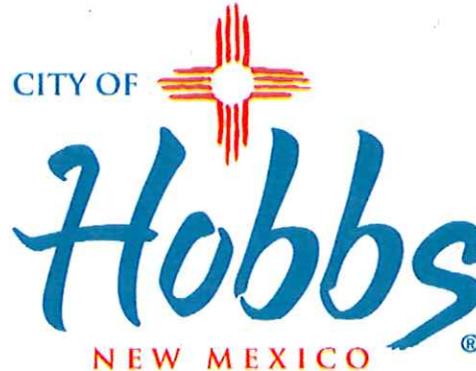


# Commission Meeting Agenda



## ***Mayor***

Samuel D. Cobb

## **City Commission**

Marshall R. Newman

Christopher R. Mills

Patricia A. Taylor

Joseph D. Calderón

Dwayne Penick

Don R. Gerth

## ***Acting City Manager***

Manny Gomez

***June 3, 2019***



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

**Monday, June 3, 2019 - 6:00 p.m.**

Sam D. Cobb, Mayor

Marshall R. Newman  
Commissioner - District 1

Christopher R. Mills  
Commissioner - District 2

Patricia A. Taylor  
Commissioner - District 3

Joseph D. Calderón  
Commissioner - District 4

Dwayne Penick  
Commissioner - District 5

Don R. Gerth  
Commissioner - District 6

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**A G E N D A**

*City Commission Meetings are  
Broadcast Live on KHBX FM 99.3 Radio  
and Available via Livestream at [www.hobbsnm.org](http://www.hobbsnm.org)*

**CALL TO ORDER AND ROLL CALL**

**INVOCATION AND PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES**

1. Minutes of the May 20, 2019, Regular Commission Meeting

**PROCLAMATIONS AND AWARDS OF MERIT**

2. Proclamation Proclaiming June 3, 2019, as "New Mexico Junior College Lady Thunderbirds Day" (NMJC Representatives)

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

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

3. Resolution No. 6801 - Authorizing a Special Variance to the City's Noise Ordinance During Hobbs August Nites on August 17-18, 2019 *(Jan Fletcher, City Clerk)*
4. Consideration of Approval of Park Usage Fee for Vendors at City-Sponsored Events *(Doug McDaniel, Parks and Recreation Director)*
5. Resolution No. 6802 - Authorizing the Appointment of Finn Smith to the Board of the Eddy-Lea Energy Alliance, LLC. *(Mayor Sam Cobb)*

## **DISCUSSION**

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

6. **PUBLIC HEARING:** Resolution No. 6803 - Establishing Permit Parking Restrictions for On-Street Parking on Streets Adjacent to the Hobbs High School (Specifically the Neighborhood West of the Hobbs High School) *(Efren Cortez, City Attorney)*
7. **FINAL ADOPTION:** Ordinance No. 1121 - Amending Chapter 10 of the Hobbs Municipal Code Prohibiting Parking of Commercial Motor Vehicles on Streets *(Erik Scramlin, Deputy City Attorney, and Kevin Robinson, Development Director)*
8. Resolution No. 6804 - Authorizing a Solid Waste Services Agreement with Waste Management of New Mexico *(Tim Woomer, Utilities Director)*
9. Resolution No. 6805 - Authorizing Budgetary Adjustment #5 for FY 2018-2019 *(Toby Spears, Finance Director)*
10. Resolution No. 6806 - Authorizing Approval of a Development Agreement with Grimes Land Co. Concerning Installation of Public Infrastructure *(Kevin Robinson, Development Director)*
11. Resolution No. 6807 - Approving the Final Plan for Tanglewood Unit Three at Ranchview Estates Subdivision *(Kevin Robinson, Development Director)*

12. Consideration of Approval to Renew the Professional Services Agreement with Life Skills Fore Youth of the Pecos for the First Tee Program at Rockwind Community Links (*Doug McDaniel, Parks and Recreation Director, and Toby Spears, Finance Director*)
13. Resolution No. 6808 - (*Tabled Item from May 20, 2019*) Authorizing the Mayor and City Manager to Enter Into a Legal Services Agreement with Robles, Rael and Anaya, P.C., and with Baron & Budd, P.C. (*Erik Scramlin, Deputy City Attorney*)

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

14. Next Meeting Date:
  - ▶ City Commission Regular Meeting  
**June 17, 2019**, at 6:00 p.m.

#### **ADJOURNMENT**

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the above meeting, please contact the City Clerk's Office at (575) 397-9207 at least 72 hours prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the City Clerk's Office if a summary or other type of accessible format is needed.



# CITY OF HOBBS

## COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 3, 2019

**SUBJECT:** City Commission Meeting Minutes

DEPT. OF ORIGIN: City Clerk's Office  
DATE SUBMITTED: May 29, 2019  
SUBMITTED BY: Jan Fletcher, City Clerk

**Summary:**

The following minutes are submitted for approval:

- ▶ Regular Commission Meeting of May 20, 2019

**Fiscal Impact:**

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

N/A

**Attachments:**

Minutes as referenced under "Summary".

**Legal Review:**

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

**Recommendation:**

Motion to approve the minutes as presented.

Approved For Submittal By:

  
\_\_\_\_\_  
Department Director  
  
\_\_\_\_\_  
City Manager

CITY CLERK'S USE ONLY  
COMMISSION ACTION TAKEN

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

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

Minutes of the regular meeting of the Hobbs City Commission held on Monday, May 20, 2019, in the City Commission Chamber, 200 East Broadway, 1<sup>st</sup> Floor Annex, Hobbs, New Mexico.

**Call to Order and Roll Call**

Mayor Cobb called the meeting to order at 3:30 p.m. and welcomed everyone in attendance to the meeting. The Clerk Record Specialist called the roll and the following answered present:

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

Also present:

Manny Gomez, Acting City Manager/Fire Chief  
Efren Cortez, City Attorney  
Erik Scramlin, Deputy City Attorney  
Valerie Chacon, Assistant City Attorney  
Brian Dunlap, Acting Police Chief  
Shane Blevins, Police Lieutenant  
Clipper Miller, Police Captain  
Barry Young, Deputy Fire Chief  
Kevin Shearer, Battalion Chief  
Michael Prudencio, EMS Coordinator Battalion Chief  
Brandon Roberts, Fire Captain  
Shawn Williams, Fire Marshal  
Art Delacruz, Code Enforcement Superintendent  
Todd Randall, City Engineer  
Kevin Robinson, Development Director  
Doug McDaniel, Parks and Recreation Director  
Matt Hughes, Rockwind Community Links/Lovington Hwy. Trail Superintendent  
Bryan Wagner, Parks and Open Spaces Director  
Wade Whitehead, Parks Superintendent  
Deborah Corral, Assistant Finance Director  
Nicholas Goulet, Human Resources Director  
Tracy South, Assistant Human Resources Director  
Raymond Bonilla, Community Services Director  
Shannon Arguello, Municipal Court Administrator  
Shelia Baker, General Services Director  
Meghan Mooney, Communications Director  
Sandy Farrell, Library Director  
Ron Roberts, Information Technology Director  
April Avila, Clerk Record Specialist  
Sandra Boltshauser, Clerk Record Specialist  
23 citizens

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

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

### **Approval of Minutes**

Commissioner Calderón moved that the minutes of the regular meeting held on May 6, 2019, and the budget work session held on May 6, 2019, be approved as presented. Commissioner Taylor seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried.

### **Closed Session**

The City Commission convened in closed executive session on Monday, May 20, 2019, at 3:00 p.m, for the discussion of matters subject to the attorney-client privilege pertaining to threatened or pending litigation in Federal or State Courts in which the City is or may become a participant, specifically involving a possible opioid investigation and litigation involving the City of Hobbs. The matter discussed in the closed meeting were limited only to the discussion of that item as specified. No action was taken during the meeting.

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

#### ***Proclamation Proclaiming the Week of May 19 - 25, 2019, as "Emergency Medical Services Week"***

Mayor Cobb proclaimed the week of May 19 - 25, 2019, as "Emergency Medical Services Week". He presented the proclamation to Mr. Barry Young, Deputy Fire Chief, and Mr. Michael Prudencio, EMS Coordinator Battalion Chief. Mr. Prudencio thanked the Commission and the community for their support. He stated the Hobbs EMS staff is continuing to improve the quality of EMS service to the community. He also invited the Commission and the public to visit the fire stations at any time, where they can have their blood pressure checked and visit with the EMS staff.

#### ***Recognition of Employee Milestone Service Awards for May, 2019.***

Acting City Manager/Fire Chief Manny Gomez recognized the employees who have reached milestone service awards with the City of Hobbs for the month of May, 2019, which total 55 years of service worked. Acting City Manager/Fire Gomez read their

names, job titles and gave a brief summary of the job duties performed by each of the following employees:

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

Acting City Manager/Fire Chief Gomez thanked the Commission for recognizing the employees and their service to the City. He stated employees are the most important resource and asset within the organization. Acting City Manager/Fire Chief Gomez expressed thanks and appreciation to the employees and their families.

#### **Public Comments**

There were no Public Comments.

#### **Consent Agenda**

There were no items on the Consent Agenda.

#### **Discussion**

There were no items presented for Discussion.

#### **Action Items**

##### **Resolution No. 6797 - Authorizing Approval of the FY 19-20 Preliminary Budget.**

Ms. Deborah Corral, Assistant Finance Director, presented the FY 19-20 Preliminary Budget to the Commission. She stated this proposed preliminary budget is due for submission to the New Mexico Department of Finance Authority (DFA) by June 1<sup>st</sup>. Ms. Corral stated the preliminary budget includes \$72,314,929.56 in proposed General Fund expenditures and \$123,251,442.63 in proposed expenditures for all funds. She stated revenues in the General Fund are projected at \$69,392,109.08 and total revenue projections for all funds are set at \$116,246,297.08. Ms. Corral stated the General Fund reserve is set at 31% with a preliminary ending cash balance for all funds of \$49,865,229.05.

Commissioner Newman thanked Ms. Corral and the Finance Department for their hard work on the budget and the preparation of an electronic budget, which was easier to review.

Commissioner Penick moved to approve Resolution No. 6797 as presented. Commissioner Newman seconded the motion and the vote was recorded as follows: Newman yes, Mills yes, Taylor yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached and made a part of these minutes.

*Resolution No. 6798 - Authorizing Funding Appropriations to Social Service Agencies and Authorizing the Mayor to Execute Professional Service Agreements.*

Mayor Cobb explained the resolution to appropriate funds for social service agencies and stated he, Commissioner Taylor, Commissioner Penick and Ms. Ann Betzen, Risk Manager, formed the committee to evaluate the funding requests. He further stated the committee recommends funding for social service agencies at the maximum allowed by Ordinance 1086, which caps the funding at \$400,000.00.

Commissioner Gerth moved to approve Resolution No. 6798 as presented. Commissioner Penick seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Gerth yes, Penick yes, Cobb yes. The motion carried. Copies of the resolution and documentation are attached and made a part of these minutes.

*Resolution No. 6799 - Approval of a Development Agreement with Black Gold Estates Concerning the Development of Market Rate Single-Family Housing*

Mr. Kevin Robinson, Development Director, stated the City is proposing to enter into a development agreement with Black Gold Estates, for property located in the Zia Crossing Subdivision. He further stated the development agreement is for infrastructure reimbursement in the amount of \$100,000.00. Mr. Robinson stated this development agreement will be the seventh development agreement requested by Black Gold Estates.

Mr. Dan Dattola, representing Black Gold Estates, stated Black Gold Estates is moving along with the project at Zia Crossing. He stated of the 228 lots, 225 of them are completed or under contract. He further stated there are 52 lots to be submitted for final approval at a later time.

Mayor Cobb stated the public infrastructure includes streets, curbs, sidewalks and water lines. He further stated the water lines are the public access mains, not private lines.

Commissioner Gerth moved to approve Resolution No. 6799 as presented. Commissioner Penick seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Gerth yes, Penick yes, Cobb yes. The motion carried. Copies of the resolution and documentation are attached and made a part of these minutes.

Consideration of Approval of RFP No. 508-19 for the Purchase/Lease of 70 Golf Carts and Recommendation to Accept the Proposal of Masek Rocky Mountain Golf Cars.

Mr. Doug McDaniel, Parks and Recreation Director, explained RFP No. 508-19 for the purchase or lease of 70 golf carts for Rockwind Community Links. He stated three bids were received and opened on March 25, 2019, and all three bids were deemed responsive by the committee which was made up of staff from the Utilities, Information Technology and Parks and Recreation Departments. He further stated the committee awarded Masek Rocky Mountain Golf Cars 97 out of a possible 110 points. Mr. McDaniel stated the City will receive a better deal financially by purchasing the 70 golf carts opposed to leasing. He further stated the Yamaha carts will be equipped with a five gallon gas tank that will allow the carts to be used for approximately 30 to 35 rounds of golf. He added the current electric carts are usable for three or four rounds of golf before their battery charge is gone and once the charge is gone, the carts are done for the day. Mr. McDaniel stated the carts will be outfitted with GPS technology as soon as it is available through the manufacturer and will allow Rockwind staff to monitor the position of the carts on the course as well as allowing Rockwind staff to shut down carts that are outside of their allowed areas. He explained this will assist in keeping drivers out of native areas on the golf course. Mr. McDaniel stated upon approval by the Commission, the City will reclassify FY 18 -19 budget funds in the amount of \$240,277 to purchase 39 golf carts now and the remaining 31 carts will be purchased in the amount of \$190,061 through the Budget Adjustment Request (BAR) #5 in June, 2019.

Mr. Jordan Webber, with Masek Rocky Mountain Golf Cars, stated the gas powered car has an improved muffler and an enclosed motor designed to be several decibels quieter than a traditional gas powered golf cart. He further stated the life span of the motor could easily be 20 years; however the golf cart body has a life span of six to seven years. Mr. Webber stated the cart's body panels are interchangeable. He added that the interchangeable body panels assist in increasing the life span of the golf carts.

Commissioner Gerth moved to approve RFP No. 508-19 to purchase 70 golf carts as presented. Commissioner Newman seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón yes, Gerth yes, Penick yes, Cobb yes. The motion carried. A copy of the supporting documentation is attached and made a part of these minutes.

Resolution No. 6800 - Authorizing the Mayor and City Manager to Enter Into a Legal Services Agreement with Robles, Rael and Anaya, P.C., and with Baron & Budd, P.C.

Mr. Erik Scramlin, Deputy City Attorney, explained the resolution and stated the City wishes to enter into a legal agreement with the law firms of Robles, Rael and Anaya, P.C. and Baron & Budd P.C., to investigate and possibly initiate litigation involving the manufacture, marketing, sale and distribution of prescription opioid products in Hobbs. He explained the payment for the legal services is pursuant to a contingency fee agreement in which there will be no payment for services unless the City of Hobbs receives a monetary award. Mr. Scramlin stated the investigation will center on known prescriptions and over the counter opiates in order to remove them from the streets.

Mayor Cobb stated he has questions regarding this contract and requested a motion to table the resolution.

Commissioner Taylor moved to table Resolution No. 6800. Commissioner Penick seconded the motion and the vote was recorded as follows: Mills yes, Newman yes, Taylor yes, Calderón no, Gerth yes, Penick yes, Cobb yes. The motion carried. Copies of the resolution and documentation are attached and made a part of these minutes.

**Comments by City Commissioners, City Manager**

Mayor Cobb stated the next regular Commission meeting will be held on Monday, June 3, 2019.

**Adjournment**

There being no further business or comments, Commissioner Calderón moved that the meeting adjourn. Commissioner Gerth seconded the motion and the vote was recorded as follows: Newman yes, Mills yes, Taylor yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried. The meeting adjourned at 4:10 p.m.

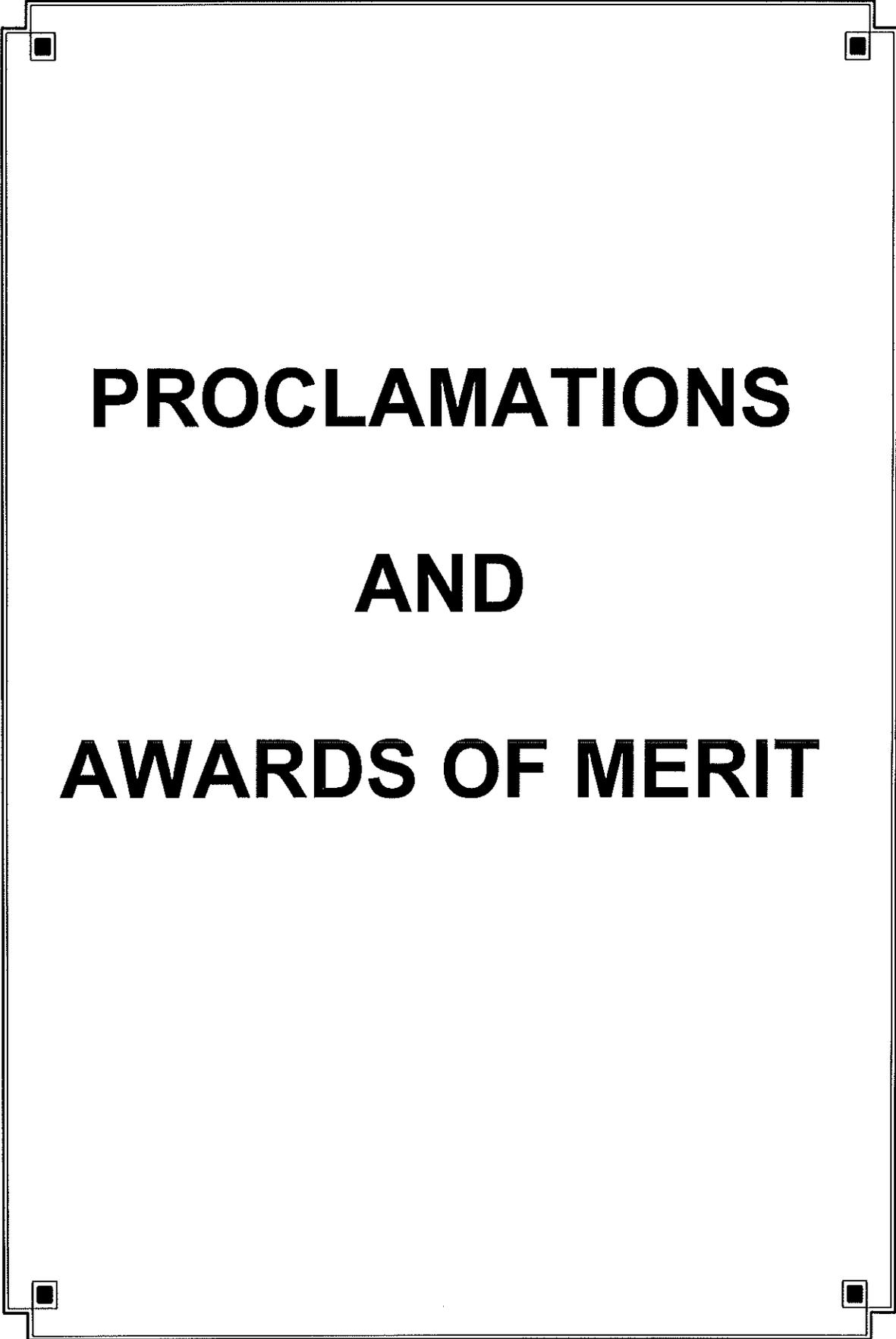
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SAM D. COBB, Mayor

ATTEST:

---

JAN FLETCHER, City Clerk



**PROCLAMATIONS**

**AND**

**AWARDS OF MERIT**

Office of the Mayor  
Hobbs, New Mexico

## PROCLAMATION

**WHEREAS**, the New Mexico Junior College located in Hobbs, New Mexico, successfully hosted the NJCAA National Outdoor Track & Field Championship on May 16-18, 2019, at the Ross Black Field of Champions; and

**WHEREAS**, at this prestigious event, on its home track in front of its home fans, the New Mexico Junior College Women's Track & Field Team won the title of *2019 NJCAA Outdoor Track & Field National Champions*; and

**WHEREAS**, this is the third outdoor national title in a row for the NMJC Women's Team; and

**WHEREAS**, Head Coach Keith Blackwill was named the NJCAA Women's Coach of the Meet and the U. S. Track & Field and Cross County Coaches Association (USTFCCCA) Coach of the Year.

**NOW, THEREFORE**, I, Sam D. Cobb, Mayor of the City of Hobbs, New Mexico, do hereby proclaim June 3<sup>rd</sup>, 2019, as

***“NEW MEXICO JUNIOR COLLEGE  
LADY THUNDERBIRDS DAY”***

in recognition of the outstanding accomplishments of the 2019 Women's Track & Field Team with congratulations for a job well done!

**IN WITNESS WHEREOF**, I have hereunto set my hand this 3<sup>rd</sup> day of June, 2019, and cause the seal of the City of Hobbs to be affixed hereto.

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

ATTEST:

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





# **CONSENT AGENDA**



# CITY OF HOBBS

## COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 3, 2019

**SUBJECT: Resolution Authorizing a Special Variance to the City's Noise Ordinance During Hobbs August Nites on August 17-18, 2019**

DEPT. OF ORIGIN: City Clerk  
DATE SUBMITTED: May 27, 2019  
SUBMITTED BY: Jan Fletcher, City Clerk

**Summary:**

Section 8.20.050 of the Hobbs Municipal Code authorizes the City Commission to grant special variances to the City's noise ordinance. Hobbs August Nites is requesting a noise variance for organized activities and concerts during Hobbs August Nites which are scheduled to be held on August 17<sup>th</sup> and 18<sup>th</sup>, 2019, until 10:30 p.m. Notice of the variance request has been published in the *Hobbs News-Sun* as required by the Hobbs Municipal Code.

**Fiscal Impact:**

No fiscal impact.

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

*[Signature]*  
Finance Department

**Attachments:**

Request from Hobbs August Nites  
Affidavit of Publication  
Resolution Granting a Special Variance

**Legal Review:**

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

*[Signature]*  
City Attorney

**Recommendation:**

Motion to approve the resolution.

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. 6801

A RESOLUTION AUTHORIZING THE MAYOR TO  
GRANT A SPECIAL VARIANCE TO THE NOISE  
ORDINANCE PURSUANT TO SECTION 8.20.050 OF  
THE HOBBS MUNICIPAL CODE DURING  
HOBBS AUGUST NITES ON AUGUST 17 - 18, 2019

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS,  
NEW MEXICO, that the Mayor be and hereby is authorized and directed to grant a  
special variance to the noise ordinance of the Hobbs Municipal Code for organized  
activities and concerts occurring during Hobbs August Nites on August 17<sup>th</sup> and 18<sup>th</sup>,  
2019, until 10:30 p.m. in downtown Hobbs for the reason that benefit to the community  
of the activities creating the offending noise are greater than the adverse effect of the  
noise created.

PASSED, ADOPTED AND APPROVED this 3<sup>rd</sup> day of June, 2019.

