_\_ 2017 by and between the City Of Hobbs, New Mexico, a municipal corporation (hereinafter "City"); and French Brothers, Inc., PO Box 593, Alamogordo, NM 88310, (hereinafter "Developer") for the purpose of delivering Housing Developer Services to be provided to the City.

**RECITALS:**

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

\*\* Developer has submitted a proposal to the City to deliver the required Housing Developer Services work for the development of market rate single-family units, to be produced within 180 days of ratification of this agreement, within Zia Crossing Subdivision located within the Municipal Boundaries.

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

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

**A. Work To Be Performed.**

1. The Developer shall furnish to the City its Professional Housing Developer Services for certain work regarding the Hobbs Single Family Housing Project. All single family structures completed under this agreement shall be located within the municipal boundaries and shall have received a certificate of occupancy after ratification of this agreement as per the incentive request proposal, which is attached hereto and made a part of this Agreement as Exhibit #1.

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

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

Incentives are available for installed public municipal infrastructure only. Development Agreement must be in place prior to Municipal Acceptance of infrastructure. Existing Developments that have received DA's prior to 2017 are eligible through 12/31/2017.

a. Incentive not to exceed per square footage basis:

- i. \$10.00 per sq. ft. north of Sanger
    - ii. \$20.00 per sq. ft. south of Sanger
    - iii. Calculation based on living area only
  - b. Incentive not to exceed per unit basis:
    - i. \$10,000.00 per single family unit
    - ii. \$5,000.00 per multi-family unit
  - c. Incentive not to exceed fair share per linear foot of infrastructure basis:
    - i. \$180.00 per lineal front footage of complete public infrastructure installed, and further broken down as follows:
      1. Water (\$25 / lf):
        - a. Twenty Five (\$25) per equivalent front foot of lot to which water service is provided (8" minimum service single family & 10" minimum service for multi-family);
      2. Sewer (\$35 / lf):
        - a. Thirty Five (\$35) per equivalent front foot of lot to which sewer service is provided (8" minimum service single family & 10" minimum service for multi-family);
      3. Street (\$90/ lf):
        - a. Ninety (\$90) per equivalent front foot of lot to which street is provided (built to Minor Residential standards as promulgated within the City of Hobbs Major Thoroughfare Plan);
      4. Sidewalk:
        - a. Thirty (\$30) per equivalent front foot of lot to which sidewalk (includes driveway with ADA accessible path) is provided;

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

**B. Payment For Services.**

1) The City shall pay for said services at the rates agreed to and as specified above in the Infrastructure details and the Developer's proposal, as shown herein. Payment will not be made by the City for any unit until a certificate of occupancy is issued, based on this Agreement.

2) The total compensation to be paid to the Developer during the term of this Agreement shall not exceed One Hundred Thousand Dollars (\$100,000.00), unless the Agreement is amended by the City Commission.

3) City subsidy shall be paid when each individual single family unit is complete and certificate of occupancy is issued, provided the certificate of occupancy for the unit is issued after ratification of this agreement. Payment will be made within fifteen (15) days following a

written request from the Developer and upon City inspection of project completion.

4) Produced Units receiving an infrastructure incentive reimbursement shall not now or in the future be utilized in a pecuniary manner by renting, leasing, exchanging or bartering habitation privileges to the property for a period of no less than 30 days at a time. Such usage either now or in the future, for a period not to exceed 10 years from date of issuance of a C.O., shall require Developer to return any incentive funds received for any unit thus utilized, upon demand by the City. Developer shall record a "Declaration of Restrictive Covenants", attached hereto as Exhibit 2, to restrict such usage and to notify parties involved in future conveyances.

**C. Construction Requirements.**

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

**D. Assignment of Agreement.**

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

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

1. Developer agrees to obtain and maintain appropriate insurance during the course of the work program with the City of Hobbs, as follows, and shall indemnify and hold harmless City, its employees, agents, officers and officials from any and all claims, losses, causes of action, and/or liabilities resulting from the conduct, negligence, errors or omissions of Developer or any employee or agent of Developer while engaged in performing the services called for herein. Developer will provide a current Certificate of Insurance to be attached to this agreement, with the City of Hobbs as shown as an additional insured party.

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

**F. Governing Law and Provisions.**

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

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

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

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

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

**H. Amendments.**

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

**I. Breach.**

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

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

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

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

**J. Remedies Upon Breach.**

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

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

**K. Termination.**

This Agreement shall be terminated upon the completion of all tenants herein specified or 180 days from date of ratification whichever comes first. A request for infrastructure reimbursement, for a qualified unit produced within the terms of this

agreement, received after the Termination Date of this agreement will not eligible for payment.

**L. Notice.**

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City, ATTN: City Attorney, 200 E. Broadway, Hobbs, NM 88240; to Developer ATTN and French Brothers, Inc., PO Box 593, Alamogordo, NM 88310 and to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

**M. Entire Agreement.**

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

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

**City of Hobbs**

**Developer**

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

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

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Mike H. Stone, City Attorney

DECLARATION OF RESTRICTIVE COVENANTS  
FOR LOT # \_\_\_\_\_, OF BLOCK # \_\_\_\_\_ WITHIN  
\_\_\_\_\_ SUBDIVISION

THIS DECLARATION made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

RECITALS:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and by this reference incorporated herein as the "Property"; and

WHEREAS, Declarant has requested incentive funds from the City of Hobbs, New Mexico, a New Mexico Municipal Corporation; and

WHEREAS, a proviso of receipt of such funds so requested is to restrict certain usage of the property to the benefit of the City.

NOW THEREFORE, Declarant on behalf of themselves, beneficiaries, personal representatives, successors and assigns does hereby make and establish for said property the following restrictive covenant which is to run with the land and shall be binding on all parties hereto, and all persons claiming by, through and under them until 2024.

1. The property as described herein shall not be utilized in a pecuniary manner by renting, leasing, exchanging or bartering habitation privileges to the property for a period of no less than 30 days at a time.

IN WITNESS WHEREOF, I hereby set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Declarant:

\_\_\_\_\_

STATE OF NEW MEXICO )  
(SS.  
COUNTY OF LEA )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he executed the same as his free act and deed.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid and year first written above.

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

My Commission Expires: \_\_\_\_\_



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: September 18, 2017

**SUBJECT: Resolution Authorizing a Memorandum of Agreement Between the New Mexico Department of Transportation and the City of Hobbs for Public Transportation for FY 17-18**

DEPT. OF ORIGIN: City Clerk's Office  
DATE SUBMITTED: September 12, 2017  
SUBMITTED BY: Jan Fletcher, City Clerk

**Summary:**

The attached Memorandum of Agreement is for continued operation of Public Transportation Services for FY 17-18 beginning October 1, 2017, through September 30, 2018.

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 17-18 Revised Budget approved by DFA includes \$1,342,854.78 for personnel, operating and capital expenditures. The total grant revenue and fares for FY 17-18 are projected at \$1,063,578.11. Details are summarized as follows:

|                   |  |
|-------------------|--|
| \$ 628,541.81     | Personnel  |
| \$ 189,050.00     | Operating  |
| \$ 525,262.97     | Capital  |
| \$ (35,000.00)    | Fares  |
| \$ (1,028,578.11) | Grant Revenue (includes carryover revenue for purchase of buses) |
| \$ 279,276.67     | City Cost (transfer from General Fund)                           |

**Attachments:**

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

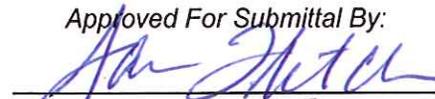
**Legal Review:**

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. \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Approved \_\_\_\_\_

Other \_\_\_\_\_

Continued To: \_\_\_\_\_

Referred To: \_\_\_\_\_

Denied \_\_\_\_\_

File No. \_\_\_\_\_

CITY OF HOBBS

RESOLUTION NO. 6589

A RESOLUTION AUTHORIZING AN AGREEMENT  
FOR FY 17-18 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 18<sup>th</sup> day of September, 2017.

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

ATTEST:

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

FISCAL YEAR 2018 (FY 18)

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 CITY OF HOBBS. 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 Subgrantee 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 Subgrantee 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 Subgrantee.

B. Use of Capital Equipment

The Subgrantee 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 Subgrantee shall notify the Department verbally and in writing, either hand-delivered or send by U.S. certified mail, 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 Subgrantee must notify and seek approval from the Department if there will be an elimination or a reduction of services greater than 20%. Notice must be verbal and 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 Subgrantee 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 Subgrantee’s governing body, shall be stated in the approved Operations Profile. The Department must also approve all fare schedules in writing.

F. Advertising

The Subgrantee 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 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 Subgrantee 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 Subgrantee 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 Subgrantee shall inform the Department verbally and in writing, either hand-delivered or send 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 Subgrantee to cover expenses of the Program as described in the approved Operations Profile from October 1, 2017 to September 30, 2018 in an amount described below:

Subaward FY 18

| City of Hobbs                                      | Total                | Federal              | Local                |
|--|----------------------|----------------------|----------------------|
| Administration (80/20)                             | \$ 83,701.33         | \$ 66,961.06         | \$ 16,740.27         |
| Operating (50/50)                                  | \$ 688,585.04        | \$ 344,292.52        | \$ 344,292.52        |
| Capital to Subgrantee (80/20)                      | \$ 130,000.00        | \$ 104,000.00        | \$ 26,000.00         |
| <b>Total Administration, Operating and Capital</b> | <b>\$ 902,286.37</b> | <b>\$ 515,253.58</b> | <b>\$ 387,032.79</b> |

Vehicle purchases must be under contract with a vendor by March 31, 2018, 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, 2018, may revert to the Department. Any remaining federal funds that are not expended by September 30, 2018 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 Subgrantee. The Subgrantee shall take all actions necessary to fund its share of the Program.

3. Method of Payment.

The Department shall either reimburse the Subgrantee or pay the vendor on behalf of the Subgrantee 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.

For Subgrantees that receive administration and/or operating assistance, invoices are to be submitted on a monthly basis, and received by the Department by the 25th day of the following month. These invoices shall be submitted to the Department utilizing the Electronic Grants Management Performance System. 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 within 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 Subgrantee 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, 2017, 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 45 days after completion of this Agreement, the Subgrantee shall submit a final invoice to the Department for Administration and Operating expenses and a financial statement showing the total expense of the Program. Subgrantee 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 to be sent to the Department under this active Agreement. The Subgrantee'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, 2017, 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, 2017 to September 30, 2018 may be reimbursed. This Agreement shall expire September 30, 2018 or when Federal funding is expended, whichever occurs first.

**7. Termination for Cause.**

The Department has the option to terminate this Agreement if the Subgrantee 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 Subgrantees breaches on which the termination is based.

The Department may provide the Subgrantee a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Subgrantee has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Subgrantee has not begun and proceeded in good faith to correct the breach, the Department may declare the Subgrantee 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 Subgrantee 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 Subgrantee. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Subgrantee 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 Subgrantee 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 Subgrantee 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 Subgrantee has ten (10) days from receipt of the decision to file a written appeal with the Transit and Rail Division. Upon appeal, the Subgrantee 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 Subgrantee 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 Subgrantee 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 \$2,500, the Subgrantee shall seek concurrence in writing from the Department.

**12. Rolling Stock.**

In acquiring rolling stock, the Subgrantee agrees as follows:

- 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 Subgrantee shall maintain, satisfactory to the Department, liability, comprehensive, collision, and uninsured motorist insurance adequate to protect the Program equipment. The Department is to be named as an additional insured and a loss payee on Subgrantee'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 Subgrantee 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 Subgrantee shall require contractors hired to perform the services under this Agreement to have a commercial general liability insurance policy. The Department is to be named as an additional insured on the contractor'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 Subgrantee shall require contractors 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' construction or maintenance activities pursuant to this Agreement, as memorialized herein and subject to any additional permit that may be required of the contractor to perform said activities.

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

As between the Department and the Subgrantee, 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, Section 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 that will be used in the Program. The Program Vehicle Inventory shall be reported and updated within the Electronic Grants Management Performance System as changes to the vehicle inventory occur.
- B. 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, at all times while the vehicle is in operation.
- C. 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*.
- D. 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*.
- E. The Subgrantee shall notify the Department immediately of vehicular accidents, thefts, or vandalism involving Program equipment. Failure to notify the Department shall be considered a material breach of contract subject to the provisions of *Section 7. Termination for Cause*.
- F. 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 Subgrantee 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.
- G. Upon termination of the Agreement under *Section 7. Termination for Cause*, the Subgrantee 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 Subgrantee shall be reimbursed for its pro-rata share of the Program equipment's depreciated value as determined by the Straight Line Depreciation method.
- H. The Subgrantee 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 Subgrantee is responsible for the cost of restoring the vehicle(s) to its original condition.