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

ATTEST:

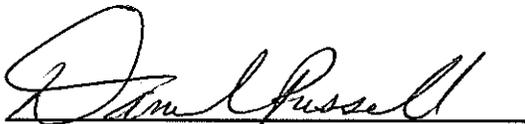
\_\_\_\_\_  
JAN FLETCHER, City Clerk

# Affidavit of Publication

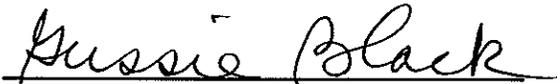
STATE OF NEW MEXICO  
COUNTY OF LEA

I, Daniel Russell, Publisher of the Hobbs News-Sun, a newspaper published at Hobbs, New Mexico, solemnly swear that the clipping attached hereto was published in the regular and entire issue of said newspaper, and not a supplement thereof for a period of 1 issue(s).

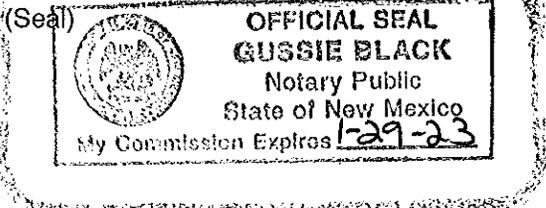
Beginning with the issue dated  
May 10, 2019  
and ending with the issue dated  
May 10, 2019.

  
\_\_\_\_\_  
Publisher

Sworn and subscribed to before me this  
10th day of May 2019.

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

My commission expires  
January 29, 2023



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

LEGAL	LEGAL
<b>LEGAL NOTICE MAY 10, 2019</b>	
NOTICE IS HEREBY GIVEN that on the 3rd day of June, 2019, at its regular meeting at 6:00 p.m., in the City Commission Chambers at City Hall, 200 East Broadway, 1st Floor Annex, Hobbs, New Mexico, the governing body of the City of Hobbs will consider a noise variance requested by Hobbs August Nites for a downtown event on August 17-18, 2019. The proposed resolution reads as follows:	
A RESOLUTION AUTHORIZING THE MAYOR TO GRANT A SPECIAL VARIANCE TO THE NOISE ORDINANCE PURSUANT TO SECTION 8.20.050 OF THE HOBBS MUNICIPAL CODE DURING HOBBS AUGUST NITES ON AUGUST 17-18, 2019	
BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be and hereby is authorized and directed to grant a special variance to the noise ordinance of the Hobbs Municipal Code for organized activities and concerts occurring during Hobbs August Nites on August 17th and 18th, 2019, until 10:30 p.m. in downtown Hobbs for the reason that benefit to the community of the activities creating the offending noise are greater than the adverse effect of the noise created.	
A copy of the proposed resolution is available to interested persons during regular business hours in the office of the City Clerk, City Hall, 200 East Broadway, Hobbs, New Mexico, and available online at <a href="http://www.hobbsnm.org">www.hobbsnm.org</a> .	
/s/ Jan Fletcher JAN FLETCHER, City Clerk	
#34118	

67108146

00228079

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

## LEGAL NOTICE

NOTICE IS HEREBY GIVEN that on the 3<sup>rd</sup> day of June, 2019, at its regular meeting at 6:00 p.m., in the City Commission Chambers at City Hall, 200 East Broadway, 1<sup>st</sup> Floor Annex, Hobbs, New Mexico, the governing body of the City of Hobbs will consider a noise variance requested by Hobbs August Nites for a downtown event on August 17-18, 2019. The proposed resolution reads as follows:

A RESOLUTION AUTHORIZING THE MAYOR TO  
GRANT A SPECIAL VARIANCE TO THE NOISE  
ORDINANCE PURSUANT TO SECTION 8.20.050 OF  
THE HOBBS MUNICIPAL CODE DURING  
HOBBS AUGUST NITES ON AUGUST 17-18, 2019

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be and hereby is authorized and directed to grant a special variance to the noise ordinance of the Hobbs Municipal Code for organized activities and concerts occurring during Hobbs August Nites on August 17<sup>th</sup> and 18<sup>th</sup>, 2019, until 10:30 p.m. in downtown Hobbs for the reason that benefit to the community of the activities creating the offending noise are greater than the adverse effect of the noise created.

A copy of the proposed resolution is available to interested persons during regular business hours in the office of the City Clerk, City Hall, 200 East Broadway, Hobbs, New Mexico, and available online at [www.hobbsnm.org](http://www.hobbsnm.org).

/s/ Jan Fletcher  
JAN FLETCHER, City Clerk



# Application for a Noise Variance

Hobbs Municipal Code - Section 8.20.050

### Applicant Information - Please Print

Applicant Name: Joshua Grassham Date: 4-22-19  
 Applicant Signature: [Signature]  
 Address: 400 N. Marland Blvd c/o Hobbs Jaycees  
 Contact Phone Number: 575-397-3202

### Event Information

Event Description: Hobbs August Nites - Concert  
 Location of Event: Intersection Taylor + Shipp Event Date: August 17+18  
 Beginning/Ending Time of Event: 6:00 p.m. - 10:30 p.m.  
 Type of Noise: Concert - Live bands  
 Will Alcohol Be Served/Provided  Yes  No  
 Will Security Be Provided: HPD  Yes  No  
 Close to Residences:  Yes  No

### Additional Notes

Lodger's tax funds received

### Approval - Official Use Only

Hobbs Police Department: \_\_\_\_\_ Date: \_\_\_\_\_  
 City Manager: \_\_\_\_\_ Date: \_\_\_\_\_

Submit Completed Application to:

City Manager's Office  
 200 East Broadway  
 Hobbs, NM 88240

Date Received

**RECEIVED**

APR 23 2019

BY: .....



# CITY OF HOBBS

## COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 3, 2019

**SUBJECT:** CONSIDER APPROVAL OF PARK USAGE FEE/VENDORS AT CITY SPONSORED EVENTS

**DEPT. OF ORIGIN:** Parks & Recreation Department

**DATE SUBMITTED:** May 28, 2019

**SUBMITTED BY:** Doug McDaniel, Parks and Recreation Director

**Summary:**

Beginning with the Tree Lighting Ceremony in December 2018, the City of Hobbs has afforded vendors the opportunity to sell goods and food items at City sponsored events. This also occurred at the District Swim Meet hosted by Hobbs High School at the CORE. Additionally, vendors have also sold goods at the Veterans Memorial Complex during adult slowpitch, girls fastpitch and youth baseball tournaments. The fees paid by these vendors ranged from \$10 (Tree Lighting), \$75 (District Swim Meet) and \$50 (Veterans Memorial Complex events).

The relationship with vendors must be directly with the City of Hobbs and both a Vendor Application and Vendor Contract were drafted by the Legal Department which has been used by vendors at the above events. In the past, vendors have contracted with a third party (tournament organizers). This new process enables the City to have a direct relationship with these vendors and also provides compliance with the New Mexico Anti-Donation laws by having the vendors pay a fee for the ability to sell goods or food at City sponsored events.

The Community Affairs Board reviewed the information related to vendors and vendor fees at their meeting on May 14. To make the fee both affordable and consistent between events, the Community Affairs Board voted to recommend a fee in the amount of \$50.00 going forward.

This fee would only apply to vendors at City sponsored events, or at events at which the City has a contractual agreement with the event organizer. These events would include:

- Movies Under the Stars
- 4<sup>th</sup> of July Community Celebration
- Hobbs Downtown Slam and Jam
- Father Daughter Dance
- USSSA Tournaments at Veterans Memorial Complex

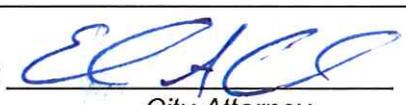
The vendors at various other events which the City does not sponsor would not pay the fee. Events included in this category include Hobbs August Nights, Cinco de Mayo, etc.

**Fiscal Impact:**

Reviewed By:   
Finance Department

It is anticipated that less than \$5,000 will be generated by these fees annually.

**Legal Review:**

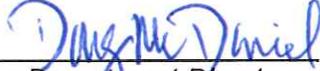
Approved As To Form:   
City Attorney

**Attachments:** Vendor Application, Vendor Contract, List of current Park Usage Fees

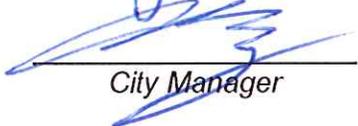
**Recommendation:**

Staff recommends that the City Commission consider approving the Parks Usage Fee for Vendors at City Sponsored Events and add this fee to the ordinance governing Park Usage Fees.

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**  
**2019 Vendor Application**

**Business Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Point of Contact:** \_\_\_\_\_  
Name \_\_\_\_\_ Number \_\_\_\_\_

**Location of proposed Vendor activity:** \_\_\_\_\_

**Type of Product to be Sold\*:** \_\_\_\_\_

\*All items sold must be related to the competition, event, or its purpose. Food items may not be sold at events held near pools.

**Will you be selling from a table/booth/trailer?** \_\_\_\_\_

**If yes, what size table/booth/trailer?** \_\_\_\_\_

**Will your staff be wearing self-identifying clothing?** \_\_\_\_\_ yes \_\_\_\_\_ no

**If yes, please describe the clothing:** \_\_\_\_\_

**Does your organization maintain general liability insurance?** \_\_\_\_\_ yes \_\_\_\_\_ no

**Does your organization maintain an active business license?** \_\_\_\_\_ yes \_\_\_\_\_ no

**I ACKNOWLEDGE THAT THE CITY OF HOBBS, OR ITS DESIGNATED DEPARTMENT RESERVES THE RIGHT TO MOVE/RELOCATE ANY VENDOR. I FURTHER ACKNOWLEDGE THAT THE CITY OF HOBBS RESERVES THE RIGHT TO APPROVE OR DENY THIS APPLICATION WHEN SAID DECISION IS DETERMINED TO BE IN THE BEST INTEREST OF THE CITY OF HOBBS, OR THE CITIZENS OF HOBBS. IF APPROVED, I WILL BE REQUIRED TO ENTER INTO A CONTRACT PRIOR TO BEGINNING SERVICES AS A VENDOR AT ANY CITY LOCATION.**

\_\_\_\_\_  
**Name of Applicant (printed)**      **Signature of Applicant**      **Date of Application**

**For Internal Use Only:**

\_\_\_\_\_  
**Reviewed By (Print)**      **Date of Review**      **Approve/Disapprove (choose one)**

\_\_\_\_\_  
**Signature of Reviewer**      **Reason for Disapproval (if applicable):** \_\_\_\_\_

**In CONTRACT BETWEEN THE CITY OF HOBBS AND  
VENDOR TO PROVIDE VENDOR SERVICES AT MOVIES UNDER THE STARS**

THIS CONTRACT is made the \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and between the City of Hobbs, New Mexico, (hereinafter referred to as "CITY") and \_\_\_\_\_, an independent contractor (hereinafter referred to as "Vendor").

The parties to this contract, in consideration of their mutual promises, agree as follows:

1. SCOPE OF SERVICES

Vendor shall perform the following project for CITY: Provide retail/food services at the MOVIES UNDER THE STARS event held on \_\_\_\_\_, 2019, at \_\_\_\_\_ a.m./p.m. Vendor shall provide their own equipment to work from and the CITY shall provide electricity as needed. Vendor will provide a list of items for sell for approval from CITY prior to the event in which they intend to provide retail services; Vendor shall attach said list to this contract as an exhibit. All items offered to the public for sale must be related to the competition, or participants of the competition, or its purpose.

2. PRICE

Vendor shall pay the CITY a fee of \$50.00 for space reservation and participation for the MOVIES UNDER THE STARS event, above.

3. TIME SCHEDULE

Vendor shall provide retail/food services for the MOVIES UNDER THE STARS event held at \_\_\_\_\_ on \_\_\_\_\_, 2019, at \_\_\_\_\_ a.m./p.m. Vendor shall be set up at least 15 minutes prior to the event so as not to interfere with the event. Vendor must cease at least 15 minutes after the conclusion of the event. This Agreement only authorizes Vendor to sell items at the specific event outlined herein. There is no continued contractual relationship, pursuant to this Agreement, between Vendor and CITY absent a separate written Agreement.

4. STATUS OF CONTRACTOR

Vendor acknowledges that their relationship with CITY is that of an independent contractor and, as such, Vendor shall not be considered an employee or agent of the CITY. Vendor further acknowledges that no benefits pursuant to the Worker's Compensation Laws of the State of New Mexico are available.

5. INSURANCE REQUIREMENTS

Vendor shall provide CITY with a certificate of insurance coverage for general liability in an amount of \$1,000,000.00, and naming City of Hobbs as an additional insured.

6. INDEMNITY

Vendor agrees to and shall indemnify, defend and hold the CITY, the City Commission of the City of Hobbs, its individual commissioners, its officers, employees and agents harmless from any and all causes of action, suits, claims, judgments, losses, costs, expenses, and liens of every kind and nature, including, but not limited to court costs and attorney's fees, arising or alleged to have arisen due to activities of Vendor, or any employees working under Vendor while engaged in the performance of this contract, or for Vendor's failure to render services, or any breach of this contract.

7. MISCELLANEOUS PROVISIONS

Vendor shall not subcontract, transfer or assign this contract, or any interest herein.

No alcohol is permitted for use or consumption at this event.

Duly authorized representatives of CITY shall have the right to inspect the work under this Contract. Duly authorized representatives of CITY shall have the right to move Vendor's location at any time so as to account for safety of the general public, participants of the competition, or the facility.

Vendor shall be responsible for all taxes and related reporting requirements. CITY shall have no liability for the payment of taxes other than gross receipts taxes upon the total price of this contract.

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

In the event that Vendor defaults on any term of this contract, CITY retains the right to declare this contract void, and Vendor agrees to pay CITY the agreed upon service fee.

If any part of this contract shall be 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.

Jurisdiction and venue relating to any litigation or dispute arising out of this contract shall be in the District Court of Lea County, New Mexico, only.

The foregoing constitutes the entire contract between the parties and may be modified only in writing signed by both parties. This contract is governed by the laws of the State of New Mexico and will bind and inure to the benefit of CITY and Vendor, their respective successors and assigns.

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

CITY OF HOBBS

\_\_\_\_\_

By: (Vendor)

\_\_\_\_\_

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

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

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Amount paid: \_\_\_\_\_ cash ( ) Check ( ) Check # \_\_\_\_\_

Electricity required: Yes ( ) No ( ) amps requested: \_\_\_\_\_





**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 3, 2019

SUBJECT: Resolution Authorizing the Appointment of a Director For Eddy-Lea Energy Alliance, LLC

DEPT. OF ORIGIN: Mayor's Office  
DATE SUBMITTED: May 30, 2019  
SUBMITTED BY: Mayor Sam D. Cobb

Summary:

The Mayor would like to appoint Finn Smith to serve as a Director for the Eddy-Lea Energy Alliance, LLC.

Fiscal Impact: There is no effect on the current year budget.

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

Attachments: Resolution

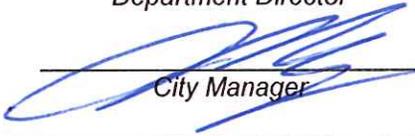
Legal Review:

Approved As To Form:   
*City Attorney*

Recommendation: Approve Resolution to appoint Finn Smith as a Director for the Eddy-Lea Energy Alliance, LLC.

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. 6802

A RESOLUTION AUTHORIZING THE APPOINTMENT  
OF A DIRECTOR FOR EDDY-LEA ENERGY ALLIANCE, LLC

WHEREAS, the City is a member of the Eddy-Lea Energy Alliance, LLC  
("ELEA"); and

WHEREAS, the City desires to appoint Finn Smith as a director for ELEA;

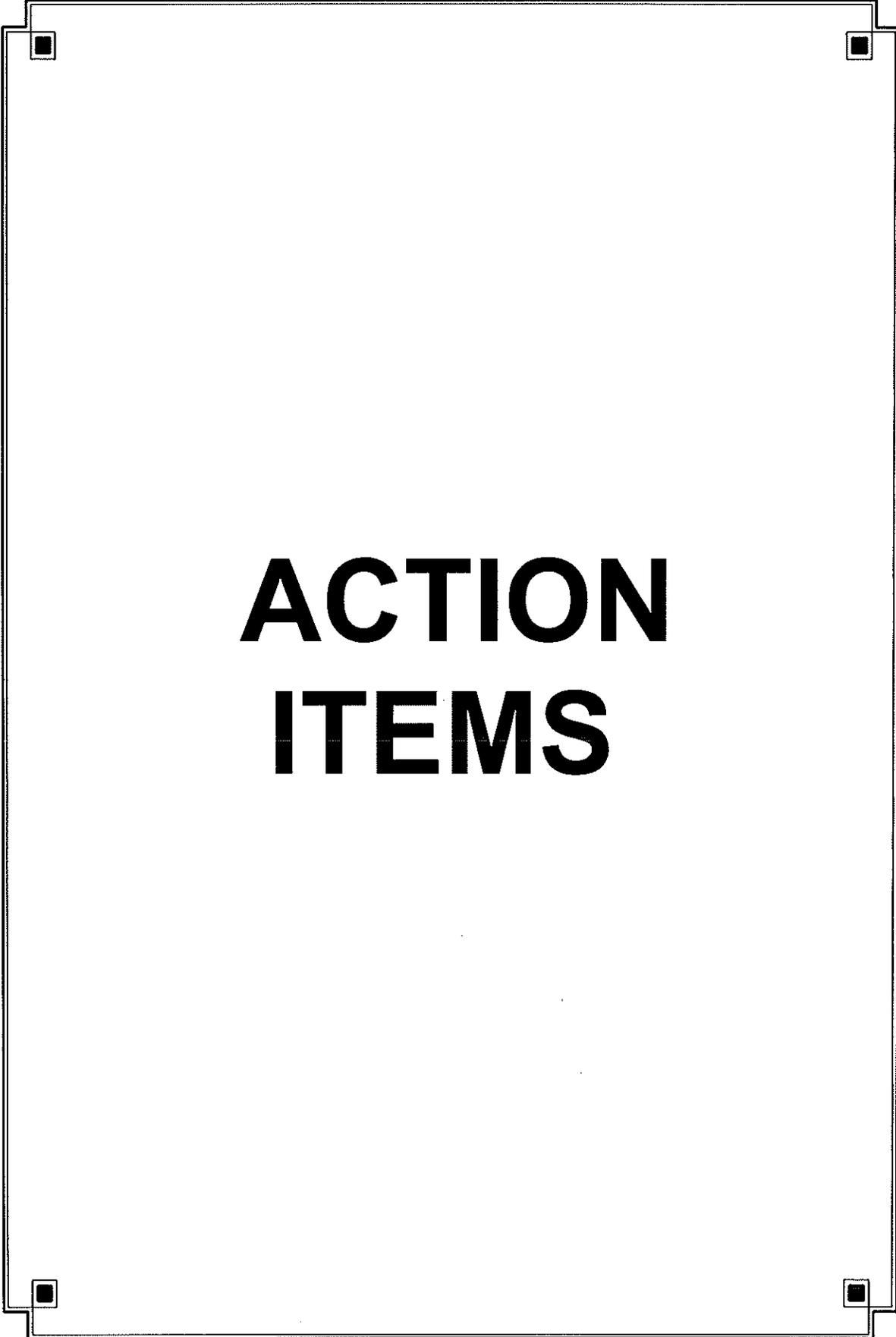
NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE  
CITY OF HOBBS, NEW MEXICO, that the Mayor be and hereby is authorized to  
appoint Finn Smith to the Eddy-Lea Energy Alliance, LLC Board.

PASSED, ADOPTED AND APPROVED this 3<sup>rd</sup> day of June, 2019.

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

ATTEST:

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



# **ACTION ITEMS**



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 3, 2019

SUBJECT: Resolution Establishing Permit Parking Restrictions For On-Street Parking On Streets Adjacent to Hobbs High School (Neighborhood West)

DEPT. OF ORIGIN: Legal Department  
DATE SUBMITTED: May 28, 2019  
SUBMITTED BY: Efren A. Cortez, City Attorney

Summary:

Members of the community have expressed concerns regarding on-street parking in neighborhoods adjacent to Hobbs High School. The City of Hobbs has reviewed the concerns and considered options to assist the residents in the matter. Specifically, the Commission held a work session on March 4, 2019, and a town hall meeting on March 11, 2019, to address the issue. Pursuant to Uniform Traffic Ordinance Section 12-6-6.7 and Section 12-6-6.12, the City Manager may erect signs effecting parking adjacent to any school property where, in his opinion, parking would interfere with traffic or create a hazardous situation. Prior to exercising his authority, the City Manager sought input from members of the public both for and against permit parking by implementing a petition process spanning from March 20, 2019, to May 20, 2019. The petition required 67% "for" permit parking for the Commission to consider the matter. Only the neighborhood west of Hobbs High School achieved this mark. The City has published notice of hearing in the Hobbs News-Sun and thus has provided notice via publication to the general public.

Fiscal Impact:

The estimated cost for the necessary signs is \$1,000.00 and adequate funds will be made available within the City Engineer's budget for signals and signs for FY 2019 (010412-42404) as a reclassification adjustment will be made within Fund 412 (Traffic) of \$1,000.00 from pavement markings (010412-42594) to signals and signs (010412-42404). The estimated cost for the necessary placards is \$800.00 and adequate funds will be made available within the Municipal Court's budget for printing and duplicating for FY 2019 (010160-42304).

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

*[Signature]*  
Finance Department

Attachments:

Proposed Resolution; Affidavit of Publication – Notice of Public Hearing; Completed Petition (Neighborhood West)(as public hearing Exhibit)

Legal Review:

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

*[Signature]*  
City Attorney

Recommendation:

No recommendation from staff as this matter relies on public desire and input and Commission consideration of the public's desire and input.

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. 6803

A RESOLUTION ESTABLISHING PERMIT PARKING RESTRICTIONS FOR ON-STREET PARKING ON STREETS ADJACENT TO HOBBS HIGH SCHOOL

WHEREAS, members of the community have expressed concerns regarding on-street parking in neighborhoods adjacent to Hobbs High School that present interference with traffic and create hazardous situations; and

WHEREAS, on August 1, 2016, the City of Hobbs adopted the Uniform Traffic Ordinance (UTO) via Ordinance No. 1095; and

WHEREAS, Sections 12-6-6.7 and 12-6-6.12 authorize the City Manager to erect signs effecting parking on streets adjacent to any school property where, in his opinion, parking would interfere with traffic or create a hazardous situation; and

WHEREAS, a majority (67%) of the residents in the neighborhood west of the Hobbs High School have signed a petition in favor of implementing permit parking restrictions;

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO that the City Manager is hereby authorized to erect signs outlining the requirements of the permit parking restrictions, as are necessary to address the issues presented, on those public streets in the neighborhood west of the Hobbs High School and enforce the provisions thereof through the Uniform Traffic Ordinance.

BE IT FURTHER RESOLVED, that the affected streets wherein signs may be

erected are outlined herein and attached hereto as Exhibit 1.

PASSED, ADOPTED AND APPROVED this 3<sup>rd</sup> day of June, 2019.

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

ATTEST:

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

# Affidavit of Publication

STATE OF NEW MEXICO  
COUNTY OF LEA

I, Daniel Russell, Publisher of the Hobbs News-Sun, a newspaper published at Hobbs, New Mexico, solemnly swear that the clipping attached hereto was published in the regular and entire issue of said newspaper, and not a supplement thereof for a period of 1 issue(s).