- I. If the Subgrantee wants to remove any Program equipment from service or dispose of such equipment either as a result of planned withdrawal or casualty loss, the Subgrantee shall contact the Department to obtain specific disposition instructions.
- J. The Subgrantee shall follow the equipment manufacturer's minimum standards and recommended preventive maintenance schedules. The Subgrantee 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 Subgrantee 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.

**16. Charter Bus Requirements.**

The Subgrantee agrees to comply with 49 U.S.C. Section 5323(d) and 49 C.F.R. Part 604, which provides that recipients and sub recipients 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 sub recipients 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 Subgrantee 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<br>(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 |
| Heavy-Duty Small Bus                             | 26,000 to 33,000lbs     | \$200,000 to \$325,000      | 13                                      | 455,000 |
| 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 Subgrantee 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 Subgrantee 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. Daily Pre/Post Trip Inspection Records — The Subgrantee shall keep daily Pre/Post Trip Inspection Records on the use of each transit vehicle and shall submit to the Department, upon request, such information.
- B. Monthly Reporting — a monthly invoice/report shall be submitted electronically by the Subgrantee to include financial expenditures and ridership, 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.
- C. Annual Reporting — A certification that the Program equipment is still being used in accordance with the terms of the Agreement shall be submitted to the Department with the Certifications and Assurances during the application process.
- D. National Transit Database (NTD) Rural Report — the Subgrantee will provide an annual report as needed for the NTD Rural Report.
- E. Semi-annual DBE Reporting — the Subgrantee 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).

The Subgrantee'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 Subgrantee 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 Subgrantee shall grant authorized representatives of the Department, the state and the federal government access to books, documents, papers, reports, and records of the Subgrantee or its subcontractors, which are directly pertinent to this Agreement, for the purpose of making audits, examination excerpts, and transcriptions. The Subgrantee agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Subgrantee 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 Subgrantee 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 Subgrantee agrees to obtain the express consent of the federal government before the Subgrantee or its employees operate a system of records on behalf of the federal government. The Subgrantee 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 contract.

The Subgrantee agrees to include these requirements in each 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 Subgrantee shall ensure that an annual audit of the Program based on the Subgrantee's fiscal year shall be conducted pursuant to 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards. The Subgrantee, prior to initiation of the audit, shall seek written approval from the Department of the auditing firm. The Subgrantee 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 months following the close of the local fiscal year. Audit costs are an eligible administrative expense. Should the Subgrantee 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 Subgrantee 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 Subgrantee 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 Subgrantee of the Department's election to withhold an amount equal to the payment owed under this Section from any future distribution owed to Subgrantee 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 Subgrantee shall not contract any portion of this Agreement without prior written approval of the Department. No such contracting shall relieve the Subgrantee from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Department.

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

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, Subcontractors with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subgrantees*, which is attached as Certification 1.

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

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

B. The Subgrantee agrees to include the above clause in each 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 subcontractor who will be subject to its provisions.

**29. Training.**

The Subgrantee shall ensure that all drivers described in the Operations Profile are trained in the following programs: first aid, cardiopulmonary resuscitation (CPR), blood borne pathogens, defensive driving, wheelchair securement, passenger safety, sensitivity and crisis management. An approved contractor will provide training in passenger safety, sensitivity and crisis management. 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 years. For the cardiopulmonary resuscitation (CPR) training, the drivers must be recertified every two 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.

In addition, the Department may require specific training for the Subgrantee. Attendance is required and failure to attend shall result in a deduction in from the Subgrantee's next invoice. This deduction will be an amount equal to the Subgrantees's pro-rata share: total cost of training incurred by the Department divided by the total number of all individuals scheduled for training and multiplied by the total number of Subgrantee employees failing to attend the scheduled training.

Should the Subgrantee fail to satisfy the terms and conditions as outlined, the Subgrantee 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.**

The Subgrantee 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 Subgrantee agrees to certify annually its compliance with 49 C.F.R. Parts 40 and 655 by February 1, 2018, and to submit the Management Information System (MIS) reports before March 1, 2018, to the Department. To certify compliance, the Subgrantee shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Subgrantee agrees further to submit for review and approval a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Subgrantee agrees to participate in the Department's consortium.

**31. Labor Warranty.**

The Subgrantee 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 Subgrantee will assume all legal and financial responsibility relative to compliance with the terms and conditions of the Warranty.

**32. Transit Employee Protection Guidelines.**

The Subgrantee 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 Subgrantee shall provide for the preservation of rights and benefits of employees under existing collective bargaining agreements, continuation of collective bargaining rights, 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 Subgrantee 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. Section 2000d, Section 303 of the Age Discrimination Act of 1975, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the Subgrantee shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The Subgrantee shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to this Agreement:

1. Race, Color, Creed, 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 Subgrantee 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. Parts 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 Subgrantee agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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 Subgrantee agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subgrantee 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 Subgrantee 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 Subgrantee shall include these requirements in each subcontract 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 Subgrantee also agrees to 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.

#### **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 2017 fiscal year is 1.22%, through race-neutral means.

B. The Subgrantee shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The Subgrantee shall carry out applicable requirements of 49 CFR Part 26 in the administration of the Program. Failure by the Subgrantee 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 Subgrantee signs with a contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

C. The Subgrantee 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, or sex in the award and performance of U.S. DOT assisted contracts. The Subgrantee will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- D. The Subgrantee is required to pay its contractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the awarded contractor's receipt of payment for that work from the Department.
- E. The Subgrantee 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 Subgrantee 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 Subgrantee 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 Subgrantee with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subgrantees*, which is attached as Certification 1.

**35. ADA Access.**

The Subgrantee 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 Subgrantee 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 Subgrantee 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 Subgrantee certifies or affirms the truthfulness and accuracy of any statement it makes pertaining to the resultant contract or the FTA assisted program for which this work is being performed. The Subgrantee 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 Subgrantee to the extent the federal government deems appropriate.
- B. The Subgrantee 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 Subgrantee, to the extent the federal government deems appropriate.
- C. The Subgrantee certifies to abide by these clauses and include the clauses in each subcontract financed in whole or in part with Federal Transit Administration funds. Subgrantee further agrees that these clauses shall not be modified, except to identify the 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 Subgrantee 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 Subgrantee 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 Subgrantee hires a contractor, the contractor must provide the Lobbying Certification to the Subgrantee. Each tier below the contractor shall also provide a Lobbying Certification. Such disclosures are forwarded from tier to tier up to the Subgrantee.

**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 Subgrantee 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 Subgrantee 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 Subgrantee 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 Subgrantee agrees to include these requirements in each 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 12549, as implemented by 49 C.F.R. Part 29, prohibits FTA Subgrantees from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts. Subgrantees shall include the certification and instruction language contained at 29 C.F.R. Part 29, Appendix B, in all Invitations for Bids and Requests for Proposals (for inclusion by contractors 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 Subgrantee is required to verify that none of the Subgrantee's principals, as defined at 49 C.F.R. Part 29.995, or affiliates, as defined at 49 C.F.R. Part 29.905, are excluded or disqualified as defined at 49 C.F.R. Parts 29.940 and 29.945. By signing and submitting this Agreement, the Subgrantee 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/Subgrantee or proposer/Subgrantee 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/Subgrantee or proposer/Subgrantee agrees to comply with the requirements of 49 C.F.R. Part 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder/Subgrantee or proposer/Subgrantee 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, Subgrantees 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 Subgrantee 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 Subgrantee 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 Subgrantee, which includes the Congressional District
- Place of performance of the program or activity, which includes the Congressional District
- Unique identifier—DUNS—of the Subgrantee and its parent organization, if one exists
- Total compensation and names of the top five executives of the Subgrantee. This information is required, if the Subgrantee 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 Subgrantee's grant application and standard reports. However, the Subgrantee will be required to provide additional information, which includes the total compensation and names of the Subgrantee's top five executives, if applicable. As specified earlier in Section 42, "Central Contractor Registration Requirements," of this Agreement, the Subgrantee 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, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

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

The Subgrantee 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 Subgrantee shall make as part of this Agreement between the Department and the Subgrantee 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 Subgrantee 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.

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

New Mexico Department of Transportation

CITY OF HOBBS

  
\_\_\_\_\_  
Tom Church, Cabinet Secretary

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 8/31/17

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Gloria Regensberg, Assistant General Counsel

\_\_\_\_\_  
Date

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);   | City of Hobbs  |
| (ii) Subrecipient's unique entity identifier (DUNS);  | 079339222  |
| (iii) Federal Award Identification Number (FAIN);   | TBD  |
| (iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;   | 7/10/2017  |
| (v) Subaward Period of Performance Start and End Date;  | 10-01-2017 thru 09-30-2018   |
| (vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;   | Administrative \$66,961.06<br>Operating \$344,292.52   |
| (vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;  | Administrative \$66,961.06<br>Operating \$344,292.52   |
| (viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;  | Administrative \$66,961.06<br>Operating \$344,292.52   |
| (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);                                | FY17 5311 Rural Transit Appropriation for FY18 Program Funding<br>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<br>Transportation<br>David Harris - 505 -827-5420, DavidC.Harris@state.nm.us<br>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);   | City of Hobbs   |
| (ii) Subrecipient's unique entity identifier (DUNS);  | 079339222   |
| (iii) Federal Award Identification Number (FAIN);   | TBD   |
| (iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;   | 17/10/2017  |
| (v) Subaward Period of Performance Start and End Date;  | 10-01-2017 thru 09-30-2018  |
| (vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;   | Capital \$104,000.00  |
| (vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;  | Capital \$104,000.00  |
| (viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;  | Capital \$104,000.00  |
| (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);                                | FY17 5339(a) Buses and Bus Facilities Formula Appropriation for FY18 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<br>David Harris - 505 -827-5420, DavidC.Harris@state.nm.us<br>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 SUBGRANTEES**

**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 Subgrantee 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, Subgrantee with contracting opportunities must submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subgrantees* (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 Subgrantees are responsible for complying with the requirements contained therein.

**DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT for the City of Clovis ; hereinafter referred to as "Subgrantee."**

**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 Subgrantee 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 Subgrantee will sign the New Mexico Department of Transportation's Disadvantaged Business Enterprise Race Neutral Implementation Agreement (hereinafter referred to as Agreement).

The Subgrantee 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)**

Subgrantee 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. Subgrantee 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)**

Subgrantee 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:

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.

Subgrantee 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)**

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

**VI. DBE Liaison Officer (§26.25)**

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

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

The Subgrantee 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)**

Subgrantee 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

Subgrantee 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 Subgrantee 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. Subgrantee 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**

Subgrantee 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.

Subgrantee 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 Subgrantee.

Subgrantee 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 Subgrantee's financial assistance agreement with NMDOT by reference and made a part of that agreement.

|                                     |
|-------------------------------------|
| Date:                               |
| Signature of Subgrantee Official    |
| Phone Number:                       |
| Printed Name of Subgrantee 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 by selecting Category "02."

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: \_\_\_\_\_



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: September 18, 2017

**SUBJECT:** Adoption of Ordinance 1107 authorizing the City of Hobbs to enter into a Loan Agreement with the New Mexico Environment Department in the amount of \$6,314,300 to finance the design and construction of new aerobic digestion basins and associated equipment at the City of Hobbs' Wastewater Reclamation Facility.

**DEPT. OF ORIGIN:** Utilities

**DATE SUBMITTED:** September 11, 2017

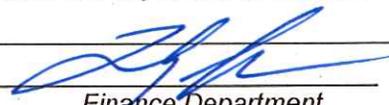
**SUBMITTED BY:** Tim Woormer, Utilities Director

**Summary:**

This ordinance was properly published in the Hobbs News Sun on August 26, 2017 and posted on the City of Hobbs website ([www.hobbsnm.org](http://www.hobbsnm.org)). The ordinance authorizes the City of Hobbs to enter into a loan agreement with the New Mexico Environment Department in the amount of \$6,314,300.00 to finance the design and construction of new aerobic digestion basins and bio-solids processing facility.

Loan terms include a fixed annual interest rate of 1.2% for a 20 years and will require an annual debt payment of \$347,328.35. Funds to repay the loan will be accrued from the net revenues of the City of Hobbs Enterprise Fund (Utilities).