Beginning with the issue dated  
May 10, 2019  
and ending with the issue dated  
May 10, 2019.



Publisher

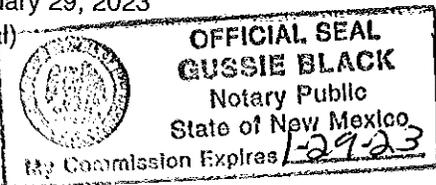
Sworn and subscribed to before me this  
10th day of May 2019.



Business Manager

My commission expires  
January 29, 2023

(Seal)



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

## LEGALS

LEGAL NOTICE  
MAY 10, 2019

NOTICE OF PUBLIC  
HEARING TO CONSIDER  
PERMIT PARKING  
PROGRAM FOR  
NEIGHBORHOODS  
ADJACENT TO HOBBS  
HIGH SCHOOL

NOTICE IS HEREBY GIVEN that the Hobbs City Commission will hold a public hearing on Monday, June 3, 2019, at 6:00 p.m., in the City Commission Chamber at City Hall, First Floor Annex, 200 East Broadway, Hobbs, New Mexico, to consider adoption of a resolution implementing a permit parking program for neighborhoods adjacent to the Hobbs High School. Full details of the permit parking program are available on the City's website at [www.hobbsnm.org](http://www.hobbsnm.org) along with a map of the proposed areas. These restrictions, if adopted, would only apply to parking on the public street and would not affect parking on private property.

DATED this 10th day of  
May, 2019.

/s/ Jan Fletcher  
JAN FLETCHER, City Clerk  
#34122

67108146

00228155

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



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 3, 2019

SUBJECT: Adoption of An Ordinance Prohibiting Parking of Commercial Motor Vehicles On Streets

DEPT. OF ORIGIN: Engineering Department and Legal Department  
DATE SUBMITTED: May 28, 2019  
SUBMITTED BY: Kevin Robinson, Development Director and Erik M. Scramlin, Deputy City Attorney

Summary:

NMSA 1978, §§3-17-1, and 3-18-1 confer general welfare and police powers on the City of Hobbs. Additionally, NMSA 1978, §66-7-415 allows a municipality to regulate the operation of commercial motor vehicles with respect to streets under their jurisdiction. Pursuant to that authority, the proposed ordinance would make it a parking violation to park any commercial motor vehicle, as defined by statute, on any street within the municipal boundaries of Hobbs, New Mexico. The proposed ordinance, would at a minimum, require signs to be posted on all major entrances to the City. The UTO only allows regulation on streets and does not authorize regulation on private property. Several citizens have voiced concerns at planning board meetings regarding safety as it relates to commercial motor vehicles being parked upon City streets. The attached planning board minutes reference the history of public concern regarding the parking of commercial motor vehicles and the health, welfare and safety concerns discussed by the board. The planning board recommended this proposed ordinance for adoption by 6-0 vote. This proposed ordinance has been published as required by state statute.

Fiscal Impact:

The estimated cost for the necessary signs is \$2,500.00 and adequate funds will be made available within the City Engineer's budget for signals and signs for FY 2019 (010412-42404) as a reclassification adjustment will be made within Fund 412 (Traffic) of \$2,500.00 from pavement markings (010412-42594) to signals and signs (010412-42404).

Reviewed By: 

Finance Department

Attachments:

Proposed Ordinance; Draft of Planning Board Minutes from March 19, 2019

Legal Review:

Approved As To Form: 

City Attorney

Recommendation:

The Commission should consider the proposed Ordinance.

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

ORDINANCE NO. 1121

AN ORDINANCE AMENDING CHAPTER 10 OF THE HOBBS MUNICIPAL CODE  
PROHIBITING PARKING OF COMMERCIAL MOTOR VEHICLES ON STREETS

WHEREAS, the City of Hobbs has previously adopted the Uniform Traffic Ordinance to govern the traffic laws within the municipal limits of the City of Hobbs, New Mexico, through enactment of an amended Chapter 10 of the Hobbs Municipal Code; and

WHEREAS, NMSA 1978, §3-17-1 allows a municipality to adopt ordinances not inconsistent with the laws of New Mexico for the purpose of providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants; and

WHEREAS, NMSA 1978, §66-7-415, allows a municipality to regulate the operation of commercial motor vehicles with respect to streets under their jurisdiction; and

WHEREAS, the Uniform Traffic Ordinance Section 12-6-6.1 authorizes the City Manager, or his or her designee, to erect and maintain signs regulating parking on streets located in the municipal boundaries; and

WHEREAS, City of Hobbs has identified the parking of commercial motor vehicles, as that term is defined by state statute and local ordinance, on the streets of Hobbs, New Mexico to be detrimental to the safety, health, prosperity, morals, order, comfort and convenience of Hobbs, New Mexico and its inhabitants; and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that Chapter 10, is hereby amended as more specifically described as follows:

## TITLE 10

### VEHICLES AND TRAFFIC

#### 10.05 PARKING RESTRICTIONS FOR COMMERCIAL MOTOR VEHICLES

##### 10.05.010 Purpose

The purpose of this section is to protect the safety, health, prosperity, morals, order, and comfort of the residents of Hobbs, New Mexico by prohibiting commercial motor vehicles from parking on municipal streets.

##### 10.05.020 Authority of the City of Hobbs

This section is adopted pursuant to NMSA 1978, § 66-7-415, which authorizes the city to prohibit the operation of trucks or other commercial vehicles in addition to the general welfare and police powers conferred upon the City of Hobbs by NMSA 1978, §§ 3-17-1, et seq. and 3-18-1, et seq. Regulation of parking on municipal streets is authorized by Article VI of the Uniform Traffic Ordinance.

##### 10.05.030 Commercial Motor Vehicle – Definition

“Commercial Motor Vehicle” means a self-propelled or towed vehicle, other than special mobile equipment, used on public highways in commerce to transport passengers or property when the vehicle: is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of four thousand five hundred thirty-six kilograms, or ten thousand one pounds or more; or is operated only in intrastate commerce and has a gross vehicle weight or gross combination weight, of twenty-six thousand one or more pounds (Uniform Traffic Code Section 12-1-10.1); or as designated as such by the New Mexico Motor Vehicle Division, or an out of state equivalent state agency.

##### 10.05.040 Parking of Commercial Vehicles – Prohibitions and Exceptions

- A. Commercial motor vehicles are prohibited from being parked on any street within the municipal boundaries except as set forth in paragraphs B and C.
- B. Temporary parking of a commercial motor vehicle is not prohibited when the temporary parking of the commercial motor vehicle is for the purposes of loading, unloading, making pick-up, making deliveries or providing services.
- C. Authorized emergency vehicles; any government or utility maintenance, service and transportation vehicles; and school buses, are permitted to park on streets.

10.05.050 Notice

- A. Pursuant to Uniform Traffic Ordinance Section 12-6-6.1 the City Manager or his or her designee shall erect and maintain signs designating the provisions of this section throughout the City as he or she deems appropriate. The signs shall be placed in conspicuous locations throughout the City in order to ensure visibility of the signs so as to notify possible commercial motorists and the general public. Placement of the signs contemplated herein shall be at the discretion of the City Manager who may receive recommendations from time to time from the City of Hobbs Planning Board.
- B. This section shall not be effective unless and until such signs are erected and maintained and notice thereof is given in writing to the nearest officer or employee of the motor transportation division of the department of public safety authorized to issue special permits.

10.05.060 Penalty

Violation of this section shall be a penalty assessment misdemeanor and the penalties for violation shall be those imposed by Hobbs Municipal Code Section 10.04.050.

10.05.070 Citation Procedure

Pursuant to Uniform Traffic Ordinance Section 12-3-3 it is the duty of the Hobbs Police Department to enforce this provision. Citation procedures are those outlined by Uniform Traffic Ordinance Sections 12-12-12, 12-12-13, and 12-12-4.

PASSED, ADOPTED AND APPROVED this 3rd day of June, 2019.

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

ATTEST:

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

**PLANNING BOARD MEETING  
MINUTES  
March 19, 2019**

The Hobbs Planning Board met on March 19, 2019 at 10:00 a.m. at City of Hobbs Annex Building, First Floor Commission Chambers, located at 200 E. Broadway, Hobbs, NM 88240 with Mr. W.M. "Tres" Hicks Chairman presiding.

**Members Present:**

"Tres" Hicks, Chairman  
Guy Kesner, Vice Chairman  
Bill Ramirez  
Larry Sanderson  
Phillip Ingram  
Ben Donahue

**Members Absent:**

Brett Drennan

Also present were members of the public and City staff as follows:

Kevin Robinson, Development Director  
Julie Nymeyer, Staff Secretary  
Bruce Reid, County Planner  
Bob Auld

Todd Randall, City Engineer  
Eric Scramlin, Deputy City Attorney  
Burl Masters

**1) Call To Order.**

Chairman Hicks called the meeting to order at 10:00 am.

**2) Review and Consider Approval of Agenda.**

The first item of business was to review and approve the Agenda for the March 19, 2019 meeting. Mr. Hicks asked if there were anyone at the meeting for today's items. Mr. Robinson said there were people here for items 10 and 11. Mr. Hicks suggested moving items 10 and 11 after item number 4. Mr. Ramirez made a motion, seconded by Mr. Ingram to approve the agenda as amended. The vote on the motion was 5-0 and the motion carried.

**3) Review and Consider Approval of Minutes.**

**February 19, 2018 – Regular Meeting**

Mr. Hicks asked if everyone has had a chance to read the Regular Meeting Minutes from February 19, 2019. Mr. Kesner made a motion, seconded by Mr. Ramirez approve the Regular Meeting Minutes as presented. The vote on the motion was 5-0 and the motion carried as presented. Mr. Donahue arrived at the meeting.

**4) Communications from Citizens.**

Mr. Hicks asked if there was an easement across the land to the north to get down to the second tract of land. Mr. Chad Wright said yes. Mr. Hicks said it is his opinion that if these people want to live out in the county and have access to that level of a road then he does not think they should change the environment they are in by requiring an all weather surface road. He said he does think for the protection of the future planning of Hobbs ETJ there should be a 60 foot easement on their plat. Mr. Wright said it is their intention to raise cattle out there and they do not plan on dividing their land. He said if they did they would have to come before the Board again anyway and could meet the required standards at that time. He said they do plan on making the road from north to south end on their land all weather standard as well.

Mr. Kesner said it is his understanding that the all weather surface road is going to run from the access point to the north all the way to at least tract 2. Mr. Wright said yes. He said the first road from the east is already done from the east and west. Mr. Robinson said that the road has to be within at least 150 foot of any proposed structure. Mr. Wright said they are going to bring the road all the way to the south border.

Mr. Sanderson made a motion, seconded by Mr. Ramirez to recommend approval to the City Commission of the proposed subdivision with a 60 foot easement on the east side of the parcel with an all weather private drive that will be installed from the access point to the east all the way through parcel two. Mr. Kesner said he does not think that east/west roadway is necessary. The vote on the motion was 6-0 and the motion carried.

- 5) **Public Hearing to Review and Consider a Special Use Map Amendment to create a Recreational Vehicle Park (RVP) Planning District per MC 18.04, located at 1608 E. Main.**

Mr. Hicks opened the public meeting up at 10:34 am. Mr. Robinson said this is a Special Use Map amendment on east Main. He said the adjacent property owners were notified and there were no phone calls or objections. Mr. Ramirez asked how many RV lots were proposed. Mr. Robinson said he thought about 3 or 4 with the possibility of expanding. Mr. Hicks asked if Main Street was improved? Mr. Robinson said yes. Mr. Hicks asked if there were any members of the public that wanted to comment on the RV Park? There were none. Mr. Hicks closed the public hearing at 10:40 am. Mr. Ingram made a motion, seconded by Mr. Sanderson to approve the Special Use Map Amendment. Mr. Kesner said that he feels like it needs to be screened where there are private residences. The vote on the motion was 6-0 and the motion carried.

- 6) **Review and Consider side yard setback variance request for a residential single family housing unit to be located on Lot #28 of Homestead Estates Subdivision, as submitted by Gold Creek Homes, property owner. This particular lot, Lot #28 of Homestead Estates Subdivision, is located in the northwest corner of Lincoln, a minor residential, and Orchid, a minor residential. The side yard setback at this location should be 10' from the property line; the proposed structure is requested to be located 9' from the property line requiring a 1' variance.**

Mr. Robinson said this is on Lincoln Road and they are requesting a 1 foot variance. Mr. Kesner said he is not concerned about the 1 foot setback it is the other side with a 4 foot setback that will adversely affect the lot next to it. Mr. Robinson said not necessarily, the IBC does require that the closer the structure gets to the interior property line the more hardened it becomes as far as a fire. Mr. Hicks said the 5 foot setback is the standard but you can get closer if you have a fire resistance wall. Mr. Donahue made a motion, seconded by Mr. Ramirez to approve the 1 foot variance. The vote on the motion was 6-0 and the motion carried.

- 7) **Review and Consider a landscape variance for a proposed Commercial Development to be located northwest of the intersection of Bender and Kingsley. On-site Landscaping per MC 15.40 requires a 3,946 square feet; the proposed will provide 3,265 square feet plus 4,749 additional square feet to be located within the adjacent ROW.**

Mr. Robinson said the Municipal Code requires 10 percent of the parking lot to be landscaped. He said the proposed area to be landscaped comes out to be 8.33 percent. He said it comes out to be 120 percent of the requirement on the adjacent right-of-way. Mr. Kesner made a motion, seconded by Mr. Donahue to approve the landscape variance. The vote on the motion was 6-0 and the motion carried.

- 8) **Review and Consider an encroachment agreement for property located at 3500 N. Fowler, as submitted by property owner, Stone Ridge Property LLC. According to the most recent ALTA Survey, certain appurtenances belonging to the property encroach into the public ROW located adjacent to the western property line, maximum amount of apparent encroachment being 5.3'.**

Mr. Robinson said this is an encroachment agreement with Stone Ridge Property LLC. He said there are possible encroachments into the right of way. He said there is a fence, light and a sign that appear to encroach in the right of way. He said the encroachment agreement and encroachment easement are similar to what this Board has seen in the past and if they approve this it will go to the City Commission for execution. He said the agreement basically says you can occupy the property until we need it or you can no longer occupy it. He said it would be an additional expense to relocate the entire fence. Mr. Ramirez asked if the fence was concrete? Mr. Hicks said concrete and iron fence. Mr. Ingram said the agreement could be changed if needed. He said he does not see an issue with it.

Mr. Ingram made a motion, seconded by Mr. Donahue to approve the encroachment agreement. The vote on the motion was 6-0 and the motion carried.

- 9) **Review and Consider a proposed Summary Subdivision, as submitted by property owner Suerte Land Group, LLC, located south of the intersection of Scenic Drive and Suerte Drive.**

Mr. Robinson said this is a proposed Summary Subdivision. He said staff has not seen any actual subdivision plats. He said Suerte Drive is proposed to be a minor collector street. He said the development agreement is because there are parts of this roadway that would not be

There were no communications from citizens.

- 10) **Review and Consider variance request for a proposed addition to an existing sign located at 408 W. Bender.**

Mr. Robinson said this is an existing sign located at 408 W. Bender. He said historically if you work in an existing business and change the face for an existing business everything is good but if you modify then you are required to comply with the new rules. He said the existing sign exceeds the maximum square footage allowed. He said the proposal is to replace the top portion with a new sign that is 112 square feet. He said that is a 41 foot reduction in the total sign footage. He said it is currently at 303 sq. feet. Mr. Bob Auld said it will also meet the height restriction when replaced.

Mr. Kesner made a motion, seconded by Mr. Ramirez to approve the variance. The vote on the motion was 6-0 and the motion carried.

- 11) **Review and Consider proposed ETJ subdivision located in Section 2, Township 19 South, Range 39 East, N.M.P.M., Lea County, New Mexico.**

Mr. Robinson said this is an ETJ subdivision. He said the proposed subdivision as submitted to the Planning Department does not meet standard requirements. He said the developer has the right to appeal the Planning Departments decision and appear before the Board.

Mr. Robinson said this is under a claim of exemption under the county's rules and regulations. He said it will also need to comply with the municipals title 16. He said the dedication of surface and subsurface public easements which is an encumbrance of that property for the benefit of the public. He said additionally the infrastructure which in this case in the ETJ would be a roadway would make it compliant.

Mr. Robinson said one of the things that make this property unique is that it is on the New Mexico/Texas state line. He said there is not an access from a New Mexico improved roadway to the property. He said there is an improved Texas roadway and there is an easement from CR 347 to the Stateline. Mr. Ramirez asked if there were any utilities on the road? Mr. Kesner said there may be electrical and telephone.

Mr. Hicks asked if staff's suggestion was that they provide an easement along the edge of the property? Mr. Robinson said it is connectivity for an east/west road way coming off of the Texas roadway and it is on a section line. He said there are no New Mexico roads in this area. Mr. Kesner said the nearest road would either be Stanolind to the north or Nadine to the south. Mr. Robinson said those streets are on section lines. Mr. Kesner said without much connectivity he did not think the roadway to the north of tract 1 made any sense. He said he has reviewed this and has talked to the land owner. Mr. Robinson said there is an addressing issue and making sure there is adequate access for emergency services is the issue. He said that requires access from an all-weather surface to within 150 foot of a structure that is being built.

beneficial to the developer. He said it better serves the community to have the roadway located in this area. He said the developer and staff are proposing a developer agreement for the development of the minor collector. He said the municipality would participate in the fair share of development and the city's fair share would ultimately be recovered when the adjacent properties access the infrastructures that they are installing.

Mr. Robinson said the developer agreement requires a surface and subsurface easement conveyed to the public with the execution of the subdivision plat. He said there is a north-south and an east-west easement that would be an extension of Smith Road. Mr. Hicks asked if staff is actually asking for a developer agreement? Mr. Robinson said Municipal Title 16 allows approval of a subdivision providing there is a development agreement or some other form that states the public does not pay for the infrastructures.

Mr. Kesner made a motion, seconded by Mr. Ramirez to approve the Sketch Plan and if the Sketch Plan is converted then the use of a development agreement can be developed while the plat is being approved. The vote on the motion was 6-0 and the motion carried.

12) **Review and Consider Proposed Ordinance to prohibit on street parking of commercial vehicles.**

Mr. Scramlin said legal has drafted an ordinance that would be in compliance with the UTO using the authority of the UTO to create the commercial motor vehicle ordinance. He said if you look at the ordinance the first page sets out the authority that they used. He said it is consistent with what some of the other municipalities have done. He said when it comes to enforcement in conversations with MVD there are certain identifiers on license plates so a police officer can look and see the code then he knows what classification the vehicle is in. He said then he doesn't have to guess what the weight is he will just know the code.

Mr. Scramlin said they discussed in the subcommittee meetings some options of making it 500 feet or a certain amount of feet from a dwelling structure and they couldn't think of a place in Hobbs where you would be able to park anywhere. He said they came up with a plan to list it as commercial vehicles are prohibited from being parked on street within the municipal boundaries except for the list exceptions. He said they would also post signs to the entry ways to the city.

Mr. Scramlin said if they are going to adopt this ordinance he would recommend having a discussion on the health, safety and welfare factors if this is challenged. He said if this is ever challenged and they pull the minutes they will want to know if this is for health and safety or another reason. He said they have had subcommittee meetings and this has been discussed a lot. Mr. Hicks said he wanted it in the minutes that the Planning Board has had numerous complaints and people come to the Planning Board and talk about their concern of having large trucks in the streets and the safety of their children being around commercial vehicles. He said this has been brought up numerous times to the Planning Board that it is an issue of concern to the residents. Mr. Kesner said the visibility issue, rather you are backing out of your driveway or a child playing in the neighborhood and it is a big safety issue.

Mr. Donahue said the subcommittee discussed in their meeting that any vehicle that is

registered commercial which could be an F150 if the license plate specifies that it is a commercial vehicle then that would fall under what they are talking about here. He said in the subcommittee meeting this will be mostly a complaint driven issue and the odds of someone complaining about an F150 will probably not occur. Mr. Ingram said now people cannot park their F150's or F250's in front of their house will be an issue. Mr. Donahue said the subcommittee discussed that but for enforcement purposes a commercial vehicle will have the code on the license plate. He said it is the big trucks that people are complaining about. Mr. Hicks said they can park in their driveway. He said there are going to be some potential for friction. Mr. Scramlin said this ordinance under the UTO only allows regulation on streets. He said it will not affect anything on private property. Mr. Sanderson said he thought it was a good start and they can adjust as they go.

Mr. Ramirez made a motion, seconded by Mr. Kesner to recommend approval of this ordinance to the City Commission. The vote on the motion was 6-0 and the motion carried.

Mr. Ingram left the meeting at 11:14 am.

13) Discussion Items:

- A) Proposed location and development of a Hobbs Fire Department Training area located northwest of the intersection of Jack Gomez and A Street.

Mr. Robinson said this item will probably be seen on the ICIP in the future. He said this Board will be reviewing HIAP issues. Mr. Barry Young said HFD had a training ground of approximately 5 acres several years ago. He said that area has been vacated. He said they now would like to use some land that is on the west side of A Street which about 10 acres to develop a training ground for the HFD. He said they feel like it is a need for their department in the community. He said it gives them the ability to train their firefighters in their own community rather than send them to Carlsbad or Roswell or as far as Socorro NM. He said developing a training ground will take some time. He said they have met with Kevin and they have come up with some different areas. He said there are two structures on the property at this time that they could potentially utilize. He said they would like to be able to do interior and exterior burns for their training ground. He said they are one of the only communities in the state that does not have a training ground. Mr. Hicks said he thought it was a good plan. He asked why they did not use the land all the way to the north and use the 15 acres? He said the northern area would be a better location for the burn areas. Mr. Sanderson said he agrees and thought it would be a good use of that property.

Mr. Hicks said next meeting he has a conflict with the time of the next meeting and asked if the meeting could be moved to 9 am. The Board agreed.

14) Adjournment.

With nothing further to discuss the meeting adjourned at 11:30 am.

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Tres Hicks, Chairman

# Affidavit of Publication

STATE OF NEW MEXICO  
COUNTY OF LEA

I, Daniel Russell, Publisher of the Hobbs News-Sun, a newspaper published at Hobbs, New Mexico, solemnly swear that the clipping attached hereto was published in the regular and entire issue of said newspaper, and not a supplement thereof for a period of 1 issue(s).

Beginning with the issue dated  
April 24, 2019  
and ending with the issue dated  
April 24, 2019.



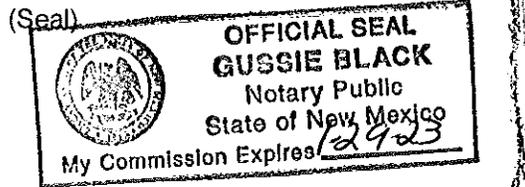
Publisher

Sworn and subscribed to before me this  
24th day of April 2019.



Business Manager

My commission expires  
January 29, 2023



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

## LEGAL NOTICE April 24, 2019

### NOTICE OF ORDINANCE

NOTICE IS HEREBY GIVEN that on the 3rd day of June, 2019, at its meeting at 6:00 p.m., in the City Commission Chamber at City Hall, 1st Floor Annex, 200 East Broadway, Hobbs, New Mexico, the governing body of the City of Hobbs proposes to adopt an ordinance amending Chapter 10 of the Hobbs Municipal Code prohibiting parking of commercial motor vehicles on streets. The ordinance is described as follows:

#### AN ORDINANCE AMENDING CHAPTER 10 OF THE HOBBS MUNICIPAL CODE PROHIBITING PARKING OF COMMERCIAL MOTOR VEHICLES ON STREETS

WHEREAS, the City of Hobbs has previously adopted the Uniform Traffic Ordinance to govern the traffic laws within the municipal limits of the City of Hobbs, New Mexico, through enactment of an amended Chapter 10 of the Hobbs Municipal Code; and

WHEREAS, NMSA 1978, §3-17-1 allows a municipality to adopt ordinances not inconsistent with the laws of New Mexico for the purpose of providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants; and

WHEREAS, NMSA 1978, §66-7-415, allows a municipality to regulate the operation of commercial motor vehicles with respect to streets under their jurisdiction; and

WHEREAS, the Uniform Traffic Ordinance Section 12-6-6.1 authorizes the City Manager, or his or her designee, to erect and maintain signs regulating parking on streets located in the municipal boundaries; and

WHEREAS, City of Hobbs has identified the parking of commercial motor vehicles, as that term is defined by state statute and local ordinance, on the streets of Hobbs, New Mexico, to be detrimental to the safety, health, prosperity, morals, order, comfort and convenience of Hobbs, New Mexico and its inhabitants; and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that Chapter 10, is hereby amended as more specifically described as follows:

#### TITLE 10 VEHICLES AND TRAFFIC

##### 10.05 PARKING RESTRICTIONS FOR COMMERCIAL MOTOR VEHICLES

###### 10.05.010 Purpose

The purpose of this section is to protect the safety, health, prosperity, morals, order, and comfort of the residents of Hobbs, New Mexico by prohibiting commercial motor vehicles from parking on municipal streets.

###### 10.05.020 Authority of the City of Hobbs

This section is adopted pursuant to NMSA 1978, § 66-7-415, which authorizes the city to prohibit the operation of trucks or other commercial vehicles in addition to the general welfare and police powers conferred upon the City of Hobbs by NMSA 1978, §§ 3-17-1, et seq. and 3-18-1, et seq. Regulation of parking on municipal streets is authorized by Article VI of the Uniform Traffic Ordinance.

###### 10.05.030 Commercial Motor Vehicle - Definition

"Commercial Motor Vehicle" means a self-propelled or towed vehicle, other than special mobile equipment, used on public highways in commerce to transport passengers or property when the vehicle is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of four thousand five hundred thirty-six kilograms, or ten thousand one pounds or more, or is operated only in intrastate commerce and has a gross vehicle weight or gross combination weight, of twenty-six thousand one or more pounds (Uniform Traffic Code Section 12-1-10.1); or as designated as such by the New Mexico Motor Vehicle Division, or an out of state equivalent state agency.

###### 10.05.040 Parking of Commercial Vehicles - Prohibitions and Exceptions

A. Commercial motor vehicles are prohibited from being parked on any street within the municipal boundaries except as set forth in paragraphs B and C.

B. Temporary parking of a commercial motor vehicle is not prohibited when the temporary parking of the commercial motor vehicle is for the purposes of loading, unloading, making pick-up, making deliveries or providing services.

C. Authorized emergency vehicles; any government or utility maintenance, service and transportation vehicles; and school buses, are permitted to park on streets.

###### 10.05.050 Notice

A. Pursuant to Uniform Traffic Ordinance Section 12-6-6.1 the City Manager or his or her designee shall erect and maintain signs designating the provisions of this section throughout the City as he or she deems appropriate. The signs shall be placed in conspicuous locations throughout the City in order to ensure visibility of the signs so as to notify possible commercial motorists and the general public. Placement of the signs contemplated herein shall be at the discretion of the City Manager who may receive recommendations from time to time from the City of Hobbs Planning Board.

B. This section shall not be effective unless and until such signs are erected and maintained and notice thereof is given in writing to the nearest officer or employee of the motor transportation division of the department of public safety authorized to issue special permits.

###### 10.05.060 Penalty

Violation of this section shall be a penalty assessment misdemeanor and the penalties for violation shall be those imposed by Hobbs Municipal Code Section 10.04.050.

###### 10.05.070 Citation Procedure

Pursuant to Uniform Traffic Ordinance Section 12-3-3 it is the duty of the Hobbs Police Department to enforce this provision. Citation procedures are those outlined by Uniform



**CITY OF HOBBS**  
**COMMISSION STAFF SUMMARY FORM**

MEETING DATE: June 3, 2019

**SUBJECT:** Resolution of the City of Hobbs to enter into a new Solid Waste Services Agreement with Waste Management of New Mexico.  
**DEPT. OF ORIGIN:** Utilities  
**DATE SUBMITTED:** May 28, 2019  
**SUBMITTED BY:** Tim Woomer, Utilities Director

**Summary:**

The City of Hobbs desires to enter into a new Solid Waste Services Agreement with Waste Management of New Mexico. Waste Management of New Mexico desires to enter into a new Solid Waste Services Agreement with the City of Hobbs. Below are the summary highlights of the new agreement. In general, the new agreement is similar to the existing agreement.

- Contract Term: 10 year agreement with two automatic 5 year renewals.
- Twice a week residential pickup from alley or curbside as currently designated.

- Residential Rates will remain the same:

96-gallon Polycart	\$ 18.67 per month
Second Polycart	\$ 7.25 per month

**\*\*City Rates Charged to Customers\*\***

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

**\*\*City Rates are adjusted to pay for the operation of the Recycling Facility and the Convenience Center, all City landfill tipping fees and hauling charges, as well as, costs associated with the City Wide Community Clean-ups. See attached rate table. Rates shown do not include NMGR.T.**

- Commercial Rates will remain the same, see attached rate table.

- The Transfer Facility Operation Fees:

Convenience Center                      \$8,570.68/month; This is the same as the current fee.

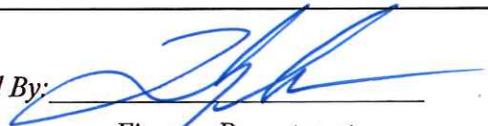
Recycling Facility                      \$9,500.00/month; This is an increase of \$942.03/month

The current charge for the Recycling Facility operation is \$8,557.97/month. The increase is due to Waste Management assuming the capital and operating expenses related to the Transfer Facility located at 3000 E. Marland. In the previous agreement, the City owned and maintained all Capital assets related to the operation of Transfer Facility. In addition to maintaining the facility and equipment, new capital expenses include the purchase of a new compactor, recycling baler/conveyor, and a new bobcat. Operating hours at the Transfer Facility will remain the same.

- City relinquished the 3% Administrative Fee it received as a discount with the current agreement. Waste Management relinquished the CPI and Fuel Adjustment they would have been eligible to receive on July 1, 2019.
- The Agreement Allows for an annual rate increase based on the national CPI-WST index.
- No Fuel Adjustments are allowed with the new agreement.
- Waste Management agrees to relocate their current hauling site located at 2608 Lovington Highway, to a more suitable location to better serve the City of Hobbs.

**Fiscal Impact:**

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

  
Finance Department

- Solid Waste Services are paid through the garbage collection fees charged to customers on their monthly Utility bills. The fees are set to fully pay for the entire cost of this service. The 3% increase to the City from relinquishing the Administrative Fee (discount) is projected to be absorbed by the cash reserves within the Solid Waste Fund (Fund 10). Deferral of the July 1, 2019 CPI increase and the elimination of future Fuel Adjustments will further offset this increase.

**Attachments:**

- Solid Waste Services Agreement with Waste Management of New Mexico.
- Residential and Commercial Rate Table

**Legal Review:**

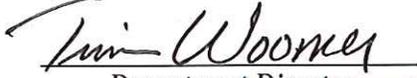
Approved As To Form: \_\_\_\_\_

  
City Attorney

**Recommendation:**

- Adopt the Resolution approving a new Solid Waste Services Agreement with Waste Management of New Mexico and authorize the Mayor to execute such agreement.

Approved For Submittal By:

  
Department Director

  
City Manager

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

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

CITY OF HOBBS

RESOLUTION NO. 6804

A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO  
EXECUTE A SOLID WASTE COLLECTION/DISPOSAL AGREEMENT BETWEEN  
THE CITY OF HOBBS AND WASTE MANAGEMENT

WHEREAS, NMSA 1978, §3-48-3(A) allows a municipality to adopt an ordinance for the collection and disposal of refuse by contract; and

WHEREAS, in 2006 the City of Hobbs City Commission adopted Ordinance No. 952 which addresses the collection and disposal of refuse in Hobbs, New Mexico; and

WHEREAS, Hobbs Municipal Code Section 8.16.030(B) allows the City Commission to enter into a contract with any person authorized to do business within the State of New Mexico for the collection of solid waste, or the disposal thereof; and

WHEREAS, Waste Management of New Mexico provides collection and disposal of solid waste in New Mexico and has historically provided these services, via contract with the City of Hobbs, in Hobbs, New Mexico; and

WHEREAS, the previous contract between the City of Hobbs and Waste Management is set to expire on June 30, 2019, and the parties are seeking to enter into a new agreement which will allow the parties to address contemporary issues in solid waste disposal and collection in Hobbs, New Mexico.

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO that the Mayor and City Manager are hereby authorized to execute on behalf of the City of Hobbs a Solid Waste Collection/Disposal Agreement Between the City of Hobbs and Waste Management of New Mexico, Inc. A copy of the

Agreement is attached hereto and incorporated herein by reference.

PASSED, ADOPTED AND APPROVED this 3<sup>rd</sup> day of June, 2019.

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

ATTEST:

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

## SOLID WASTE SERVICES AGREEMENT

THIS SOLID WASTE SERVICES AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”) by and between WASTE MANAGEMENT OF NEW MEXICO, INC., a corporation organized and existing under the laws of the State of New Mexico (hereafter “Company”), and CITY OF HOBBS, a municipal corporation created under the laws of the State of New Mexico (hereafter “City”) (Company and City each a “Party” and collectively the “Parties”).

**WHEREAS**, City desires to provide its citizens with environmentally sound collection, disposal and processing of solid waste and recyclable materials; and

**WHEREAS**, Company and its affiliates have extensive experience in providing such services; and

**WHEREAS**, City has determined that it would be in the best interests of its citizens to contract with Company for such services in accordance with the terms and conditions contained herein.

**NOW THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Company and City agree as follows:

### **1. DEFINITIONS**

a. **“Applicable Law”** means any law, regulation, requirement, or order of any Federal, State or local agency, court or other domestic or foreign governmental body, or interpretation thereof by any court or administrative agency of competent jurisdiction, and requirements of all permits, licenses, and governmental approvals applicable to this Agreement.

b. **“Bin”** means a watertight metal or heavy plastic receptacle with a hinged plastic lid and a capacity of between one (1) and eight (8) cubic yards, designed or intended to be mechanically dumped into a packer type truck. Bins may also include compactors that are owned or leased by a Customer, contingent upon confirmation of compatibility from Company.

c. **“Bulky Waste”** means large household items, such as appliances, discarded furniture, swamp coolers, hot water heaters, and other items not suitable for normal collection that do not properly fit in the Customer’s Cart, or bundled or bagged Solid Waste, limited to three (3) items

that do not exceed four feet by four feet by two feet (4'x4'x2') and weigh no more than seventy five (75) pounds per item and no more than two (2) yards per collection, which are attributed to the normal activities of a Single-Family Premises. Bulky item collection does not include construction debris, dirt, rocks or concrete, and excludes any Unacceptable Waste.

d. **"Cart"** means a watertight heavy plastic receptacle with a rated capacity of approximately sixty-four (64) or ninety-six (96) gallons, having a hinged, tight-fitting lid, and two (2) wheels.

e. **"Collection Service(s)"** means the process by which Solid Waste is removed from Residential and Commercial Premises, transported to a transfer, disposal or Processing facility, and subsequently disposed or processed.

f. **"Commercial Premises"** means any non-Residential Premises where business activity is conducted, including, but not limited to, educational, governmental, retail sales, services, wholesale, manufacturing, or industrial operations.

g. **"Construction and Demolition Debris"** or **"C&D Debris"** means commonly used or discarded materials removed from construction, remodeling, repair, demolition, or renovation operations on any pavement, house, commercial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastic pipe, roofing material, carpeting, concrete, wood, masonry, trees, remnants of new construction materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, and packaging. With the exception of soil, concrete and asphalt, Construction and Demolition Debris does not include Unacceptable Waste.

h. **"Customer"** means an owner or occupant of a Residential or Commercial Premises who has the legal right to initiate, cancel or make changes to Collection Services.

i. **"Dwelling Unit"** means any individual living unit that includes a kitchen, and a room or suite of rooms, and is designed or occupied as separate living quarters for an individual or group of individuals. However, Dwelling Unit does not include a hotel or motel unit.

j. **"Multi-Family Complex"** means any Premises with five (5) or more Dwelling Units, where such Dwelling Units receive centralized Refuse Collection Services (and not individualized Cart-based Refuse Collection Services).

k. **"Multi-Family Dwelling Unit"** means a Dwelling Unit in a Multi-Family Complex.

l. **“Overage”** is defined as (i) Refuse exceeding its Container’s intended capacity such that the lid is lifted by at least ten (10) inches (or would be lifted by at least ten (10) inches if there was a lid), or (ii) Refuse placed on top of or in the immediate vicinity of the Container.

m. **“Premises”** means any parcel of real property in the Service Area where Solid Waste is generated or accumulated.

n. **“Process” or “Processing”** means an operation or series of operations, whether involving equipment, manual labor, or mechanical or biological processes, that sorts, enhances, upgrades, concentrates, decontaminates, packages or otherwise prepares Recyclables or other Solid Waste, and returns marketable elements thereof to the economic mainstream in the form of raw material for new, reused or reconstituted products. Processing begins at the time the Recyclables or Solid Waste is delivered to the Processing facility and ends when the finished Processed materials are sold or reused and the residue is properly disposed.

o. **“Rates”** means the fees to be charged by Company to the City or Customers for the Collection Services and other services provided by Company and included on Exhibit “A” attached hereto, as such may be adjusted from time to time.

p. **“Recyclables”** means the materials described as such in Exhibit B. Source-separated Recyclables are Recyclables that have been separated from other types of Recyclables (e.g., Plastics #1, #2 and #5, or Mixed Paper)

q. **“Refuse”** means Solid Waste that is set out for collection and disposal pursuant to this Agreement. Refuse does not include Recyclables set out for collection pursuant to Sections 3(c)(ii) or (iii) of this Agreement, nor does it include Unacceptable Waste.

r. **“Residential Premises”** means a Single-Family Premises or Multi-Family Complex.

s. **“Roll-Off Container”** means an all-metal container with ten (10) cubic yards or more capacity that is loaded onto a specialized collection vehicle. Roll-Off Containers may also include compactors that are owned or leased by a Customer, contingent upon confirmation of compatibility from Company.

t. **“Service Area”** means (i) the entire territory included within the City limits as of the Effective Date of this Agreement; and (ii) such additional area as may thereafter become included with the City limits from time to time due to annexation, incorporation or other means, but only from and after the time as the Contractor is able to provide collection services in such

additional area, within a reasonable amount of time as agreed to, in writing, by both parties, and except to the extent providing such services may be otherwise prohibited by law.

u. **“Single-Family Premises”** means (i) any Premises with less than five (5) Dwelling Units, and (ii) any Premises with five (5) or more Dwelling Units where each Dwelling Unit receives individualized Cart-based Refuse Collection Services (and not centralized Refuse Collection Services).

v. **“Solid Waste”** means all putrescible and non-putrescible solid, semi-solid, and liquid wastes that are generated or coming to exist in the Service Area, including discarded Recyclables and Organic Waste, but excluding Unacceptable Waste.

w. **“Unacceptable Waste”** means any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized, or listed under applicable federal, state, or local laws or regulations, any materials containing information protected by federal, state or local privacy and security laws or regulations (unless tendered to Company pursuant to a separate agreement), or any material the acceptance or handling of which would cause a violation of any Applicable Law, damage to Company’s equipment or facilities, or present a substantial endangerment to the health or safety of the public or Company’s employees. Title to and liability for Unacceptable Waste shall remain with the generator at all times.

2. **TERM.** The Term of this Agreement shall be for ten (10) years commencing on July 1, 2019 (the “Commencement Date”), and expiring July 1, 2019, with two (2) automatic extensions of five (5) years each, unless either Party gives the other at least 180 days advance written notice of the intention to terminate the Agreement at the end of the then-current term.

### 3. **COLLECTION SERVICES.**

a. **Exclusive Right; Exceptions; Enforcement.** The City does hereby grant to Company and Company shall have the exclusive right and privilege to provide Collection Services or otherwise handle all Solid Waste generated, deposited, accumulated or coming to exist at Residential or Commercial Premises in the Service Area, including the collection, disposal and management of permanent industrial solid waste locations, but excluding, recyclables, temporary industrial solid waste, and temporary C&D waste and debris Collection Services which are not

specifically described in this Agreement and will be provided according to terms and pricing established by Company. Subject to Section 3(a)(i) below, all Residential and Commercial Premises within the Service Area shall be required by City to utilize the Collection Services of Company as provided herein. All Single-Family Premises shall establish Collection Services separately and two or more Single Family premises shall not be permitted to share Collection Services under a single account.

i. Notwithstanding the above, nothing in this Agreement shall prevent any owner, occupant or tenant of a Residential or Commercial Premises from personally handling, hauling, or transporting Solid Waste generated by or from such Premises for purposes of disposing of the same at an authorized disposal area or transfer station, nor shall anything in this Agreement affect or limit the right of any person to sell Recyclables (i.e., receipt of a net payment) to any person lawfully engaged in the recycling business or to donate Recyclables to any bona fide charity, provided that all such Recyclables are separated by the generator.

ii. Company may independently enforce the exclusivity provision of this Agreement against third party violators, including but not limited to seeking injunctive relief, and the City shall use good faith efforts to cooperate in such enforcement actions brought by Company.

b. Containers.

i. Single-Family and Multi-Family. At no cost, Company shall provide each Single-Family Premises with one 96-gallon Cart for Refuse. Additional Carts will be available for a fee as set forth in Exhibit A. Company shall provide each Multi-Family Complex with a number of Bins and/or Carts sufficient to contain Refuse generated by Dwelling Units therein, as determined by Company and the Customer. Company will own all Containers provided to Customers hereunder and Company shall empty all Company Containers and Company shall retrieve all Company Containers at the termination or expiration of this Agreement.

ii. Commercial. Company shall provide each Commercial Premises with a number of Bins and/or Carts sufficient to contain Refuse generated thereat, as determined by Company and the Customer. Customers may request Recyclables Collection Services on a subscription basis, as a private contract between the customer and Company, and Company will have the non-exclusive right to provide such services. Company will own all Containers provided to Customers hereunder and Company shall empty all Company Containers and Company shall retrieve all Company Containers at the termination or expiration of this Agreement.

iii. Company shall replace, at no charge to the Customer, any Container that becomes damaged or destroyed during the provision of the Collection Services, or that becomes unusable due to ordinary wear and tear. However, if a Container in the possession of a Customer is intentionally lost, stolen, damaged, or destroyed through no fault of Company, the Customer shall be responsible to compensate Company the fair market value for the replacement or repair of such Container. Customers will be responsible for maintaining the cleanliness of Containers, although Customers may request a Container exchange at no cost to the customer.

c. Collection Location, Frequency and Time.

i. Refuse shall be collected from the designated pickup area two times (2x) per week from each Single-Family Premises. Collections shall occur during ordinary hours but in no instance earlier than 6:30 a.m. or later than 8:00 p.m. Refuse shall be collected from Multi-Family Complexes and Commercial Premises at a frequency and from locations determined by Company and the Customer, but in no event less than once per week.

ii. Company shall establish routes and collection schedules for each portion of the City. Such routes and schedules will be publicly advertised, and the Company shall adhere to the same. If Company chooses to modify its service days or schedules for any reason, it will notify the City not less than two (2) weeks prior to such change, and will, following approval (which shall not be unreasonably withheld) of change, notify each individual customer affected by such change and publicly advertise same for the benefit of the residents of the City. Factors out of the control of both parties may be considered in granting a temporary modification of service days.

iii. Company shall maintain sufficient equipment and personnel to quickly and efficiently remove all properly stored Refuse from the City streets and alleys. All Refuse containers, vehicles, and equipment must be properly maintained and in safe operating condition at all times that they are in active service. Leaking vehicles, containers, and equipment shall be removed from service without delay.

iv. Company shall properly notify the City of any noticed violation of the City ordinances related to Refuse disposal. When the Company finds Refuse scattered in a street or alleyway, it will notify the City of such violation not later than the morning of the day following such finding.

v. Company shall furnish to the City in writing (when requested) copies of all complaints received by the Company regarding its services hereunder.

vi. Company shall respond promptly to any request by City for special service which occasioned by the failure of Company to provide adequate service on a regularly scheduled basis.

vii. Company agrees to participate in a Community Clean-up every two years, consisting of four (4) consecutively scheduled weekend Community Clean-up events for each of the four (4) designated quadrants of the City. Community Clean-ups are normally scheduled for the first Saturday of August, September, October, and November, subject to change to meet Company and City work schedules. City will coordinate Community Clean-ups with Company and Company shall provide approximately eight (8), thirty (30) yard roll offs, plus one (1) metal-only roll and one (1) tires-only roll off at each of the four (4) scheduled Community Clean-ups. Community Clean-up events will be held at the location as specified by the City. City agrees to pay the landfill tipping fees for the disposal of all refuse/materials collected at Community Clean-ups. City agrees to properly dispose of all hazardous materials collected at Community Clean-ups. Company agrees to provide and pay for hauling of all refuse/materials collected at Community Clean-ups. If agreed to by both parties, the schedule and frequency of Community Clean-ups may be adjusted or modified.

d. Overage; Overweight.

i. Overage. Company is not obligated to collect Overage, unless caused by Company spillage of non-overloaded Containers during collection.

1. If Company elects to collect Overage, it may charge the Customer the Overage Rate set forth in Exhibit A; provided, however, Company must have photographic evidence of the Overage (which will be provided to the Customer upon request). Company shall notify Customer with at least one (1) written notice, in order to allow the Customer to mitigate the Overage, prior to charging the Customer the Overage Rate as set forth in Exhibit A.