**Fiscal Impact:** \$347,328.35 per annum

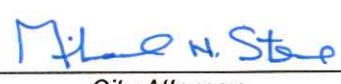
Reviewed By:   
Finance Department

Repayment of this loan will begin one year following the completion of the project. Future debt payments of \$347,328.35, will need to be budgeted for twenty (20) years to repay the CWSRF loan. NMED has determined the Enterprise Fund's FY 2014-2016 debt service ratio at 1.9. The additional debt will revise this ratio to 1.6. As a condition of funding, the Enterprise Fund must maintain a debt service coverage ratio of no less than 1.2.

**Attachments:**

Interim Loan Amortization Schedule; Ordinance authorizing the City of Hobbs to enter into a loan agreement with the New Mexico Environment Department for the purpose of obtaining project CWSRF loan funds in the principle amount of \$6,143,300.00.

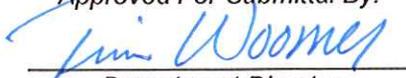
**Legal Review:**

Approved As To Form:   
City Attorney

**Recommendation:**

Adopt Ordinance 1107, authorizing the Mayor to execute a loan agreement between the City of Hobbs and the New Mexico Environment Department in the amount of \$6,143,300.00 for the design and construction of the City of Hobbs Aerobic Digester Project.

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. \_\_\_\_\_

**INTERIM LOAN AGREEMENT  
INTERIM LOAN AMORTIZATION SCHEDULE**

| Entity        | CITY OF HOBBS  |                  |                       |                       |                     |                 |
|---------------|----------------|------------------|-----------------------|-----------------------|---------------------|-----------------|
| Loan Number   | CWSRF 064      |                  |                       |                       |                     |                 |
| Amount        | \$6,143,300.00 |                  |                       |                       |                     |                 |
| Rate          | 1.20%          |                  |                       |                       |                     |                 |
| Term in Years | 20             | #<br>of Payments | Amount of<br>Payment  | Paid On<br>Principal  | Paid On<br>Interest | Loan<br>Balance |
|               |                | 1                | \$347,328.35          | \$273,608.75          | \$73,719.60         | \$5,869,691.25  |
|               |                | 2                | \$347,328.35          | \$276,892.05          | \$70,436.30         | \$5,592,799.20  |
|               |                | 3                | \$347,328.35          | \$280,214.76          | \$67,113.69         | \$5,312,584.44  |
|               |                | 4                | \$347,328.35          | \$283,577.34          | \$63,751.01         | \$5,029,007.10  |
|               |                | 5                | \$347,328.35          | \$286,980.26          | \$60,348.09         | \$4,742,026.84  |
|               |                | 6                | \$347,328.35          | \$290,424.03          | \$56,904.32         | \$4,451,602.81  |
|               |                | 7                | \$347,328.35          | \$293,909.12          | \$53,419.23         | \$4,157,693.69  |
|               |                | 8                | \$347,328.35          | \$297,436.03          | \$49,892.32         | \$3,860,257.66  |
|               |                | 9                | \$347,328.35          | \$301,005.28          | \$46,323.09         | \$3,569,252.40  |
|               |                | 10               | \$347,328.35          | \$304,617.32          | \$42,711.03         | \$3,254,635.08  |
|               |                | 11               | \$347,328.35          | \$308,272.73          | \$39,055.62         | \$2,946,362.35  |
|               |                | 12               | \$347,328.35          | \$311,972.00          | \$35,356.35         | \$2,634,390.35  |
|               |                | 13               | \$347,328.35          | \$315,715.67          | \$31,612.68         | \$2,318,674.68  |
|               |                | 14               | \$347,328.35          | \$319,504.25          | \$27,824.10         | \$1,999,170.43  |
|               |                | 15               | \$347,328.35          | \$323,338.30          | \$23,990.05         | \$1,675,832.13  |
|               |                | 16               | \$347,328.35          | \$327,218.36          | \$20,109.99         | \$1,348,613.77  |
|               |                | 17               | \$347,328.35          | \$331,144.98          | \$16,183.37         | \$1,017,468.79  |
|               |                | 18               | \$347,328.35          | \$335,118.72          | \$12,209.63         | \$682,350.07    |
|               |                | 19               | \$347,328.35          | \$339,140.15          | \$8,188.20          | \$343,209.92    |
|               |                | 20               | \$347,328.35          | \$343,209.92          | \$4,118.43          | \$0.00          |
|               |                |                  | <u>\$6,946,567.00</u> | <u>\$6,143,300.00</u> | <u>\$803,267.00</u> |                 |

**ORDINANCE NO. 1107**

**AUTHORIZING THE CITY OF HOBBS, NEW MEXICO (“BORROWER”) TO ENTER INTO A LOAN AGREEMENT WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT (“NMED”) FOR THE PURPOSE OF OBTAINING PROJECT LOAN FUNDS IN THE PRINCIPAL AMOUNT OF \$6,143,300.00 (SIX MILLION ONE HUNDRED FORTY THREE THOUSAND THREE HUNDRED DOLLARS AND NO CENTS) PLUS ACCRUED INTEREST; DESIGNATING THE USE OF THE FUNDS FOR THE PURPOSE DEFINED IN THE MOST CURRENT PROJECT DESCRIPTION FORM AS APPROVED BY NMED; DECLARING THE NECESSITY FOR THE LOAN; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE CITY OF HOBBS ENTERPRISE FUND (“PLEGGED REVENUES”); PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AND THE SECURITY THEREFOR.**

Capitalized terms used in the following preambles are defined in Section 1 of this Ordinance, unless the context requires otherwise.

**WHEREAS**, the Borrower is a legally and regularly created public body organized under the general laws of the State of New Mexico (“State”); and

**WHEREAS**, the Borrower now owns, operates and maintains a public utility constituting a joint water and wastewater system (“System”), which includes a system for disposing of wastes by surface and underground methods; and

**WHEREAS**, the present System is insufficient and inadequate to meet the needs of the Borrower and its residents for the treatment and disposal of wastewater or for groundwater protection; and

**WHEREAS**, the Loan Agreement and Note will be payable solely from the Pledged Revenues; and

**WHEREAS**, the funds for this Project will include funds from a one-time federal grant to the NMED from the Environmental Protection Agency (“EPA”); and

**WHEREAS**, the Project is subject to specific requirements of the federal grant; and

**WHEREAS**, the Borrower has the following obligations outstanding to which the Pledged Revenues have already been pledged:

| Funding Source  | Principal Amount Outstanding at 06/30/2017 | Is the listed funding source superior, subordinate or on parity with this funding? |
|-----------------|--|--|
| NMFA: DWRLF-150 | 3,484,004.00                               | Superior   |
| NMED: CWSRF-001 | 23,262,025.31                              | Superior   |
| NMFA: 250-WTB   | 996,243.00                                 | Superior   |
| NMFA: 316-WTB   | 1,156,578.00                               | Superior   |
| NMFA: 339-WTB   | 669,583.00                                 | Superior   |
| NMFA: 3555-WTB  | -0- (No draw down on loan)                 | Superior   |

**WHEREAS**, the Governing Body of the Borrower has determined that it is in the best interest of the Borrower to accept and enter into the Loan Agreement and to execute and to deliver the Note to the NMED.