2. If there have been more than three instances of Overage in any 12-month period, and Company has photographic evidence of each instance, Company may increase the Customer's service level (i.e., larger Container or more frequent service) to mitigate the Overage and may increase the charges to such Customer according to the increased service level.

ii. Overweight Containers. The Company may refuse to collect any Refuse Container which the Company reasonably believes to be overweight. A Container shall be considered "overweight" if the total weight of the Container and contents exceeds two times the volume capacity

of said Container (e.g., 192 pounds for a 96-gallon Cart). The Company shall, in a timely manner, provide notification to the Customer regarding each instance of non-collection.

e. Disposal and Processing. Company shall dispose or arrange to dispose of the Refuse collected under this Agreement only at solid waste disposal facilities that are licensed and permitted to accept such solid waste. Company also shall Process or arrange to Process the Recyclables collected under this Agreement only at Processing facilities that are licensed and permitted to process such materials.

f. Resident Drop-Off Sites. Company will allow residents to deliver Refuse and source separated Recyclables to Company's facility located at 3000 E. Marland, Hobbs, NM (the "WM Transfer Facility") during the following days and hours: Thursday – Sunday, 8am – 5pm. Residents will be responsible for placing Refuse and source-separated Recyclables in Company-provided, designated containers at the WM Transfer Facility, and complying with Company site rules. Unacceptable Waste and C&D Debris are prohibited, and persons delivering such material will be fully responsible for all costs and liabilities incurred by Company. Regarding designated Recyclables containers, residents must place only the permitted type of source-separated Recyclable in such container (e.g., plastics #1, #2 or #5 in plastics container). A Company employee will monitor activities at this WM Transfer Facility. Company will periodically deliver such Refuse to the Lea County Landfill (the "Landfill") and source-separated Recyclables to a recycling processing facility. The City agrees to pay the costs of hauling WM Transfer Facility Refuse to the Landfill, and the Landfill will directly bill the City for disposal of such material. Company will be responsible for payment of any tip fees to Recyclables processing facilities. Company agrees to install and operate a suitably sized compactor at the WM Transfer Facility to reduce hauls and efficiently handle refuse to be delivered to the Landfill. Regarding Company's Refuse services in this Section, the City will pay for the operation of the facility, as specified in Exhibit A, and such amounts will be adjusted annually pursuant to Section 4(d) and may be further adjusted pursuant to Section 4(e) based on extraordinary events. Company may dispose of contents of Recyclables containers which contain excessive contamination and treat such material as Refuse under this Section. Company agrees to advertise the schedule of WM Transfer Facility at least one time per quarter. Company agrees to place single stream recycling containers in front of Company hauling location at 2608 N. Lovington Highway, or other agreed to designated location, for the convenience of residents.

g. Holiday Schedule. When the regular pick-up falls on a holiday, as herein defined (New Year's Day, Memorial Day, July 4th Independence Day, Labor Day, Thanksgiving Day, and Christmas Day), the pick-up shall be made on the following day. Company reserves the right to delete, add, or change above stated holidays. Company will notify the City Manager of any alterations of the above stated holiday schedule, within thirty (30) days of the proposed change.

h. Bulky Waste Services. Single-Family Customers may request up to two Bulky Waste pickups per Agreement year, which will be provided at no cost. Bulky Waste items may not cumulatively exceed 2 yards per pickup. Requested Bulky Waste pickups exceeding two per Agreement year are available to each residence at the customer's request for a fee (see Exhibit A).

i. Temporary Services. Company will have the non-exclusive right to collect, transport, dispose and Process C&D Debris and other Solid Waste from Residential and Commercial Premises which is not collected as part of the recurring Refuse Collection Services hereunder. Such temporary services include the delivery of Roll-Off Containers to the Residential or Commercial Premises, and the collection and disposal or Processing of Solid Waste placed therein. Company will determine the terms of such services and the rates.

j. Compliance with Laws. The Collection Services shall be performed in accordance with Applicable Law.

k. Personnel and Equipment. The Collection Services shall be performed by properly trained and licensed personnel in adequate numbers and with an adequate number of properly maintained vehicles to complete the Collection Services in a safe and timely manner. All Refuse containers, vehicles, and equipment must be properly maintained and in safe operating condition at all times that they are in active service. Leaking vehicles, containers, and equipment shall be removed from service without delay.

l. Supervision. Company shall provide competent supervision in charge of working crews at all times while providing the Collection Service.

m. Missed Pick-Ups and Complaints. All Refuse Containers must be placed at the curb or other designated location and ready for pick-up before 6:00 a.m. on the collection day; any Containers not collected because they are not at the curb or other designated location on time shall not be considered a missed pick-up. All complaints as to Company's provision of the Collection Services, including alleged missed pick-ups, shall be given prompt and courteous attention. Company

shall attempt to resolve all complaints promptly and shall cure all missed pick-ups that are not the result of *force majeure* events within one (1) week day, conditions permitting.

n. Company will provide the City's Street Department with timely notification of any road or alley condition that are in need of repair, as to not further damage the driving surface.

o. Company shall provide the effected individual Customers and the general public with timely notice if designated pickup locations need to be changed due to adverse driving conditions, as to not further damage the driving surface.

#### **4. CUSTOMER BILLING; SERVICE RATES.**

a. Customer Billing. The City will be responsible for all billing functions related to recurring Collection Services provided under this Agreement (e.g., regularly scheduled collection of Refuse from Residential and Commercial Customers). The City agrees to set up all Residential and Commercial solid waste accounts using a unique utility number in all cases, even if resident is not an established City water or sewer customer. The Company shall be responsible for all billing functions related to non-recurring Collection Services provided under this Agreement (e.g., Overage charges and temporary services). The City and Company shall maintain full and complete records which accurately reflect the names and addresses of Residential and Commercial Customers, services provided, and the amounts billed and collected. The Company will submit an invoice to the City on or before the 15<sup>th</sup> day of each month regarding Residential and Commercial Collection Services performed in the prior month, and the City shall pay from such invoice within 15 days of receipt. Regarding Company billing for non-recurring Collection Services, the Customer due date shall be no sooner than thirty (30) days from the date of the invoice. The Company may bill Customers for non-recurring Collection Services, a late payment fee, NSF check charges, reactivation and redelivery fee, as well as all costs associated with bad debt collection. Company agrees to discontinue services to Residential and Commercial Customers' delinquent accounts when requested to do so by the City, provided the City notifies the Company at least five (5) days prior to the date the service is to be discontinued. Questions by the resident as to such delinquent accounts shall be referred to the City for resolution. If such Residential and Commercial Customers' Collection Service is reactivated, Company may not charge a reactivation/container redelivery fee. The City and Company will provide timely notification to the other party as it becomes aware of changes in Customers (e.g., evictions,

move-ins, and move-outs); and the City will reconcile their records with the Company records monthly.

b. Accounting Procedures and Records of Company. Company shall submit monthly statements to the City which shall include the number of Customers served for recurring Collection Services and a description of such services.

c. Service Rate Schedule. Company shall provide the Collection Services described in Exhibit A for the Rates set forth therein, as the same may be adjusted in accordance with this Section

d. Annual CPI Increases. Commencing on the date which is one (1) year after the Commencement Date, and on the same date annually thereafter (the "Adjustment Date"), the Rates, as adjusted hereunder, shall be automatically adjusted by a percentage equal to the annual percent change in the average Consumer Price Index for All Urban Consumers: Water and sewer and trash collection services ("CPI"), as published by the Bureau of Labor Statistics, for the 12-month period ending the previous December 31 (compared to the average CPI for the next previous 12-month period ending December 31). At least thirty (30) days prior to the Adjustment Date, Company shall notify City of the CPI adjustment to take effect on the Adjustment Date and shall provide City with its computations therefor. Adjustments to the Rates shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments.

e. Extraordinary Adjustments. In addition to the Annual CPI Adjustment provided by Section 4(d), the Rates shall, upon written request of Company, be further adjusted to fully capture increased expenses associated with performance of the Collection Services hereunder due to any one or more of the following causes:

i. Change in Applicable Law that is effective after the Effective Date of this Agreement or Increase in surcharges, fees, assessments or taxes levied by federal, state or local regulatory authorities or other governmental entities related to the Collection Services;

ii. Change in the scope or method of operations provided by the Company required, initiated, or approved by the City;

iii. New or additional services the City may request;

If Company requests a Rate Adjustment pursuant to this Section 4(e), it shall prepare a Rate Adjustment request setting forth its calculations of the increased costs/lost revenue and accompanying adjustment to the Rates necessary to offset such increased costs/lost revenue. The City may request documentation and data reasonably necessary to evaluate such request by

Company, and may retain, at its own expense, an independent third party to audit and review such documentation and request. If such third party is retained, the City shall take reasonable steps, consistent with Applicable Law, to protect the confidential or proprietary nature of any data or information supplied by Company. The City shall consider all properly calculated Rate Adjustments within ninety (90) days of Company's request. Any approval of a Rate Adjustment will not be unreasonably withheld, and the City shall formally document the reason any request for a Rate Adjustment is denied in writing.

**5. DEFAULT AND TERMINATION**

Except as otherwise provided in Section 9 (Force Majeure), the failure of either Party to perform a material obligation under this Agreement shall be considered a breach of this Agreement, and the breaching Party shall be in default. In the event of default, the non-defaulting Party shall give written notice to the other Party of the default, and the defaulting Party shall have: (i) ten (10) days from the receipt of the notice to cure any failure to pay money under this Agreement, or (ii) thirty (30) days from the receipt of the notice to cure any other default under this Agreement. If the defaulting Party fails to cure the breach within the allotted time, the non-defaulting Party may, at its option, immediately terminate the Agreement by written notice to the defaulting Party. In the event of a default, the defaulting Party agrees to pay all damages caused by said default, to include, without limitation reasonable attorneys' fees and costs associated with enforcement of this Agreement. Under no circumstances shall either Party be liable for any consequential, indirect, punitive or special damages for any alleged default under this Agreement.

**6. INDEPENDENT CONTRACTOR**

Company shall perform the Collection Services as an independent contractor. Company, its officers, employees, agents, contractors or subcontractors, are not and shall not be considered employees, agents or servants of the City for any purpose whatsoever under this Agreement or otherwise. Company at all times shall have exclusive control of the performance of the Collection Services. Nothing in this Agreement shall be construed to give City any right or duty to supervise or control Company, its officers, employees, agents, contractors, or subcontractors, or to determine the manner in which Company shall perform its obligations under the Agreement except as explicitly stated herein.

**7. SUBCONTRACTORS**

Company shall not use subcontractors to perform the Collection Services described hereunder unless Company has obtained prior written approval from the City, which approval shall not be unreasonably delayed or withheld. In the event that written approval is obtained, Company shall remain liable to the City for the subcontractor's performance of the Collection Services as if they were being provided by Company itself.

**8. FORCE MAJEURE**

Except for the failure to make payment when due, neither party shall be in default for its failure to perform or delay in performance caused by an Uncontrollable Circumstance, and the affected party shall be excused from performance during the occurrence of such events. For purposes of this Agreement, "Uncontrollable Circumstances" means any act of terrorism, act of God, landslides, lightning, forest fires, storms, floods, typhoons, hurricanes, severe weather, freezing, earthquakes, volcanic eruptions, other natural disasters or the imminent threat of such natural disasters, pandemics, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, labor unrest (e.g., strikes, lockouts, or other labor disturbances), acts of domestic or foreign governments or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of a party.

**9. INDEMNIFICATION**

a. Company agrees to indemnify, defend, and hold City harmless from and against all claims and actions, causes of action, suits, debts, damages, liabilities and costs whatsoever, including but not limited to reasonable attorneys' fees and costs of defense, based upon or arising out of Company's breach of this Agreement, or based upon or arising out of any injuries (including death) to persons, or damage to property, to the extent caused by the negligent acts or omissions or willful misconduct of Company, or any of its directors, officers, employees, agents, or subcontractors, in the performance of this Agreement.

c. Notwithstanding any provision in this Agreement to the contrary, Company shall not be responsible for any damage to driving surfaces that is the result of ordinary wear and tear during the performance of the Collection Services.

d. The indemnification obligations of this section shall survive the termination or expiration of this Agreement for any reason.

**10. INSURANCE**

Company shall maintain at its own cost and expense the following minimum limits of occurrence-based insurance during the term of this Agreement, said insurance shall be primary:

	<b>Type</b>	<b>Amount</b>
A.	Worker's Compensation	Statutory
B.	Employer's Liability	\$1,000,000
C.	Comprehensive General Liability	\$1,000,000 per occurrence \$1,000,000 aggregate
D.	Automobile Liability (owned and non-owned)	
	i. Bodily Injury	\$1,000,000 per occurrence
	ii. Property Damage Liability	\$1,000,000 per occurrence
E.	Excess/Umbrella	\$1,000,000 per occurrence

The City, its elected and appointed officials and employees, shall be included as additional insured parties under the CGL, Automobile and Excess/Umbrella coverages. Prior to commencement of the Collection Services, Company shall deliver to City certificate(s) of insurance evidencing the required coverages. The certificate(s) shall provide that any change restricting or reducing coverage, or the cancellation of any policies under which certificates are issued, shall not be valid unless at least 30 days' written notice of change or cancellation is provided, unless cancellation is due to non-payment of premium, to which ten (10) days written notice must be given. Company shall not reduce or cancel coverages at any time during the term of this Agreement.

**11. PERFORMANCE BOND**

Company shall furnish to the City and keep in force during the term of this Agreement or any renewal or extension thereof, a performance a bond in the principal amount of \$1,000,000.00 as and for assurance and guarantee to the City of Company's faithful performance of all of the terms and conditions of this Agreement, to be furnished to the City within 30 days of the execution of the Agreement.

The surety on the bond shall be a duly authorized corporate surety company qualified under New Mexico law and regulation to issue such bonds in the State of New Mexico.

Attorneys-in-fact who sign performance bonds must file with each bond an effectively dated copy of their power of attorney, bearing the seal of the company evidencing such agent's authority to execute the bond. Said bond shall be kept in force throughout the term of this Agreement or any renewal or extension thereof. In the event of the surety's insolvency the Company shall provide a new bond in no less than fifteen (15) days.

This Agreement shall be subject to termination by the City at any time if said bond shall be canceled, or the surety thereon relieved from liability for any reason. Notice of cancellation of the bond must be served upon the City six (6) months prior to the effective date of said cancellation. The Agreement will not be terminated if, within thirty (30) days of such notice, the Company files with the City a similar bond to be effective for the balance of the contract period.

Company reserves to itself the option to apply to the City for reduction of said bond(s), with the understanding that it shall be the exclusive option of the City to grant said reduction in the event that the City finds that the performance by the Company of the terms of this Agreement is, in all other regards, fully satisfactory to the City.

**12. RELOCATION OF HAULING SITE**

- a) During the two (2) year period after this Agreement is executed, Company will use good faith efforts to identify and negotiate the purchase of property located within the City (the "New Property") at which Company would relocate its existing hauling site located at 2608 N. Lovington Highway.
- b) If Company identifies a New Property as a potential purchase and negotiates purchase terms with the seller, Company and City shall promptly and in good faith negotiate adjustments to Company's rates under this Agreement to fully reimburse Company for its costs related to buildings and improvements at the New Property. The terms of such reimbursement shall be set forth in a separate agreement. If Company and City fail to reach an agreement regarding said reimbursement, then Company will not be obligated to complete the purchase of the potential New Property.
- c) Notwithstanding subsection (a) above, Company reserves the right to relocate the existing Hobbs hauling site to somewhere outside the City. However, in such event, City shall have no obligation contractually to be bound by any claimed rate

adjustments or costs associated with the relocation, unless the City still requires relocation from the Company's current location.

**13. MISCELLANEOUS PROVISIONS**

- a. This Agreement shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.
- b. This Agreement shall be construed in accordance with the law of the state in which the Collection Services are provided. Jurisdiction shall be in the 5<sup>th</sup> Judicial District, located in Lea County, New Mexico.
- c. All written notification required by this Agreement shall be effective upon receipt and delivered by Certified Mail, Return Receipt Requested, overnight delivery by a nationally-recognized overnight delivery service, or by hand delivery to the Party's address below:
- If to Company:           Waste Management of New Mexico, Inc.  
                                  222 S. Mill Avenue, Suite 333  
                                  Tempe, AZ 85281  
                                  Attn. Public Sector Services Director
- If to City:                 The City of Hobbs  
                                  200 E. Broadway, Hobbs, NM 88240  
                                  Attn: Mayor, City of Hobbs, NM
- d. If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the Parties shall amend this Agreement to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision.
- e. In the event either Party successfully enforces its rights against the other hereunder, the other Party shall be required to pay the prevailing Party's attorneys' fees and court costs.
- f. Neither party may assign its rights nor obligations hereunder without the prior express written consent of the other party.

[Signatures on following page]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date above.

**WASTE MANAGEMENT OF NEW MEXICO, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF HOBBS, NEW MEXICO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**COMPANY RATES**

[INSERT SCHEDULE OF RATES FOR ROUTINE COLLECTION SERVICES]

Current:

96-gallon	\$18.67
Second Cart	\$7.25
Average cost per serviced yard	\$5.80

Proposed: Status quo, no franchise fee, relocation of hauling, operate Convenience Center/IPC

96-gallon	\$18.67
Second Cart	\$7.25
Average cost per serviced yard	\$5.80

WM Transfer Facility Operation

Recycling Facility	\$9,500.00
Convenience Center	\$8,570.68

**EXHIBIT B**  
**RECYCLABLES SPECIFICATIONS**

**RECYCLABLES** must be dry, loose (not bagged) and include **ONLY** the following:

Aluminum cans -- empty	Newspaper
PET bottles with the symbol #1 -- with screw tops only -- empty	Mail
HDPE plastic bottles with the symbol #2 (milk, water bottles detergent, and shampoo bottles, etc.) -- empty	Uncoated paperboard (ex. cereal boxes; food and snack boxes)
PP plastic bottles and tubs with symbol # 5 -- empty	Uncoated printing, writing and office paper
Steel and tin cans -- empty	Old corrugated containers/cardboard (uncoated)
	Magazines, glossy inserts and pamphlets

**NON-RECYCLABLES** include, but are not limited to the following:

Plastic bags and bagged materials (even if containing Recyclables)	Microwavable trays
Mirrors	Glass
Light bulbs	Coated cardboard
Porcelain and ceramics	Plastics not listed above including but not limited to those with symbols #3*, #4*, #6*, #7* and unnumbered
Expanded polystyrene	Coat hangers
Glass and metal cookware/bakeware	Household appliances and electronics,
Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)
Excluded Materials or containers which contained Excluded Materials	Napkins, paper towels, tissue, paper plates, paper cups, and plastic utensils
Any paper Recyclable materials or pieces of paper Recyclables less than 4" in size in any dimension	Propane tanks, batteries
Cartons*	Aseptic Containers*

\* These materials may be deemed Recyclables upon written consent of Company, which may be withdrawn upon notice to City if there is no commercially viable market.

**ADDITIONAL SPECIFICATIONS:**

Contained materials may not have more than 10% Non-Recyclables or any Excluded Materials. Carts or Bins with more than 10% Non-Recyclables may be delivered to the designated transfer or disposal facility for disposal. "Excluded Materials" means radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous or toxic substance or material, or regulated medical or hazardous waste as defined by, characterized or listed under applicable federal,

state, or local laws or regulations, materials containing information (in hard copy or electronic format, or otherwise) which information is protected or regulated under any local, state or federal privacy or data security laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, or other regulations or ordinances.

Company reserves the right, upon notice to City, to reclassify Recyclables as Non-Recyclables for such period of time that the cost process, transport and market such materials exceeds its then-current value.

## City of Hobbs Solid Waste Rates

Jun-19

### Waste Management Rates (Not Including NMGRT)

RESIDENTIAL	\$18.67
EXTRA CART	\$7.25
COMMERCIAL HANDLOAD POLYCART	\$24.13

### Commercial Container Rates

Frequency: Number of Pickups per Week

Container Size		1x	2x	3x	4x	5x	6x	7x
1.5	Cubic Yards	\$64.66	\$106.81	\$148.88	\$191.01	\$233.12	\$275.28	\$317.40
2.0	Cubic Yards	\$86.50	\$143.73	\$201.28	\$258.81	\$316.37	\$373.84	\$431.41
3.0	Cubic Yards	\$106.81	\$178.74	\$250.69	\$322.62	\$394.55	\$466.54	\$538.49
4.0	Cubic Yards	\$131.45	\$217.81	\$304.19	\$390.55	\$476.95	\$563.32	\$649.69
6.0	Cubic Yards	\$166.84	\$287.13	\$407.31	\$556.01	\$647.29	\$767.14	\$887.39
8.0	Cubic Yards	\$222.71	\$385.09	\$547.94	\$710.27	\$873.05	\$1,035.74	\$1,198.27

### City Rates Charged to Customers \*\* (Not Including NMGRT)

RESIDENTIAL	\$23.01
EXTRA CART	\$6.87
COMMERCIAL HANDLOAD POLYCART	\$24.43

### Commercial Container Rates

Frequency: Number of Pickups per Week

Container Size		1x	2x	3x	4x	5x	6x	7x
1.5	Cubic Yards	\$65.67	\$108.49	\$151.25	\$194.05	\$236.82	\$279.64	\$322.43
2.0	Cubic Yards	\$87.89	\$146.01	\$204.48	\$262.90	\$321.34	\$379.76	\$438.25
3.0	Cubic Yards	\$108.49	\$181.59	\$254.66	\$327.74	\$400.82	\$473.93	\$547.03
4.0	Cubic Yards	\$133.53	\$221.27	\$308.99	\$396.67	\$484.51	\$572.23	\$651.68
6.0	Cubic Yards	\$169.47	\$291.69	\$413.75	\$564.82	\$657.55	\$779.29	\$901.46
8.0	Cubic Yards	\$226.25	\$391.19	\$556.63	\$721.53	\$886.88	\$1,052.12	\$1,217.26

\*\* City Rates are adjusted to pay for the operation of the Recycling Facility and the Convenience Center, all City landfill tipping fees and hauling charges, as well as, costs associated with the City Wide Community Clean-ups.



# CITY OF HOBBS

## COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 3, 2019

**SUBJECT:** Resolution Adopting Budgetary Adjustment #5 for the Fiscal Year 2018-2019  
**DEPT. OF ORIGIN:** Finance Department  
**DATE SUBMITTED:** May 28, 2019  
**SUBMITTED BY:** Deborah Corral, Assistant Finance Director

**Summary:**

The fiscal budget of the City of Hobbs is adopted by resolution, and reviewed and approved by the Department of Finance & Administration. The budget is prepared prior to the beginning of the fiscal year, and as such, from time to time it becomes necessary to adjust the budget for items not contemplated at the time of its preparation or for issues that arise during the fiscal year.

Enclosed is a budgetary adjustment #5 for the current year. A summary of the funds adjusted is attached to this resolution. After this adjustment is approved by the Commission, it must be forwarded to the Department of Finance & Administration for their approval.

**Fiscal Impact:**

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

*[Signature]*  
Finance Department

Included in this budget adjustment are increases to expenditure and revenue accounts as well as cash transfers between funds. Total Expenditure increase by \$3,173,204.99 and total revenues increase by \$2,310,000.00. Ending cash balance for all funds decreases from \$56,870,374.60 to \$56,007,169.61 a net decrease of \$863,204.99

The general fund reserve balance remains at 34%.

**Attachments:**

- Budget Cash Balance Sheet
- Budgeted Adjustments Detail
- Resolution approving Budget Adjustment for the fiscal year 2018-2019

**Legal Review:**

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

*[Signature]*  
City Attorney

**Recommendation:**

Motion to approve the resolution.

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

*[Signature]*  
Department Director

*[Signature]*  
City Manager

**CITY CLERKS USE ONLY  
COMMISSION ACTION TAKEN**

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

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

CITY OF HOBBS

RESOLUTION NO. 6805

BUDGETARY ADJUSTMENT #5

FISCAL YEAR 2018-2019

WHEREAS, the fiscal budget for the City of Hobbs is prepared, reviewed and approved prior to the beginning of the fiscal year; and

WHEREAS, from time to time it becomes necessary to adjust the budget due to items not contemplated at the time it is prepared; and

WHEREAS, included in this budgetary adjustment are increases to expenditures in the amount of \$3,173,204.99, and increases to revenues in the amount of \$2,310,000.00; and

WHEREAS, the ending cash balance for all funds is \$56,007,169.61; and

WHEREAS, the General Fund reserve balance remains at 34%;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the herein referenced budget adjustments be approved.

BE IT FURTHER RESOLVED BY THE GOVERNING BODY of the City of Hobbs, New Mexico, that the budgetary adjustments be subject to the approval of the Department of Finance and Administration of the State of New Mexico and that a copy of this Resolution be forwarded to their office in Santa Fe, New Mexico, for approval.

PASSED, ADOPTED AND APPROVED this 3<sup>rd</sup> day of June, 2019

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

ATTEST:

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

**City of Hobbs Budget Adjustment Request #5  
FY19 Fund Summary**

	Beginning Cash 06/30/2018	Total Revenue	Interfund Transfer	Total Expenditures	Ending Cash
1 GENERAL	54,640,045.37	69,147,623.15	(9,525,849.66)	85,204,222.24	29,057,596.62
2 LAND ACQUISITIO	326,192.47	100,000.00	-	325,000.00	101,192.47
<b>General Fund Subtotal</b>	<b>54,966,237.84</b>	<b>69,247,623.15</b>	<b>(9,525,849.66)</b>	<b>85,529,222.24</b>	<b>29,158,789.09</b>
11 LOCAL GOV CORR	559,796.11	280,000.00	-	755,540.01	84,256.10
12 POLICE PROTECTI	87,000.00	79,200.00	-	166,200.00	-
13 P D N (parif, drug,	1,918.75	-	-	-	1,918.75
14 SAFER Grant	1,000.00	409,148.31	110,595.63	519,743.65	1,000.29
15 COPS GRANT	1,000.00	697,584.94	510,095.01	977,947.95	230,732.00
16 RECREATION (COF	75,000.00	8,666,664.78	3,530,355.49	11,656,620.27	615,400.00
17 OLDER AMERICAN	1,000.00	145,647.00	945,203.89	1,090,850.89	1,000.00
18 GOLF	1,000.00	1,000,700.00	3,366,027.40	4,366,727.40	1,000.00
19 CEMETERY	1,000.00	159,200.00	534,135.51	693,335.51	1,000.00
20 AIRPORT	288,518.33	41,000.00	-	110,716.20	218,802.13
23 LODGERS' TAX	1,382,920.55	2,520,000.12	(1,105,455.00)	850,000.00	1,947,465.67
27 PUBLIC TRANSPOR	-	1,070,201.60	319,742.73	1,229,364.33	160,580.00
28 FIRE PROTECTION	444,158.18	503,317.00	-	924,765.00	22,710.18
29 EMER MEDICAL SI	11.27	20,000.00	-	20,000.00	11.27
<b>Special Revenue Subt</b>	<b>2,844,323.19</b>	<b>15,592,663.75</b>	<b>8,210,700.66</b>	<b>23,361,811.21</b>	<b>3,285,876.39</b>
37 COMM DEVE CON	1,000.00	500,000.00	315,149.00	635,149.00	181,000.00
46 BEAUTIFICATION I	1,538,849.89	-	-	402,856.00	1,135,993.89
48 STREET IMPROVEI	2,024,650.68	1,201,671.33	-	2,510,576.00	715,746.01
49 CITY COMM. IMPI	512,265.22	2,586,000.04	(1,861,265.22)	116,000.00	1,121,000.04
<b>Capitol Project Subtot</b>	<b>4,076,765.79</b>	<b>4,287,671.37</b>	<b>(1,546,116.22)</b>	<b>3,664,581.00</b>	<b>3,153,739.94</b>
51 UTILITY BOND	-	-	307,004.58	307,004.58	-
53 WASTEWATER BC	1,989,842.96	-	2,105,209.23	2,105,209.23	1,989,842.96
<b>Debt Service Subtotal</b>	<b>1,989,842.96</b>	<b>-</b>	<b>2,412,213.81</b>	<b>2,412,213.81</b>	<b>1,989,842.96</b>
10 SOLID WASTE	1,975,305.24	6,500,000.00	-	6,500,000.04	1,975,305.20
44 JOINT UTILITY EXT	402,868.75	335,000.00	1,206,326.74	1,943,196.00	999.49
60 JOINT UTILITY	5,554,307.33	-	1,355,580.42	5,722,295.87	1,187,591.88
61 JOINT UTILITY COI	1,000.00	-	5,347,415.00	5,347,415.00	1,000.00
62 WASTE WATER PL	11,548,869.72	7,563,572.00	2,332,929.98	20,821,834.00	623,537.70
63 JOINT UTILTIY - W	1,000.00	-	4,007,799.35	4,007,799.35	1,000.00
65 JOINT UTILTIY INC	1,000.00	6,910,000.08	(6,791,000.08)	60,000.00	60,000.00
66 JOINT UTILITY INC	1,000.00	7,010,000.00	(7,010,000.00)	-	1,000.00
68 METER DEPOSIT R	973,283.94	425,000.04	-	425,000.00	973,283.98
69 INTERNAL SUPPLY	76,262.04	300,000.00	-	300,000.00	76,262.04
<b>Utility Subtotals</b>	<b>20,534,897.02</b>	<b>29,043,572.12</b>	<b>449,051.41</b>	<b>45,127,540.26</b>	<b>4,899,980.29</b>
64 MEDICAL INSURA	3,737,836.73	6,323,720.88	-	6,323,720.88	3,737,836.73
67 WORKERS COMP	1,069,590.48	685,064.36	-	800,000.00	954,654.84
<b>Internal Service Subto</b>	<b>4,807,427.21</b>	<b>7,008,785.24</b>	<b>-</b>	<b>7,123,720.88</b>	<b>4,692,491.57</b>
70 MOTOR VEHICLE	22,290.49	5,500,000.00	-	5,500,000.00	22,290.49
71 MUNI JUDGE BON	103,565.84	-	-	-	103,565.84
72 RETIREE HEALTH I	9,000,000.00	1,237,414.32	-	1,774,052.04	8,463,362.28
73 CRIME LAB FUND	72,649.55	121,000.00	-	121,000.00	72,649.55
75 FORECLOSURE TR	71.88	-	-	-	71.88
76 RECREATION TRU:	-	-	-	-	-
77 LIBRARY TRUST	5,756.00	1,000.00	-	2,000.00	4,756.00
78 SENIOR CITIZEN T	9,088.18	2,000.00	-	10,000.00	1,088.18
79 PRAIRIE HAVEN M	5,680.71	150.00	-	-	5,830.71
80 COMMUNITY PAR	1,519.50	100.00	-	-	1,619.50
82 EVIDENCE TRUST	131,237.46	1,000.00	-	-	132,237.46
83 HOBBS BEAUTIFU	24,069.53	1,000.00	-	10,000.00	15,069.53
86 CITY AGENCY TRU	4,907.95	1,500.00	-	2,500.00	3,907.95
<b>Trust &amp; Agency Subto</b>	<b>9,380,837.09</b>	<b>6,865,164.32</b>	<b>-</b>	<b>7,419,552.04</b>	<b>8,826,449.37</b>
<b>Grant Total All Funds</b>	<b>98,600,331.10</b>	<b>132,045,479.95</b>	<b>-</b>	<b>174,638,641.44</b>	<b>56,007,169.61</b>
		2,310,000.00		3,173,204.99	

34%

## Revenue

### New Money

Fund	Org	Object	Project	Dept	Description	Current Budget	Budget Request	New Budget	Comments
									Credit for allocation of charges from Water to Wastewater - offsetting expense in budget request
66	669999	30499		Water Revenue	Allocation to WWTP	-	(1,060,000.00)	(1,060,000.00)	
<b>66 Total</b>							<b>(1,060,000.00)</b>		
70	709999	30425		MVD Fund	MVD Sales	(4,250,000.00)	(1,250,000.00)	(5,500,000.00)	MVD Passthrough - has offsetting expense increase
<b>70 Total</b>							<b>(1,250,000.00)</b>		
<b>Grand Total</b>							<b>(2,310,000.00)</b>		

## Expense:

### New Money

Fund	Org	Object	Project	Dept	Description	Current Budget	Budget Request	New Budget	Comments
1	010100	41113		Commission	Insurance Medical/Dental	40,381.33	21,618.67	62,000.00	medical underbudgeted in this department
<b>1 Total</b>							<b>21,618.67</b>		
18	184316	43006		Golf Clubhouse	Equipment over \$5000	258,461.00	190,013.00	448,474.00	Purchase of 31 additional golf carts
<b>18 Total</b>							<b>190,013.00</b>		
63	634300	42605		Wastewater	Allocation from Water	-	280,000.00	280,000.00	
63	634330	42605		Wastewater	Allocation from Water	-	375,000.00	375,000.00	expense budget for allocation of charges
63	634340	42605		Wastewater	Allocation from Water	-	155,000.00	155,000.00	from water to wastewater - offsetting
63	634350	42605		Wastewater	Allocation from Water	-	125,000.00	125,000.00	revenue in budget request
63	634385	42605		Wastewater	Allocation from Water	-	125,000.00	125,000.00	
<b>63 Total</b>							<b>1,060,000.00</b>		
67	674067	42242		Workers Comp	Fur Claims Paid	310,064.40	114,935.60	425,000.00	Workers Comp claims paid trending well above budget
<b>67 Total</b>							<b>114,935.60</b>		
70	704070	42324		MVD Fund	Miscellaneous & Emergency	4,250,000.00	1,250,000.00	5,500,000.00	MVD Passthrough - has offsetting revenue increase
<b>70 Total</b>							<b>1,250,000.00</b>		
72	724072	42601		Retiree Health	Professional Sevices	1,113,362.28	536,637.72	1,650,000.00	Retiree Health cost trending well above budget
<b>72 Total</b>							<b>536,637.72</b>		
<b>Grand Total</b>							<b>3,173,204.99</b>		

**Reclass Only**

<b>Fund</b>	<b>Org</b>	<b>Object</b>	<b>Project</b>	<b>Dept</b>	<b>Description</b>	<b>Current Budget</b>	<b>Budget Request</b>	<b>New Budget</b>	<b>Comments</b>
1	010100	42204		Commission	Uniforms	-	800.00	800.00	
1	010100	42203		Commission	Dues & Subscriptions	75,314.00	(800.00)	74,514.00	reclass to cover cost of polo shirt order
1	010100	44901	00170	Commission	Housing Incentive (SF Housing)	1,849,820.00	300,000.00	2,149,820.00	
1	010100	44901	00162	Commission	Mkt Rate Incentive (MF Housing)	462,000.00	(300,000.00)	162,000.00	reclass funds per reso 6780, 6781 & 6782
1	010130	42304		Clerks	Printing & Duplicating	12,000.00	400.00	12,400.00	paper and other supplies
1	010130	42336		Clerks	Postage & Freight	36,000.00	(400.00)	35,600.00	reclass to printing and duplicating
1	010140	42301		Finance	Supplies - Office	2,500.00	1,000.00	3,500.00	increase in bar code labels - need for new stamps due to year
1	010140	42304		Finance	Printing & Duplicating	2,700.00	2,500.00	5,200.00	preprinted receipt books for City (per audit recommendation)
1	010140	42310		Finance	Supplies - Data Processing	3,900.00	1,000.00	4,900.00	increase in bank security bags due to additional deposit locations
1	010140	42324		Finance	Misc & Emergency	4,095.00	4,250.00	8,345.00	cash on hand adjustments and shipping
1	010140	42209		Finance	Audit	72,000.00	(8,750.00)	63,250.00	Reclass to other operating accounts - audit came in less than budgeted
1	010145	42210		IT	Service/Maint. Contracts	100,000.00	100.00	100,100.00	reclass for server maintenance budget
1	010145	42408		IT	Software Data Processing	5,200.00	(100.00)	5,100.00	shortfall
1	010145	43801		IT	Copiers		2,461.23	2,461.23	reclass money for unplanned
1	010145	43006		IT	Equipment over 5000	54,736.00	(2,461.23)	52,274.77	replacement of HPD CID copier
1	010160	42303		Court	Supplies - Janitor	500.00	100.00	600.00	reclass for janitorial supplies
1	010160	42232		Court	Service - Janitor	15,120.00	(100.00)	15,020.00	
1	010170	42320		HR	Special Programs Presentation	1,600.00	1,500.00	3,100.00	reclass for printing
1	010170	42304		HR	Printing & Duplicating	6,600.00	(1,500.00)	5,100.00	
1	010170	42357		HR	Advertising	14,800.00	3,000.00	17,800.00	reclass money for Police Chief position
1	010110	42601		City Manager	Professional Services	139,287.00	(3,000.00)	136,287.00	advertising
1	010220	42202		Fire	Communications	20,000.00	6,000.00	26,000.00	increase in communication expense

BAR #5 Detail

1	010220	42707	Fire	Furniture/Appliance	18,000.00	(6,000.00)	12,000.00	increase in communication expense
1	010326	42201	McAdams	Utilities	50,000.00	5,500.00	55,500.00	to cover overrun in utility costs
2	010326	42536	McAdams	Irrigation Repair	12,000.00	(5,500.00)	6,500.00	
1	010412	42404	Traffic	Signs and Signals	126,540.00	45,000.00	171,540.00	budget overrun due to accidents affecting traffic lights
1	010410	42601	Engineering	Professional Services	75,000.00	(45,000.00)	30,000.00	
1	010415	42706	Mapping	Equipment Under \$5000	-	2,800.00	2,800.00	transfer to replace gps base station that was struck by lightning
1	010415	42210	Mapping	Service/Maint Contract	4,200.00	(2,800.00)	1,400.00	
1	010415	42601	Mapping	Professional Services	10,000.00	5,500.00	15,500.00	transfer funds to mapping to encumber implementation of ArcGIS
1	010140	42601	Finance	Professional Services	145,972.00	(5,500.00)	140,472.00	
1	010420	42403	Garage	Machine Repair & Maint	100,000.00	20,000.00	120,000.00	transfer funds for repair of fuel line on ambulance
1	010420	42402	Garage	Vehicle Maintenance	250,000.00	(20,000.00)	230,000.00	
1	010422	42353	Code Enf	Training/Safety Equip	2,000.00	100.00	2,100.00	additional money needed for End of Year
1	010422	42613	Code Enf	Training	1,500.00	(100.00)	1,400.00	
1	010340	42313	Environmental	Safety Equipment	300.00	700.00	1,000.00	Budget overrun in safety equipment
1	010340	42204	Environmental	Uniforms	2,500.00	(700.00)	1,800.00	
1	010342	42357	Public Information	Advertising	16,500.00	2,400.00	18,900.00	additional advertising
1	010342	42302	Public Information	Travel Meals & Schools	5,700.00	(1,500.00)	4,200.00	
1	010342	42353	Public Information	Training	1,500.00	(900.00)	600.00	
16	164016	42501	Core	Buildings & Grounds	22,000.00	2,500.00	24,500.00	Budget for valet/kiosk stand for locker entrance
16	164016	42203	Core	Dues & Subs	4,670.00	(2,500.00)	2,170.00	
16	164016	42390	Core	SUPPLIES - RECREATION EQUIP	32,500.00	15,500.00	48,000.00	Myrtha Backstroke Wedge, Lane Line Equipment, Lane Line Reel, Training Equipment for Swim Team, Water Polo Goals, Gym Wipes, Additional Ninja Warrior Equipment, Extra Plate Weights, Trampolines
16	164016	42204	Core	UNIFORMS	19,700.00	(2,000.00)	17,700.00	
16	164016	42302	Core	TRAVEL, MEALS AND SCHOOLS	20,250.00	(3,000.00)	17,250.00	
16	164016	42403	Core	MACHINE REPAIR % MAINTENANCE	10,000.00	(8,500.00)	1,500.00	
16	164016	42313	Core	SAFETY EQUIPMENT	7,000.00	(2,000.00)	5,000.00	
16	164016	42820	Core	Core Store Merchandise	10,000.00	1,950.00	11,950.00	transfer for moer locks, socks and goggles for summer
16	164016	42336	Core	Postage & Freight	2,000.00	(1,950.00)	50.00	
16	164016	42303	Core	Supplies - Janitor	45,000.00	1,500.00	46,500.00	transfer for buffing machine for concrete

BAR #5 Detail

16	164016	42305	Core	Supplies - Medical	2,500.00	(1,500.00)	1,000.00	floors
18	184316	43006	Golf Clubhouse	Equipment over \$5000	152,987.00	105,474.00	258,461.00	
18	184316	43013	Golf Clubhouse	Building Improvements	105,000.00	(60,000.00)	45,000.00	transfer for purchase of 39 new golf carts
18	184316	42706	Golf Clubhouse	Equipment Under \$5000	78,500.00	(45,474.00)	33,026.00	
27	274027	42706	Public Trans	Equipment Under \$5000	1,000.00	4,000.00	5,000.00	transfer for purchase of paging system
27	274027	42357	Public Trans	Advertising	24,000.00	(4,000.00)	20,000.00	for Hobbs Express Building
60	604610	42202	Water Distrib	Communications	500.00	1,750.00	2,250.00	Cell service does not appear in budget
60	604610	42407	Water Distrib	Equip Mtc & Repair	20,000.00	(1,750.00)	18,250.00	to cover cell service
60	604620	42201	Production	Utilities	350,000.00	90,000.00	440,000.00	utility costs exceeded budget
60	604620	42523	Production	Reconditioning Water Prod Wells	225,000.00	(90,000.00)	135,000.00	
					-			

**Payroll Reclass Only**

1	010100	41110	Commission	Workers Compensaqtion	145.42	80.00	225.42	reclass for payroll expense
1	010100	41114	Commission	Long Term/Short Term Disability	55.90	28.00	83.90	reclass for payroll expense
1	010100	41112	Commission	PERA	10,243.80	(108.00)	10,135.80	reclass for payroll expense
1	010130	41128	Clerks	FSA Expense	-	25.00	25.00	reclass for payroll expense
1	010130	41101	Clerks	Salary	284,992.48	(25.00)	284,967.48	reclass for payroll expense
1	010150	41113	Legal	Insurance Medical/Dental	36,246.99	10,750.00	46,996.99	reclass for payroll expense
1	010150	41101	Legal	Salaries	341,077.28	(10,750.00)	330,327.28	reclass for payroll expense
							-	reclass for payroll expense
1	010140	41106	Finance	Longevity Pay	3,790.70	60.00	3,850.70	reclass for payroll expense
1	010140	41109	Finance	PTO Buyout	4,139.11	1,050.00	5,189.11	reclass for payroll expense
1	010140	41113	Finance	Insurance Medical/Dental	104,055.41	17,700.00	121,755.41	reclass for payroll expense
1	010140	41121	Finance	PTO Payout	1,000.00	9,200.00	10,200.00	reclass for payroll expense
1	010140	41123	Finance	Comp Time Payout	-	2,000.00	2,000.00	reclass for payroll expense
1	010140	41126	Finance	Admin Leave	50.00	1,050.00	1,100.00	reclass for payroll expense
1	010140	41101	Finance	Salaries	553,230.80	(31,060.00)	522,170.80	reclass for payroll expense
1	010170	41128	HR	FSA Expense	135.00	50.00	185.00	reclass for payroll expense
1	010170	41101	HR	Salaries	319,562.52	(50.00)	319,512.52	reclass for payroll expense

BAR #5 Detail

1	010321	41101	Sports Fields	Salaries	191,216.16	6,000.00	197,216.16	budget overrun in Salary line
								overtime for tournaments & special
1	010321	41102	Sports Fields	Overtime	18,000.00	5,000.00	23,000.00	events
1	010326	41101	McAdams	Salaries	123,437.72	16,000.00	139,437.72	budget overrun in Salary line
2	010326	41101	Parks	Salaries	1,104,160.07	(27,000.00)	1,077,160.07	reclass to Sports Field & McAdams
1	010320	41126	Parks	Admin Leave	-	2,000.00	2,000.00	reclass for payroll expense
1	010320	41101	Parks	Salaries	1,104,160.07	(2,000.00)	1,102,160.07	reclass for payroll expense
1	010330	41106	Recreation	Longevity Pay	5,025.00	1,750.00	6,775.00	reclass for payroll expense
1	010330	41109	Recreation	PTO Payout	5,070.64	4,500.00	9,570.64	reclass for payroll expense
1	010330	41126	Recreation	Admin Leave	-	650.00	650.00	reclass for payroll expense
1	010330	41101	Recreation	Salaries	326,677.04	(6,900.00)	319,777.04	reclass for payroll expense
1	010332	41126	Teen Center	Admin Leave	60.00	350.00	410.00	reclass for payroll expense
2	010332	41111	Teen Center	Workers Comp	1,453.72	1,200.00	2,653.72	reclass for payroll expense
1	010332	41101	Teen Center	Salaries	148,424.48	(1,550.00)	146,874.48	reclass for payroll expense
1	010422	41106	Code Enf	Longevity Pay	4,312.72	70.00	4,382.72	reclass for payroll expense
1	010422	41121	Code Enf	PTO Payout	-	11,000.00	11,000.00	reclass for payroll expense
1	010422	41126	Code Enf	Admin Leave	-	500.00	500.00	reclass for payroll expense
1	010422	41101	Code Enf	Salaries	299,892.00	(11,570.00)	288,322.00	reclass for payroll expense
1	010220	41128	Fire	FSA Expense	180.00	70.00	250.00	reclass for payroll expense
1	010220	41101	Fire	Salaries	4,214,964.51	(70.00)	4,214,894.51	reclass for payroll expense
16	164016	41115	Core	Bilingual Pay	-	9,000.00	9,000.00	reclass for payroll expense
16	164016	41126	Core	Admin Leave	3,800.00	5,500.00	9,300.00	reclass for payroll expense
16	164016	41101	Core	Salaries	1,804,960.28	(14,500.00)	1,790,460.28	reclass for payroll expense
17	174017	41128	Senior Center	FSA Expense	45.00	80.00	125.00	reclass for payroll expense
17	174017	41101	Senior Center	Salaries	190,538.32	(80.00)	190,458.32	reclass for payroll expense
27	274027	41106	Public Trans	Longevity Pay	-	8,900.00	8,900.00	reclass for payroll expense
27	274027	41109	Public Trans	PTO Buyout	126.72	3,600.00	3,726.72	reclass for payroll expense
27	274027	41116	Public Trans	Cell Phone Stipend	1,200.16	550.00	1,750.16	reclass for payroll expense
27	274027	41126	Public Trans	Admin Leave	-	700.00	700.00	reclass for payroll expense
27	274027	41101	Public Trans	Salaries	360,337.60	(13,750.00)	346,587.60	reclass for payroll expense
15	154015	41115	Cops Grant	Bilingual Pay	1,500.00	1,500.00	3,000.00	reclass for payroll expense

BAR #5 Detail

16	154015	41121	Cops Grant	PTO Payout	-	4,700.00	4,700.00	reclass for payroll expense
15	154015	41101	Cops Grant	Salaries	276,603.60	(6,200.00)	270,403.60	reclass for payroll expense
15	154115	41115	Cops Grant 2	Bilingual Pay	1,500.00	3,000.00	4,500.00	reclass for payroll expense
15	154115	41101	Cops Grant 2	Salaries	271,281.60	(3,000.00)	268,281.60	reclass for payroll expense
18	184315	41109	Golf Mtc	PTO Buyout	12,142.45	2,500.00	14,642.45	reclass for payroll expense
18	184315	41121	Golf Mtc	PTO Puyout (Term)	4,354.24	1,000.00	5,354.24	reclass for payroll expense
18	184315	41126	Golf Mtc	Admin Leave	1,287.34	1,500.00	2,787.34	reclass for payroll expense
18	184315	41101	Golf Mtc	Salaries	822,104.98	(5,000.00)	817,104.98	reclass for payroll expense
18	184316	41121	Golf Clubhouse	PTO Payout	50.00	17,775.00	17,825.00	reclass for payroll expense
18	184316	41126	Golf Clubhouse	Admin Leave	-	250.00	250.00	reclass for payroll expense
18	184316	41101	Golf Clubhouse		225,153.16	(18,025.00)	207,128.16	reclass for payroll expense
60	604685	41106	Scada	Longevity Pay	4,146.86	50.00	4,196.86	reclass for payroll expense
60	604685	41126	Scada	Admin Leave	-	300.00	300.00	reclass for payroll expense
60	604685	41101	Scada	Salaries	158,121.60	(350.00)	157,771.60	reclass for payroll expense
60	604610	41108	WaterDistrib	Incentive Pay	60,000.00	24,250.00	84,250.00	reclass for payroll expense
60	604610	41115	WaterDistrib	Bilingual Pay	4,500.00	1,500.00	6,000.00	reclass for payroll expense
60	604610	41121	WaterDistrib	PTO Payout	-	12,500.00	12,500.00	reclass for payroll expense
60	604610	41126	WaterDistrib	Admin Leave	75.00	1,600.00	1,675.00	reclass for payroll expense
60	604610	41101	WaterDistrib	Salaries	866,740.04	(39,850.00)	826,890.04	reclass for payroll expense

-



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 3, 2019

SUBJECT: CONSIDERATION TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN GRIMES LAND CO., AND THE CITY OF HOBBS CONCERNING INSTALLATION OF PUBLIC INFRASTRUCTURES.