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE BORROWER:**

**Section 1. DEFINITIONS.** As used in the Ordinance, the following terms shall have the meanings specified below, unless the context clearly requires otherwise (*such meanings to be equally applicable to both the singular and the plural forms of the terms defined unless the plural form is separately defined*):

**ACT.** The general laws of the State, including the Wastewater Facility Construction Loan Act at sections 74-6A-1 to 74-6A-15 NMSA 1978, as amended; enactments of the governing Body of the Borrower relating to the Note and the Loan Agreement made by resolution or ordinance, including this Ordinance; and the powers of the Borrower as a public body under authority given by the Constitution and Statutes of the State.

**ANNUAL AUDIT or SINGLE AUDIT.** Financial statements of the Borrower as of the end of each Fiscal Year, audited by an Independent Accountant, consistent with the federal Single Audit Act and the State Auditor's rules.

**AUTHORIZED OFFICER.** The Borrower's mayor, chief administrative officer, or other officer or employee of the Borrower as designated by the Borrower's Resolution Number \_\_\_\_\_ adopted by the governing body of the Borrower, as amended.

**BORROWER.** The entity requesting funds pursuant to the Act.

**FISCAL YEAR.** The twelve-month period commencing on the first day of July of each year and ending on the last day of June of the succeeding year, or any other twelve-month period which the Borrower hereafter may establish as the fiscal year or the System.

**GOVERNING BODY OF THE BORROWER** City of Hobbs Commission.

**LOAN.** A loan of funds from NMED made pursuant to the Loan Agreement.

**LOAN AGREEMENT.** One or more loan agreements between the Borrower and the NMED, pursuant to which funds will be loaned to the Borrower to construct the Project and pay eligible costs relating thereto; and the amended loan agreement which shall state the final amount the NMED loaned to the Borrower, which shall be executed upon completion of the Project and dated on the date of execution thereof.

**NMSA.** New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

**NOTE.** The interim and final promissory notes issued by the Borrower to the NMED evidencing the obligation of the Borrower to the NMED incurred pursuant to the Ordinance and Loan Agreement.

**OPERATION AND MAINTENANCE.** All reasonable and necessary current expenses of the System, paid or accrued, relating to operating, maintaining and repairing the System.

**ORDINANCE.** This Ordinance as amended or supplemented from time to time.

**PARITY BONDS or PARITY OBLIGATIONS.** Revenue Bonds and other bonds or other obligations payable from the Pledged Revenues issued with a lien on the Pledged Revenues on parity with the bonds or obligations as listed in this Ordinance.

**PLEGGED REVENUES.** City of Hobbs Enterprise Fund which consists of the water and wastewater joint utility revenues.

**PROJECT.** The most current NMED approved Project Description listed on the Project Description Form on file with NMED.

**PROJECT COMPLETION DATE.** Means the date that operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

**REGULATIONS.** Regulations promulgated by the Water Quality Control Commission at 20.7.5 NMAC and New Mexico Environment Department at 20.7.6 – 20.7.7 NMAC.

**SUBORDINATE OBLIGATIONS.** Other obligations payable from the Pledged Revenues issued with a lien on the Pledged Revenues subordinate to the lien of the Loan Agreement and Note as may be listed in this Ordinance.

**Section 2. RATIFICATION.** All action heretofore taken (not inconsistent with the provisions of the Ordinance) by the Board, the officers and employees of the Borrower, directed toward the Loan Agreement and the Note, is hereby ratified, approved and confirmed.

**Section 3. FINDINGS.** The Governing Body of the Borrower hereby declares that it has considered all necessary and relevant information and data and hereby makes the following findings:

(A) The execution and delivery of the Loan Agreement and the Note pursuant to the Act to provide funds to finance the Project, is necessary and in the interest of the public health, safety, and welfare of the residents of the Borrower and will result in savings of finance costs to the Borrower.

(B) The Borrower will acquire, improve and finance the Project.

(C) The money available for the Project from all sources other than the Loan Agreement is not sufficient to pay when due the cost of the Project.

(D) The Project is and will be part of the System.

(E) The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement and Note.

**Section 4. SYSTEM.** The System shall continue to constitute a joint water and wastewater system and shall be operated and maintained as such.

**Section 5. AUTHORIZATION OF PROJECT.** The acquisition and construction of the Project and payment of eligible items as set forth in the Regulations from proceeds of the Loan Agreement and Note is hereby authorized at a cost not to exceed the principal Loan amount of \$6,143,300.00 excluding any cost of the Project to be paid from any source other than the proceeds of the Loan Agreement and Note.

**Section 6. AUTHORIZATION OF LOAN AGREEMENT.**

(A) For the purpose of protecting the public health, conserving the property, and protecting the general welfare of the residents of the Borrower and acquiring the Project, it is hereby declared necessary that the Borrower, pursuant to the Act and the Regulations execute and deliver the Loan Agreement and Note, and the Borrower is hereby authorized to execute and deliver the Loan Agreement and the Note, to be payable and collectible solely from the Pledged Revenues. The NMED has agreed to disburse the proceeds according to the terms of the Loan Agreement to the Borrower over the construction period of the Project. The principal Loan amount of the Note shall not exceed \$6,143,300.00 plus accrued interest without the adoption of another Ordinance amending the Ordinance by the Governing Body of the Borrower, and the annual interest rate on that principal amount shall not exceed 1.2 percent per annum. Interest shall be computed as a percentage per year on the outstanding principal amount on the Loan on the basis of a 365-day year, actual number of days lapsed. The final maturity date on the Note shall not extend beyond the agreed upon useful life of the project. The Loan shall be repaid in substantially equal annual installments in the amount and on the dates provided in the Loan Agreement with the first annual installment due no later than one year after completion of the project. The Borrower must maintain a debt service coverage ratio of no less than 1.2 and must also obtain the written consent of the NMED before issuing additional obligations secured by the Pledged Revenues.