DEPT. OF ORIGIN: Planning Department
DATE SUBMITTED: May 28, 2019
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: The City of Hobbs is proposing to enter into a Development Agreement with Grimes Land Co., concerning the installation of public infrastructures. The development of property, per MC 16.12.040, requires that the permit application must contain plans for the complete construction of all of the required improvements within the abutting right-of-way to the property, including City utilities, paved streets, sidewalks, curbing, and traffic signals if applicable. The development agreement is concerning the development of public infrastructures located within Sanger a designated Major Collector and Tasker a designated minor residential. The DA attached hereto and made part of this Resolution requires the Developer to construct all of the required public infrastructures, however extension of the public infrastructures adjacent to the southern boundary of the development shall terminate west of the proposed driveway access, a distance of +/- 280' from the developers southeast property corner. The Developer shall submit to the municipality a stamped plan set for the entirety of the public infrastructures and after receipt of the Engineer of Records Certification Letter as to installation the municipality shall reimburse the Developer the fair share cost of the plan set; being 50% of the approved Engineer of Records certified invoices or \$5,000.00 whichever is less. The City of Hobbs Planning Board recommended approval of the Development Agreement at the regular meeting held on May 21, 2019 by a vote of 5 to 0.

Fiscal Impact:

Reviewed By:

[Signature]
Finance Department

The positive impact of the new development from GRT collections and monthly utility bills should offset any expenses that the City will incur from the maintenance responsibility of streets, water and sewer lines.

Attachments: Development Agreement and attachments, Draft Planning Board Minutes.

Legal Review:

Approved As To Form:

[Signature]
City Attorney

Recommendation:

Staff recommends consideration of approval of the Development Agreement.

Approved For Submittal By:

[Signature]
Department Director

[Signature]
City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 6806

**A RESOLUTION TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN GRIMES LAND CO., AND THE CITY OF HOBBS CONCERNING INSTALLATION OF PUBLIC INFRASTRUCTURES.**

WHEREAS, the City of Hobbs is proposing to enter into a Development Agreement with Grimes Land Co., concerning the installation of public infrastructures; and

WHEREAS, the aforementioned Development Agreement requires the Developer to construct all of the required public infrastructures less those infrastructures projected west of the proposed southern driveway access located +/- 280' from the southeast corner of the development; and

WHEREAS, Developer shall submit to the municipality a stamped plan set for the entirety of the public infrastructures and after receipt of the Engineer of Records Certification Letter as to installation the municipality shall reimburse the Developer the fair share cost of the plan set; being 50% of the approved Engineer of Records certified invoices or \$5,000.00 whichever is less, 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 3<sup>rd</sup> day of June, 2019.

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

ATTEST:

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

**INFRASTRUCTURE DEVELOPMENT AGREEMENT**  
**North West Corner of Sanger and Tasker**

**THIS AGREEMENT**, made and entered into this 3<sup>rd</sup> day of June 2019, by and between the **CITY OF HOBBS, NEW MEXICO**, a New Mexico Municipal Corporation, with a mailing address of 200 E. Broadway, Hobbs, New Mexico 88240 (referred to herein as the "**City**"); and **GRIMES LAND CO., LTD. Co.**, a New Mexico limited liability company with a mailing address of P.O. Box 5102, Hobbs, New Mexico 88241 (referred to herein as "**Developer**").

**RECITALS:**

**WHEREAS**, Developer seeks to locate a new commercial enterprise (the "**Development**") on property located within the city limits of the City of Hobbs, New Mexico at the northwest corner of Sanger, a Major Collector, and Tasker, a minor residential, (the "**Developer Property**"). The Development requires municipal Infrastructure Improvement to be extended adjacent to the eastern and southern property line of the Development Property, including, but not limited to, water, sewer, curb, gutter and roadway upgrades (collectively referred to herein as "**Public Infrastructure Improvements**"), as well as the construction of sidewalks adjacent to the public right of ways as per MC 12.08.040. Said Infrastructure Improvements are required per Municipal Code at time of subdivision and/or development in order to assure availability of public infrastructures for adjacent properties; and

**WHEREAS**, adjacent to the Developers holdings, and contained within the development boundaries are certain public right of ways and infrastructures previously dedicated that shall, subsequent to development, be vacated and therein conveyed to the Developer; and

**WHEREAS**, the property adjacent to the proposed development, both west and south, are unlikely to develop in the near future and would not receive fair share beneficial use, nor pay fair share assessments, of installed public infrastructures until such development occurs. Therefore, it has been agreed upon by the City and the Developer that the Developer will construct, or cause to be constructed, at Developers sole expense, the entirety of the required Infrastructure Improvements required for the Development adjacent to Sanger only to a point being +/- 280' feet from the southeast corner of the Developers holdings and west of the proposed driveway access.

**NOW, THEREFORE**, the parties, in consideration of the promises and mutual obligations set forth herein, and other good and valuable consideration, hereby agree as follows:

1. The Developer, at its sole cost and expense, shall design, or cause to be designed, construction plans for the Public Infrastructure Improvements required for the entirety of the site, with notations therein as to Infrastructure to be installed per this agreement. Developer shall submit the proposed construction drawings and specifications for the Developer Improvements to the City for review and approval.
2. Upon approval of the construction plans the Developer, at its sole cost and expense, shall construct, or cause to be constructed, the Public Infrastructure Improvements per the Approved Planset and this agreement. The Developer shall employ the services of a registered New Mexico Civil Engineer who shall certify the installation of the public infrastructure as to compliance with the planset and City of Hobbs Standards prior to municipal acceptance.
3. Responsibilities of the parties hereto are as follows:
  - A. The Developer shall:
    - 1) Comply with all applicable Federal, state and local laws and regulations as they relate to the Developer Improvements.
    - 2) Grant and record an exclusive subsurface public infrastructure permanent easement for any public infrastructures installed upon Developer's property.

- 3) Provide a letter of certification to the City from the Engineer of Record for all items pertaining to the Public Infrastructure Improvements.

B. The City shall:

- 1) Review for compliance and approve any compliant civil planset submitted for the installation of the required public infrastructures.

- 2) Upon receipt of the Engineer of Record Certification of Compliance and recordation of the public infrastructure easements, the City shall reimburse the Developer an amount of 1/2 the actual cost (excluding GRT) of the Engineered Civil Planset, not to exceed \$5,000.00.

5. 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: Planning Department, 200 E. Broadway, Hobbs, NM 88240; to GRIMES LAND CO., LTD. Co., a New Mexico limited liability company PO Box 5102, Hobbs, New Mexico 88241, or to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

6. This Agreement may be executed in one or more identical counterparts, and all counterparts so executed shall constitute one agreement which shall be binding on all of the parties. Signed counterparts of this Agreement may be delivered by facsimile and by scanned .pdf image, each of which shall have the same force and effect as an original signed counterpart; provided, that, after a request by any party hereto for such original signed counterpart, each party hereto uses commercially reasonable efforts to deliver to each other party hereto original signed counterparts as soon as possible thereafter.

7. Representations of City.

A. City is a duly organized and validly existing municipal corporation under the laws of the State of New Mexico with full municipal power to enter into this Agreement and to carry out the terms, conditions and provisions hereof. All requisite actions, judicial or otherwise, required to be taken for City to validly enter into this Agreement have been taken.

B. City will continue review and processing of the development plans, and forthcoming building permit application in a forthright manner and with due diligence.

8. Representations of Developer.

To the best knowledge of Developer, there is no litigation, proceeding or governmental investigation, either pending or threatened, in any court, arbitration board or administrative agency against or relating to Developer to prevent or impede the consummation of this Agreement by Developer.

9. Breach.

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

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

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

- 1) City's failure to materially perform or comply with any of the terms, conditions or provisions of this Agreement.

10. Remedies Upon Breach.

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

B. 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.

16. Governing Laws. 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.

17. Termination. This Agreement shall be terminated upon the completion of all installation and construction defined herein or 365 days from ratification of this agreement, whichever occurs first.

18. Severability. If any part of this contract shall be deemed in violation of the laws or Constitution of New Mexico or to be invalid for any other reason, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable.

19. Entire Agreement. This Agreement constitutes the entire agreement among and between City and Developer and there are no other agreements or understandings, oral or otherwise, between the parties on the issues defined herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY:

DEVELOPER:

CITY OF HOBBS

GRIMES  
LAND CO., LTD. Co., a New Mexico limited liability company

\_\_\_\_\_  
Sam D. Cobb - Mayor

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

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

Its: \_\_\_\_\_

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

ATTEST:

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

APPROVED AS TO FORM:



said the city can maintain a road like that in 45 feet. He said they do not need 57 feet.

Mr. Shaw said he thought the land owner would probably agree to an easement that did not encroach in the fence line areas. Mr. Hicks said the plat is not in compliance with the summary process requirements. Mr. Kesner agreed.

Mr. Ramirez made a motion, seconded by Mr. Ingram to table this item. The Board asked Mr. Shaw to come back with a dedication or easement and a variance. The vote on the motion was 5-0 and the motion carried.

**10) Review and Consider Development Agreement with PKOS 10, LLC., concerning the development of property located NW of the intersection of Sanger and Tasker.**

Mr. Robinson said this is a Development Agreement and it was PKOS but it was conveyed from PKOS to Grimes Land Company and it will be changed prior to the Commission Meeting. He said the agreement addresses all of the development requirements on the site plan. Mr. Ingram said this development is being developed for him.

Mr. Robinson said what this Development Agreement covers is public infrastructures located on Sanger from Tasker West. He said rather than approach the developer with a fair share development saying put the infrastructure from your property line to you west property line and the municipality will reimburse you half of what the infrastructures cost. He said the public is better served by telling the developer put the infrastructure from Tasker Street to your drive way all on you. Mr. Hicks said then the city would be the gap if it ever extends. Mr. Robinson said that is correct.

Mr. Robinson said the Development Agreement with the name changes will be going to the next Commission Meeting. Mr. Kesner does not see an issue. He said the ideal behind the development agreement will allow additional commercial development in the city and will generate gross receipts tax which is favorable to the City of Hobbs.

Mr. Kesner made a motion, seconded by Mr. Ramirez to approve the Development Agreement at Sanger and Tasker. The vote on the motion was 4-1 with Mr. Ingram abstaining and the motion carried.

**11) Discussion Items:**

- A) Proposed public sale disposition of public property for the production of Market Rate Multi-Family Units.
- B) Review of MC 18.12 – Tower Regulations.

**12) Adjournment.**

With nothing further to discuss the meeting adjourned at 11:30 am.



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 3, 2019

SUBJECT: RESOLUTION TO APPROVE THE FINAL PLAN FOR TANGLEWOOD UNIT THREE AT RANCHVIEW ESTATES SUBDIVISION. Located northwest of the intersection of East Bender and Ranchland within the municipal boundaries, submitted by ALJO, LLC.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: May 28, 2019
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: The Final Plan for Tanglewood Unit Three At Ranchview Estates Subdivision is submitted by ALJO, LLC. The subdivision is located northwest of the intersection of East Bender and Ranchland within the municipal boundaries. The subdivision encompasses +/- 10.43 acres and will contain 39 single family residential lots. A Bond is being presented to the City of Hobbs to ensure completion of public infrastructures. The dollar amount of uninstalled public infrastructure is estimated to be \$329,389.33 including GRT. The City Engineer has approved the Engineer of Records completion estimate. The Bond has been approved by the Finance Director, City Attorney and the Development Director. The Planning Board consider this item at the May 21, 2019 regular meeting and voted 5-0 to recommend approval contingent upon an EOR certification of all infrastructures currently emplaced.

Fiscal Impact:

Reviewed By: [Signature]
Finance Department

The positive impact of the new development and new housing from GRT collections and monthly utility bills of the residents should offset any expenses that the City will incur from the maintenance responsibility of streets, water and sewer lines.

Attachments: Resolution, EOR Estimate, Bond and Final Plan.

Legal Review:

Approved As To Form: [Signature]
City Attorney

Recommendation:

Approval of the Resolution to approve the Tanglewood Unit Three At Ranchview Estates Subdivision, as recommended by the Planning Board.

Approved For Submittal By:

[Signature]
Department Director

[Signature]
City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 6807

**A RESOLUTION TO APPROVE THE FINAL PLAN FOR TANGLEWOOD UNIT THREE AT RANCHVIEW ESTATES SUBDIVISION.**

WHEREAS, ALJO, LLC has submitted a Final Plan for Tanglewood Unit Three At Ranchview Estates Subdivision; and

WHEREAS, a Bond has been submitted in an amount to secure the placement of all public infrastructures not in place as of this date.

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

1. The City of Hobbs hereby grants Final Plan Approval to Tanglewood Unit Two at Ranchview Estates Subdivision; and

2. The City officials and staff are directed to do any and all acts necessary to carry out the intent of this Resolution.

PASSED, ADOPTED AND APPROVED this 3<sup>rd</sup> day of June, 2019.

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

ATTEST:

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

TANGLEWOOD UNIT 3

WORK REMAINING 5/13/2019

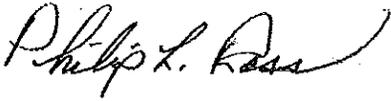
STREETS

	Unit	Quant.	Unit Price	Tot
Subgrade Prep	SY	8308	\$ 2.00	\$ 16,616.00
6" Base Course	SY	6230	\$ 7.94	\$ 49,466.20
8" Base Course	SY	2078	\$ 11.56	\$ 24,021.68
Prime	SY	8308	\$ 1.20	\$ 9,969.60
2" HMP	SY	6230	\$ 12.37	\$ 77,065.10
3" HMP	SY	2078	\$ 17.85	\$ 37,092.30
Curb & Gutter	LF	4790	\$ 17.00	\$ 81,430.00
Fillets	EA	9	\$ 900.00	\$ 8,100.00
5' Valley Gutters	LF	165	\$ 28.00	\$ 4,620.00

SubTotal \$308,380.88

GRT \$ 21,008.45

TOTAL \$329,389.33





P&C 877 282 1625 | 225 South 5th Street
Bonds 800 933 7444 | PO Box 2683
Waco, Texas 76702-2683

SUBDIVISION IMPROVEMENTS PERFORMANCE BOND

BOND NO. CNB-34192-00

KNOW ALL MEN BY THESE PRESENTS:

THAT we, ALJO Development Company, LLC, as Principal, and INSURORS INDEMNITY COMPANY, a corporation organized and doing business and under and by virtue of the laws of the State of Texas and duly licensed to conduct surety business in the State of New Mexico, as Surety, are held and firmly bound unto City of Hobbs, as Obligee, in the sum of Three Hundred Twenty-Nine Thousand Three Hundred Eighty-Nine and 33/100 Dollars (\$ 329,389.33) for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

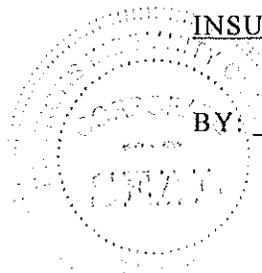
WHEREAS, the above named Principal, has agreed to construct in Tanglewood Unit 3, Subdivision, in Hobbs, NM the following improvements: Tanglewood Unit 3, Base, Paving, Curb and Gutter per 5/13/19 Schedule.

NOW, THEREFORE, the condition of this obligation is such, that if the above Principal shall well and truly perform said agreement or agreements during the original term thereof or of any extension of said term that may be granted by the Obligee with or without notice to the Surety, this obligation shall be void, otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of the said Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact, this 14th day of May, 2019.

ALJO Development Company, LLC Principal
BY: [Signature]

INSURORS INDEMNITY COMPANY
BY: [Signature] Attorney-in-Fact
William W. Burke, Jr.



POWER OF ATTORNEY of INSURORS INDEMNITY COMPANY  
Waco, Texas

KNOW ALL PERSONS BY THESE PRESENTS:

Number: CNB-34192-00

That INSURORS INDEMNITY COMPANY, Waco, Texas, organized and existing under the laws of the State of Texas, and authorized and licensed to do business in the State of Texas and the United States of America, does hereby make, constitute and appoint

William W. Burke of the City of Las Cruces, State of NM

as Attorney in Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, all of the following classes of document, to-wit:

Indemnity, Surety and Undertakings that may be desired by contract, or may be given in any action or proceeding in any court of law or equity; Indemnity in all cases where indemnity may be lawfully given and with full power and authority to execute consents and waivers to modify or change or extend any bond or document executed for this Company.

INSURORS INDEMNITY COMPANY

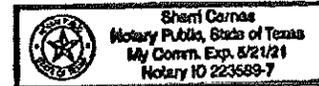
Attest: Tammy Tieperman  
Tammy Tieperman, Secretary

By: Dave E. Talbert  
Dave E. Talbert, President

State of Texas  
County of McLennan

On the 11<sup>th</sup> day of November, 2014, before me a Notary Public in the State of Texas, personally appeared Dave E. Talbert and Tammy Tieperman, who being by me duly sworn, acknowledged that they executed the above Power of Attorney in their capacities as President, and Corporate Secretary, respectively, of Insurors Indemnity Company, and acknowledged said Power of Attorney to be the voluntary act and deed of the Company.

Sherril Carnes  
Notary Public, State of Texas



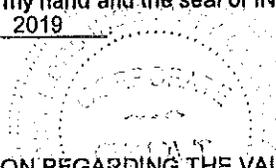
Insurors Indemnity Company certifies that this Power of Attorney is granted under and by authority of the following resolutions of the Company adopted by the Board of Directors on November 11, 2014:

RESOLVED, that all bonds, undertakings, contracts or other obligations may be executed in the name of the Company by persons appointed as Attorney in Fact pursuant to a Power of Attorney issued in accordance with these Resolutions. Said Power of Attorney shall be executed in the name and on behalf of the Company either by the Chairman and CEO or the President, under their respective designation. The signature of such officer and the seal of the Company may be affixed by facsimile to any Power of Attorney, and, unless subsequently revoked and subject to any limitation set forth therein, any such Power of Attorney or certificate bearing such facsimile signature and seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signature and seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached.

RESOLVED, that Attorneys in Fact shall have the power and authority, subject to the terms and limitations of the Power of Attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and any such instrument executed by such Attorneys in Fact shall be binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary or Assistant Secretary of the Company.

I, Tammy Tieperman, Secretary of Insurors Indemnity Company, do hereby certify that the foregoing is a true excerpt from the Resolutions of the said Company as adopted by its Board of Directors on November 11, 2014, and that this Resolution is in full force and effect. I certify that the foregoing Power of Attorney is in full force and effect and has not been revoked.

In Witness Whereof, I have set my hand and the seal of INSURORS INDEMNITY COMPANY on this 14th day of May, 2019.



Tammy Tieperman  
Tammy Tieperman, Secretary

NOTE: IF YOU HAVE ANY QUESTION REGARDING THE VALIDITY OR WORDING OF THIS POWER OF ATTORNEY, PLEASE CALL 800 933 7444 OR WRITE TO US AT P. O. BOX 2683, WACO, TEXAS 76702-2683 OR EMAIL US AT CONFIRMATION@INSURORS.COM.



Phone: 877 816 2800

PO Box 32577

Waco, Texas 76703-4200

## IMPORTANT NOTICE - AVISO IMPORTANTE

To obtain information or make a complaint:

You may call Insurors Indemnity Company's toll-free telephone number for information or to make a complaint at:

1-877-816-2800

You may also write to Insurors Indemnity Company at:

P.O. Box 32577  
Waco, TX 76703-4200

Or  
225 South Fifth Street  
Waco, TX 76701

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

1-800-252-3439

You may write the Texas Department of Insurance at:

Consumer Protection (111-1A)  
P.O. Box 149091  
Austin, TX 78714-9091  
Fax: 512-490-1007

Web: <http://www.tdi.texas.gov>

E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

### PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the agent or the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

### ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de Insurors Indemnity Company's para informacion o para someter una queja al

1-877-816-2800

Usted tambien puede escribir a Insurors Indemnity Company:

P.O. Box 32577  
Waco, TX 76703-4200

O  
225 South Fifth Street  
Waco, TX 76701

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

Consumer Protection (111-1A)  
P.O. Box 149091  
Austin, TX 78714-9091  
Fax: 512-490-1007

Web: <http://www.tdi.texas.gov>

E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

### DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concemiente a su prima o a un reclamo, debe comunicarse con el agente o la compania primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

### UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

**State of New Mexico**  
**Public Regulation Commission**  
Insurance Division

No. 50636

2008

**Certificate of Authority**  
**Insurance Company**

*It is hereby certified, that the*

**Insurors Indemnity Company**  
**225 South Fifth Street**  
**Waco, Texas 76701**  
Organized under the laws of Texas

has complied with the requirements of the laws of this State applicable to said Company and is hereby authorized to transact the business of

**Property, Marine & Transportation + Casualty (Excluding Health) + Surety  
+ Vehicle**

Insurance in accordance with its Charter or Certificate of Incorporation within the State of New Mexico, subject to the provisions and requirements of law.