(B) If the Borrower fails to satisfy any federal grant requirements or conditions, the Borrower may be required to refund any federal grant funds disbursed to the Borrower from NMED. Specific federal grant requirements include but are not limited to:

- (1) Federal Grant Reporting Requirements; and
- (2) Wage Rate Requirements

(C) The form of the Loan Agreement and the Note are approved. An Authorized Officer is hereby authorized and directed to execute and deliver the Loan Agreement and the Note and any extensions of or amendments to any such document to be executed after completion of the Project, or any substitution therefore, with such changes therein consistent with the Ordinance and as shall be approved by an Authorized Officer whose execution thereof, or any extension thereof, or substitution therefore, in their final forms shall constitute conclusive evidence of their approval and compliance with this section.

(D) From and after the date of the initial execution and delivery of the Loan Agreement and the Note, Authorized Officers, agents and employees of the Borrower are authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Ordinance, the Loan Agreement and the Note.

**Section 7. SPECIAL LIMITED OBLIGATIONS.** The Loan Agreement and the Note and all payments thereon shall be special limited obligations of the Borrower and shall be payable and collectible solely from the Pledged Revenues which are irrevocably pledged as set forth in this Ordinance. The NMED may not look to any general or other fund for the payment on the Loan Agreement and the Note except the designated special funds pledged therefore. The Loan Agreement and the Note shall not constitute indebtedness or debts within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or be held

to be general obligations of the Borrower and shall recite that they are payable and collectible solely from the Pledged Revenues the income from which is so pledged.

**Section 8. OPERATION OF PROJECT.** The Borrower will operate and maintain the Project so that it will function properly over its structural and material design life.

**Section 9. USE OF PROCEEDS.** The NMED shall disburse Funds pursuant to the Loan Agreement for NMED approved costs incurred by the Borrower for the Project or to pay contractors or suppliers of materials for work performed on the Project as set forth in the Loan Agreement.

**Section 10. APPLICATION OF REVENUES.**

**(A) OPERATION AND MAINTENANCE.** The Borrower shall pay for the operation and maintenance expenses of the System, approved indirect charges, and any amounts for capital replacement and repair of the System as incurred.

**(B) PARITY OBLIGATIONS AND OTHER APPROVED DEBT(S).** The Borrower shall pay the principal, interest and administrative fees (if applicable) of parity obligations and other approved debts which are secured from the Pledged Revenues as scheduled.

**(C) EQUITABLE AND RATABLE DISTRIBUTION.** Obligations of the Borrower secured by the Pledged Revenues on parity with the Loan Agreement and the Note, from time to time outstanding, shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance or creation.

**(D) SUBORDINATE OBLIGATIONS.** The Pledged Revenues used for the payment of Subordinate Obligations shall be applied first to the payment of the amounts due the Loan Agreement and the Note, including payments to be made to other obligations payable from the Pledged Revenues which have a lien on the Pledged Revenues on parity with the Loan Agreement and the Note.

**Section 11. LIEN OF LOAN AGREEMENT AND NOTE.** The Loan Agreement and the Note shall constitute irrevocable liens upon the Pledged Revenues with priorities on the Pledged Revenues as set forth in this Ordinance. The Borrower hereby pledges and grants a security interest in the Pledged Revenues for the payment of the Note and any other amounts owed by the Borrower to the NMED pursuant to the Loan Agreement.

**Section 12. OTHER OBLIGATIONS.** Nothing in the Ordinance shall be construed to prevent the Borrower from issuing bonds or other obligations payable from the Pledged Revenues and having a lien thereon subordinate to the liens of the Loan Agreement and the Note. The Borrower must obtain the written consent of the NMED before issuing additional obligations secured by the Pledged Revenues.

**Section 13. DEFAULT.** The following shall constitute an event of default under the Loan Agreement:

(A) The failure by the Borrower to pay the annual payment due on the repayment of the Loan set forth in the Loan Agreement and Note when due and payable either at maturity or otherwise; or

(B) Default by the Borrower in any of its covenants or conditions set forth under the Loan Agreement (*other than a default described in the previous clause of this section*) for 60 days after the NMED has given written notice to the Borrower specifying such default and requiring the same to be remedied.

**UPON OCCURRENCE OF DEFAULT:**

(A) The entire unpaid principal amount of the Interim and Final Promissory Note plus accrued interest and any fees thereon may be declared by the NMED to be immediately due and payable and the Borrower shall pay the amounts due under Note from the Pledged Revenues, either immediately or in the manner required by the NMED in its declaration, but only to the extent funds

are available for payment of the Note. However, if insufficient funds are available for payment of the Note(s), the NMED may require the Borrower to adjust the rates charged by the System to ensure repayment of the Note.

(B) If default by the Borrower is of covenants or conditions required under the federal grant, the Borrower may be required to refund the amount of the Loan disbursed to the Borrower from NMED.

(C) The NMED shall have no further obligation to make payments to the Borrower under the Loan Agreement.

**Section 14. ENFORCEMENT; VENUE.** The NMED retains the right to seek enforcement of the terms of the Loan Agreement. If the NMED and the Borrower cannot reach agreement regarding disputes as to the terms and conditions of this Loan Agreement, such disputes are to be resolved promptly and expeditiously in the district court of Santa Fe County. The Borrower agrees that the district court for Santa Fe County shall have exclusive jurisdiction over the Borrower and the subject matter of this Loan Agreement and waives the right to challenge such jurisdiction.

**Section 15. REMEDIES UPON DEFAULT.** Upon the occurrence of any of the events of default as provided in the Loan Agreement or in this Ordinance, the NMED may proceed against the Borrower to protect and enforce its rights under the Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained in the Ordinance for the enforcement of any proper legal or equitable remedy as the NMED may deem most effective to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of the NMED, or to require the Borrower to act as if it were the trustee of an express trust, or any combination of such remedies.

Each right or privilege of the NMED is in addition and cumulative to any other right or privilege under the Ordinance or the Loan Agreement and Note and the exercise of any right or privilege by the NMED shall not be deemed a waiver of any other right or privilege.

**Section 16. DUTIES UPON DEFAULT.** Upon the occurrence of any of the events of default as provided in this Ordinance, the Borrower, in addition, will do and perform all proper acts on behalf of and for the NMED to protect and preserve the security created for the payment of the Note to ensure the payment on the Note promptly as the same become due. All proceeds derived from the System, so long as the Note is outstanding, shall be treated as revenues. If the Borrower fails or refuses to proceed as required by this Section, the NMED, after demand in writing, may proceed to protect and enforce the rights of the NMED as provided in the Ordinance and the Loan Agreement.

**Section 17. TERMINATION.** When all obligations under the Loan Agreement and Note have been paid, the Loan Agreement and Note shall terminate and the pledge, lien, and all other obligations of the Borrower under the Ordinance shall be discharged. The principal amount of the Note, or any part thereof, may be prepaid at any time without penalty at the discretion of the Borrower and the prepayments of principal shall be applied as set forth in the Loan Agreement.

**Section 18. AMENDMENT OF ORDINANCE.** This Ordinance may be amended with the prior written consent of the NMED.

**Section 19. ORDINANCE IRREPEALABLE.** After the Loan Agreement and Note have been executed and delivered, the Ordinance shall be and remain irrevocable until the Note has been fully paid, terminated and discharged, as provided in the Ordinance.

**Section 20. SEVERABILITY CLAUSE.** If any section, paragraph, clause or provision of the Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or

unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the Ordinance.

**Section 21. REPEALER CLAUSE.** All bylaws, orders, Ordinances and Ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer clause shall not be construed to revive any bylaw, order, Ordinance or Ordinance, or part thereof, heretofore repealed.

PASSED, ADOPTED AND APPROVED this 18<sup>th</sup> day of September, 2017.

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

ATTEST:

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



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: September 18, 2017

**SUBJECT:** Resolution Authorizing Official Representatives and Signatory Authorities for a Loan Agreement between the New Mexico Environment Department (NMED) and the City of Hobbs for the design and construction of new aerobic digestion basins and associated equipment at the City of Hobbs' Wastewater Reclamation Facility.

**DEPT. OF ORIGIN:** Utilities

**DATE SUBMITTED:** September 11, 2017

**SUBMITTED BY:** Tim Woomeer, Utilities Director

**Summary:**

Upon adoption of Ordinance 1107 to enter into a loan agreement with NMED in the amount of \$6,314,300.00 for the City of Hobbs Aerobic Digester Project, a resolution is required which authorizes the Mayor to designate official Borrower Representatives and Signatory Authorities to the agreement.

Tim Woomeer, Utilities Director, or Todd Randall, City Engineer, or their successor(s), are designated as Official Borrower Representatives authorized to submit any documents pertaining to the project and act as the single point of contact.

Toby Spears, Finance Director, or Jan Fletcher, City Clerk, or their successor(s) are designated as Official Signatory Authorities authorized to sign reimbursement requests or other documents requiring a signature for submittal to NMED.

**Fiscal Impact:**

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

Finance Department

There is no fiscal impact in adopting a resolution designating Official Borrower Representatives and Signatory Authorities in a Loan Agreement between the New Mexico Environment Department and the City of Hobbs.

**Attachments:**

Resolution Authorizing the Assignment of Official Borrower Representatives and Signatory Authorities.

**Legal Review:**

Approved As To Form: \_\_\_\_\_

City Attorney

**Recommendation:**

Approve a resolution designating Official Borrower Representatives and Signatory Authorities to the loan agreement between the City of Hobbs and the New Mexico Environment Department for the design and construction of the City of Hobbs Aerobic Digester Project.

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. 6590

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF OFFICIAL  
REPRESENTATIVES AND SIGNATORY AUTHORITIES

WHEREAS, the Commission of Hobbs of Lea County of the State of New Mexico shall enter into a Loan Agreement with the State of New Mexico Environment Department; and

WHEREAS, the Agreement is identified as CWSRF-064;

NOW, THEREFORE, BE IT RESOLVED by the named applicant that:

Sam D. Cobb, Mayor, or his successor is authorized to sign the agreement for this project, and;

Tim Woomer, Utilities Director, or Todd Randall, City Engineer, or their successor(s) are the OFFICIAL BORROWER REPRESENTATIVES who are authorized to submit any documents pertaining to the project and act as the single point of contact; and

Toby Spears, Finance Director, or Jan Fletcher, City Clerk, or their successor(s) are the SIGNATORY AUTHORITY who are authorized to sign reimbursement requests and other documents requiring a signature for submittal to the New Mexico Environment Department.

PASSED, ADOPTED AND APPROVED this 18<sup>th</sup> day of September, 2017.

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

ATTEST:

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

**Project Name** City of Hobbs Aerobic  
Digester Project

**Project No.** \_\_\_\_\_

| <b>Borrower Representative(s)</b> |                                    |
|-----------------------------------|------------------------------------|
| Name/Title                        | Tim Woomer, Utilities Director     |
| Signature                         | _____                              |
| Address                           | 200 E. Broadway<br>Hobbs, NM 88240 |
| E-mail                            | twoomer@hobbsnm.org                |
| Phone                             | 575-397-9315                       |
| Name/Title                        | Todd Randall, City Engineer        |
| Signature                         | _____                              |
| Address                           | 200 E. Broadway<br>Hobbs, NM 88240 |
| E-mail                            | trandall@hobbsnm.org               |
| Phone                             | 575-397-9232                       |
| Name/Title                        | _____                              |
| Signature                         | _____                              |
| Address                           | _____                              |
| E-mail                            | _____                              |
| Phone                             | _____                              |

| <b>Borrower Signatory Authority(ies)</b> |                                    |
|--|------------------------------------|
| Name/Title                               | Toby Spears, Finance Director      |
| Signature                                | _____                              |
| Address                                  | 200 E. Broadway<br>Hobbs, NM 88240 |
| E-mail                                   | tspears@hobbsnm.org                |
| Phone                                    | 575-397-9239                       |
| Name/Title                               | Jan Fletcher, City Clerk           |
| Signature                                | _____                              |
| Address                                  | 200 E. Broadway<br>Hobbs, NM 88240 |
| E-mail                                   | jfletcher@hobbsnm.org              |
| Phone                                    | 575-397-9200                       |
| Name/Title                               | _____                              |
| Signature                                | _____                              |
| Address                                  | _____                              |
| E-mail                                   | _____                              |
| Phone                                    | _____                              |