*In Witness Whereof*, The Superintendent of Insurance of the State of New Mexico has caused this certificate to be signed and the seal of said Superintendent to be affixed hereto at the city of Santa Fe, this eleventh day of January 2008.

A handwritten signature in black ink, appearing to read "M. J. S.", is written over the printed name of the Superintendent of Insurance.

Superintendent of Insurance

4) **Communications from Citizens.**

There were no communications from citizens.

5) **Review and Consider**

6) **Review and Consider Final Plat Approval for Zia Crossing Unit 6, as submitted by property owner, Black Gold Estates, LLC.**

Mr. Robinson said this is the Final Plat Approval for Zia Crossing Unit 6 pending Engineer of record certification that all infrastructures are in place and acceptable as per the plans. He said this is a timing issue. He said the developer said he felt like they would be completed prior to the next Planning Board Meeting. He said they would be able to go to Commission as soon as everything is in place.

Mr. Robinson said they are only lacking curb, gutter and street. He said everything is done by the preliminary plat that was approved by the Board and City Engineer. He said this will be a Final Plat Approval pending their certification and all infrastructure is in place.

Mr. Ramirez made a motion, seconded by Mr. Kesner to approve the Final Plat approval pending the infrastructure certification. The vote on the motion was 5-0 and the motion carried.

7) **Review and Consider Final Plat Approval of Tanglewood Unit Three, as submitted by property owner, ALJO, LLC.**

Mr. Robinson said Final Plat of Tanglewood Unit 3. He said this property owner is requesting a Final Plat with a Bond as a surety that all of the public infrastructures will be in place. He said all the subsurface infrastructure is in place and they still have concrete work and paving to go. He said the bond amount is approximately \$330,000. Mr. Randall said it will require before the bond is released a certification on all the approvals. Mr. Robinson said after Commission approval of the Final Plat then they will be able to convey the lots. He said there is a difference between conveying the lots and habitation on the lots. Mr. Hicks asked if staff was comfortable with the bond amount being on the remainder of work, not the full amount. Mr. Robinson said yes staff is comfortable with the bond. Mr. Randall said they have an estimate from the Engineer as far as how much the remaining part is. He said they will not get a CO until all the improvements are done.

Mr. Ingram asked how much this developer has done with the city before? Mr. Randall said he has done two others. Mr. Robinson said staff does not have concern about the developer being able to perform on the bond. Mr. Kesner said if there is a motion made it needs to include testing and making sure that the current utilities that will be owned by the city have been tested and passed and have engineering certifications of those two items.

Mr. Sanderson made a motion, seconded by Mr. Kesner to approve the Final Plat contingent on the current utilities that will be owned by the city be tested and passed and have engineering certifications of those two items. The vote on the motion was 5-0 and the

notion carried.

- 8) Review Sketch\Master Plan for The Meadowlands, as submitted by property owner, Lemke Development, Inc.

Mr. Robinson said this is a Sketch Plan Review. He said Meadowlands is the portion of 80 acres. He said the section of 40 acres west of Jarob is what is being reviewed. He said this is staff's red line review. He said one of the things staff is concerned with is the east-west access from Grimes to Davis and the north access. He said they are trying to restrict as much access points off of College Lane.

Mr. Hicks asked about potential roadways. Mr. Randall said each developer has the ability to move the road where they want and staff is just about intersections and connections. Mr. Robinson said this is a Sketch Plan so it is imperative that the Board review it and make comments and guide and direct the developer. Mr. Hicks said he would want to require no more access along College Lane except the two. Mr. Robinson said they would make sure of that. He said he thinks it will be phased development.

- 9) Review and Consider proposed re-plat located NE of the intersection of Navajo and Hope.

Mr. Robinson said this is the NE corner of Navajo and Hope. He said it is a summary replat. He said they are readjusting a lot line. He said staff has requested a dedication of Hope which would make it compliant as a summary plat approval. He said there was a dedication along the east side of tract 1 and 2. He said there is a recorded easement that is along the properties that they are looking at doing a replat on right now. He said staff would like a dedication of that 30 foot easement.

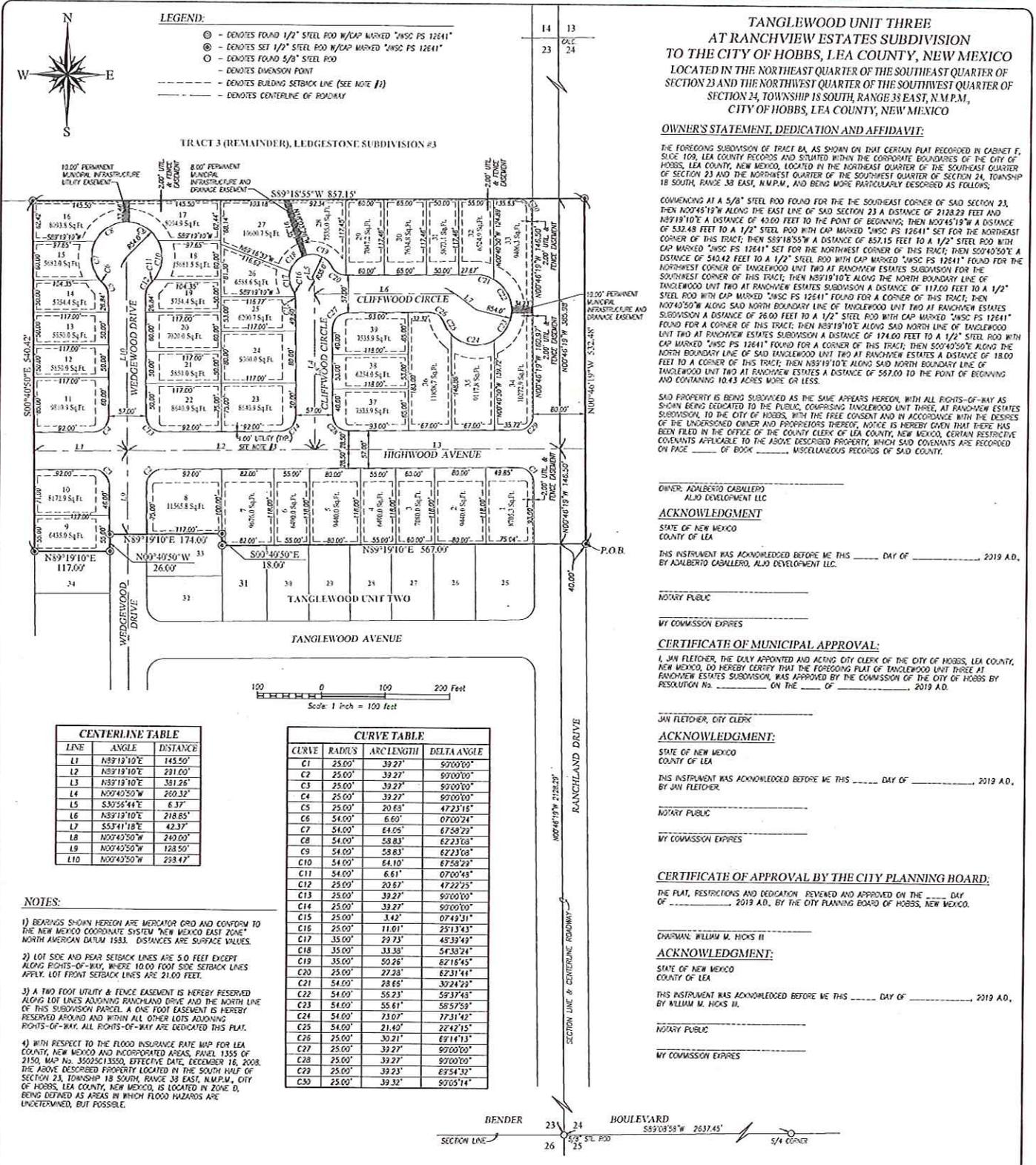
Mr. Bobby Shaw said he is asking for a solution. He said these two properties are owned by different people. He said the one on the east side is next to Border States and it is sold. He said the owner of the property where the Fed Ex building is because of where the lot line is he made a deal to purchase 15 feet from the other owner so there is enough room to get around the building. He said he thought a lot line adjustment which is not a subdivision. He said staff then asked for 30 feet on the west side of the property and the Fed Ex owner is not willing to give up that land and give it to the city.

Mr. Kesner asked if Hope was city maintained? Mr. Robinson said yes. Mr. Hicks asked if Fed Ex used the land in the back? Mr. Shaw said no.

Mr. Hicks said the land is not being used by the owner west of the fence and there is an access to Hope Street which is improved and maintained by the city. He said the Fed Ex lot or the one next to it does not need access from Hope. He said there is a utility line on the plat with the gas company. He said what if they ask them to give an easement for a strip of land that is 2 feet west of the fence line to the edge of the property for roadway and utility purposes. He can keep the land so there is a little more right-of-way if needed. He said then he does not have to give up land or value. He said it will still need a variance. Mr. Hicks

PRELIMINARY - 05/21/19

This document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document.



**TANGLEWOOD UNIT THREE  
AT RANCHVIEW ESTATES SUBDIVISION  
TO THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO**  
LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 23 AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M., CITY OF HOBBS, LEA COUNTY, NEW MEXICO

**OWNER'S STATEMENT, DEDICATION AND AFFIDAVIT:**  
THE FOREGOING SUBDIVISION OF TRACT BA, AS SHOWN ON THAT CERTAIN PLAT RECORDED IN CABINET F, SIDE 109, LEA COUNTY RECORDS AND SITUATED WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO, LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 23 AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M., AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 5/8" STEEL ROD FOUND FOR THE SOUTHWEST CORNER OF SAID SECTION 23, THEN N02°45'19"W ALONG THE EAST LINE OF SAID SECTION 23 A DISTANCE OF 2128.29 FEET AND N89°19'10"E A DISTANCE OF 43.00 FEET TO THE POINT OF BEGINNING; THEN N02°45'19"W A DISTANCE OF 532.48 FEET TO A 1/2" STEEL ROD WITH CAP MARKED "INSC PS 12611" SET FOR THE NORTHEAST CORNER OF THIS TRACT; THEN S05°18'55"W A DISTANCE OF 854.15 FEET TO A 1/2" STEEL ROD WITH CAP MARKED "INSC PS 12611" SET FOR THE NORTHWEST CORNER OF THIS TRACT; THEN S04°40'50"E A DISTANCE OF 542.42 FEET TO A 1/2" STEEL ROD WITH CAP MARKED "INSC PS 12611" FOUND FOR THE NORTHWEST CORNER OF TANGLEWOOD UNIT TWO AT RANCHVIEW ESTATES SUBDIVISION FOR THE SOUTHWEST CORNER OF THIS TRACT; THEN N89°19'10"E ALONG THE NORTH BOUNDARY LINE OF TANGLEWOOD UNIT TWO AT RANCHVIEW ESTATES SUBDIVISION A DISTANCE OF 117.00 FEET TO A 1/2" STEEL ROD WITH CAP MARKED "INSC PS 12611" FOUND FOR A CORNER OF THIS TRACT; THEN N02°45'19"W A DISTANCE OF 174.00 FEET TO A 1/2" STEEL ROD WITH CAP MARKED "INSC PS 12611" FOUND FOR A CORNER OF THIS TRACT; THEN S00°40'50"E ALONG THE NORTH BOUNDARY LINE OF SAID TANGLEWOOD UNIT TWO AT RANCHVIEW ESTATES SUBDIVISION A DISTANCE OF 26.00 FEET TO A 1/2" STEEL ROD WITH CAP MARKED "INSC PS 12611" FOUND FOR A CORNER OF THIS TRACT; THEN N89°19'10"E ALONG SAID NORTH BOUNDARY LINE OF TANGLEWOOD UNIT TWO AT RANCHVIEW ESTATES A DISTANCE OF 557.00 TO THE POINT OF BEGINNING AND CONTAINING 10.43 ACRES MORE OR LESS.

SAID PROPERTY IS BEING SUBDIVIDED AS THE SAME APPEARS HEREON, WITH ALL RIGHTS-OF-WAY AS SHOWN BEING DEDICATED TO THE PUBLIC, COMPRISING TANGLEWOOD UNIT THREE, AT RANCHVIEW ESTATES SUBDIVISION, TO THE CITY OF HOBBS, WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNER AND PROPRIETORS THEREOF; NOTICE IS HEREBY GIVEN THAT THERE HAS BEEN FILED IN THE OFFICE OF THE COUNTY CLERK OF LEA COUNTY, NEW MEXICO, CERTAIN RESTRICTIVE COVENANTS APPLICABLE TO THE ABOVE DESCRIBED PROPERTY, WHICH SAID COVENANTS ARE RECORDED ON PAGE \_\_\_\_\_ OF BOOK \_\_\_\_\_ MISCELLANEOUS RECORDS OF SAID COUNTY.

OWNER: ADALBERTO CABALLERO  
ALJO DEVELOPMENT LLC  
**ACKNOWLEDGMENT**  
STATE OF NEW MEXICO  
COUNTY OF LEA  
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019 A.D., BY ADALBERTO CABALLERO, ALJO DEVELOPMENT LLC.

NOTARY PUBLIC  
MY COMMISSION EXPIRES \_\_\_\_\_

**CERTIFICATE OF MUNICIPAL APPROVAL:**  
I, JAN FLETCHER, THE DAILY APPOINTED AND ACTING CITY CLERK OF THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO, DO HEREBY CERTIFY THAT THE FOREGOING PLAT OF TANGLEWOOD UNIT THREE AT RANCHVIEW ESTATES SUBDIVISION, WAS APPROVED BY THE COMMISSION OF THE CITY OF HOBBS BY RESOLUTION No. \_\_\_\_\_ ON THE \_\_\_\_\_ OF \_\_\_\_\_, 2019 A.D.

JAN FLETCHER, CITY CLERK  
**ACKNOWLEDGMENT:**  
STATE OF NEW MEXICO  
COUNTY OF LEA  
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019 A.D., BY JAN FLETCHER.

NOTARY PUBLIC  
MY COMMISSION EXPIRES \_\_\_\_\_

**CERTIFICATE OF APPROVAL BY THE CITY PLANNING BOARD:**  
THE PLAT, RESTRICTIONS AND DEDICATION REVIEWED AND APPROVED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019 A.D., BY THE CITY PLANNING BOARD OF HOBBS, NEW MEXICO.

CHAPMAN WILLIAM M. HICKS II  
**ACKNOWLEDGMENT:**  
STATE OF NEW MEXICO  
COUNTY OF LEA  
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019 A.D., BY WILLIAM M. HICKS II.

NOTARY PUBLIC  
MY COMMISSION EXPIRES \_\_\_\_\_

**CENTERLINE TABLE**

LINE	ANGLE	DISTANCE
L1	N89°19'10"E	145.50'
L2	N89°19'10"E	291.00'
L3	N89°19'10"E	381.28'
L4	N02°45'19"W	269.32'
L5	S30°26'44"E	6.37'
L6	N89°19'10"E	218.85'
L7	S53°41'18"E	42.32'
L8	N02°45'19"W	242.00'
L9	N02°45'19"W	128.50'
L10	N02°45'19"W	238.47'

**CURVE TABLE**

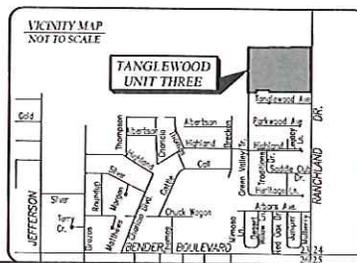
CURVE	RADIUS	ARC LENGTH	DELTA ANGLE
C1	25.00'	39.27'	90°00'00"
C2	25.00'	39.27'	90°00'00"
C3	25.00'	39.27'	90°00'00"
C4	25.00'	39.27'	90°00'00"
C5	25.00'	20.68'	47°23'18"
C6	54.00'	6.60'	07°00'24"
C7	54.00'	64.65'	67°58'22"
C8	54.00'	58.83'	62°23'68"
C9	54.00'	58.83'	62°23'68"
C10	54.00'	64.10'	67°58'22"
C11	54.00'	6.81'	07°00'48"
C12	25.00'	20.67'	47°22'55"
C13	25.00'	39.27'	90°00'00"
C14	25.00'	39.27'	90°00'00"
C15	25.00'	3.42'	07°49'31"
C16	25.00'	11.01'	25°13'43"
C17	35.00'	29.73'	48°39'49"
C18	35.00'	33.38'	54°38'24"
C19	35.00'	59.26'	82°18'45"
C20	25.00'	27.28'	62°31'41"
C21	54.00'	28.65'	32°24'22"
C22	54.00'	55.23'	59°37'45"
C23	54.00'	55.61'	58°57'59"
C24	54.00'	71.07'	77°31'42"
C25	54.00'	21.40'	22°42'15"
C26	25.00'	30.21'	61°14'31"
C27	25.00'	39.27'	90°00'00"
C28	25.00'	39.27'	90°00'00"
C29	25.00'	39.23'	87°54'32"
C30	25.00'	39.32'	90°05'14"

**NOTES:**

- 1) BEARINGS SHOWN HEREON ARE MERCATOR GRID AND CONFORM TO THE NEW MEXICO COORDINATE SYSTEM "NEW MEXICO EAST ZONE" NORTH AMERICAN DATUM 1983. DISTANCES ARE SURFACE VALUES.
- 2) LOT SIDE AND REAR SETBACK LINES ARE 5.0 FEET EXCEPT ALONG RIGHTS-OF-WAY, WHERE 10.00 FOOT SIDE SETBACK LINES APPLY. LOT FRONT SETBACK LINES ARE 21.00 FEET.
- 3) A TWO FOOT UTILITY & FENCE EASEMENT IS HEREBY RESERVED ALONG LOT LINES ADJOINING RANCHLAND DRIVE AND THE NORTH LINE OF THIS SUBDIVISION PARCEL. A ONE FOOT EASEMENT IS HEREBY RESERVED AROUND AND WITHIN ALL OTHER LOTS ADJOINING RIGHTS-OF-WAY. ALL RIGHTS-OF-WAY ARE DEDICATED THIS PLAT.
- 4) WITH RESPECT TO THE FLOOD INSURANCE RATE MAP FOR LEA COUNTY, NEW MEXICO AND INCORPORATED AREAS, PANEL 1355 OF 2150, MAP No. 35025C13550, EFFECTIVE DATE, DECEMBER 16, 2008, THE ABOVE DESCRIBED PROPERTY LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M., CITY OF HOBBS, LEA COUNTY, NEW MEXICO, IS LOCATED IN ZONE D, BEING DEFINED AS AREAS IN WHICH FLOOD HAZARDS ARE UNDETERMINED, BUT POSSIBLE.

**SURVEYOR'S CERTIFICATE:**  
I, GARY G. EIDSON, NEW MEXICO PROFESSIONAL SURVEYOR No. 12641, DO HEREBY CERTIFY THAT THIS SURVEY PLAT AND THE ACTUAL SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION, THAT I AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

GARY G. EIDSON      DATE: \_\_\_\_\_  
PROVIDING SURVEYING SERVICES SINCE 1946  
**JOHN WEST SURVEYING COMPANY**  
412 N. DAL PASO, HOBBS, N.M. 88240  
(575) 333-3117    www.jwsc.biz  
TEL#514 10021000



Scale: One Inch = One Hundred Feet  
CAD Drafter & Date: DSS - 05/15/19  
JWSC W.O. No.: 18.11.1119  
JWSC File No.: D-1307  
STATE OF NEW MEXICO  
COUNTY OF LEA - FILED.



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 3, 2019

**SUBJECT:** CONSIDER RENEWING THE PROFESSIONAL SERVICES AGREEMENT WITH LIFE SKILLS FORE YOUTH OF THE PECOS FOR THE FIRST TEE PROGRAM AT ROCKWIND COMMUNITY LINKS.

DEPT. OF ORIGIN: Parks and Recreation/Finance

DATE SUBMITTED: May 28, 2019

SUBMITTED BY: Doug McDaniel, Parks & Recreation Director

Toby Spears, Finance Director

**Summary:**

With the opening of Rockwind Community Links, one of the goals was to engage the youth of Hobbs, Lea County, southeast New Mexico and west Texas in the game of golf by offering various junior golf instructional programs, clinics and camps. The First Tee Program teaches valuable life lessons using the game of golf, and the City of Hobbs has funded the First Tee Program at Rockwind Community Links for the previous four years, The most recent agreement was renewed in March 2018 with a term of one year, and the option for two additional one year terms.

The attached Professional Services Agreement includes new language that gives the City of Hobbs the ability to audit First Tee program finances. It also prohibits the City of Hobbs acting as a trustee for funds generated by the First Tee and prohibits City of Hobbs staff being issued credit cards assigned to the First Tee program.

The Finance Department is proposing an extension of the previous agreement that expired on March 5, 2019, that would cover services from March 6 - June 30, 2019 at a pro-rated amount of \$34,819 (\$109,560 ÷ 365 x 116).

The new Professional Services Agreement would then commence on July 1, 2019 and have a term of one year, and the option to renew for three additional one year terms.

The partnership with Life Skills Fore Youth Of The Pecos has afforded local youth golfers to participate in the nationally renowned, First Tee Program. The First Tee's Nine Core Values, Nine Healthy Habits and Code of Conduct continue to have a positive impact on all that participate in this program at Rockwind Community Links, at the Boys and Girls Clubs and in the Hobbs Municipal Schools. By renewing this agreement, Rockwind Community Links will continue to be officially designated as a, "The First Tee of Southeastern New Mexico Program Location" and will receive all considerations normally associated with First Tee Program locations as described in the attached agreement.

The City of Hobbs will also provide a maximum of two (2) fundraising golf events per year to benefit The First Tee program.

**Fiscal Impact**

Reviewed by: \_\_\_\_\_

Finance Department

The remaining budget amount of the 2019 contract is \$36,520 (March 6 - June 30, 2019). The City of Hobbs has included \$109,560 in the Rockwind Community Links preliminary budget contingent upon DFA approval for the operation of the First Tee program. The funds are budgeted in account 180-184316-42601. (Professional Services)

**Attachments:** Copy of Extension Agreement, Copy of the Professional Services Agreement, Copy of Related Party Disclosure Form

**Legal Review:**

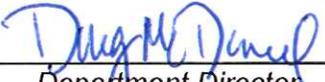
Approved As To Form:

  
\_\_\_\_\_  
City Attorney

**Recommendation:**

Staff recommends that the Commission consider extending the current Professional Services Agreement for the operation of the First Tee Program at Rockwind Community Links through June 30, 2019, and approve the attached Professional Services Agreement that will commence on July 1, 2019, at an annual cost of \$109,560.

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. \_\_\_\_\_



**FINANCE DEPARTMENT**  
*Shelly Raulston - Accounts Payable Specialist*

200 E. Broadway Street  
Hobbs, NM 88240

575-397-9244 bus  
575-397-9450 fax

June 3, 2019

Life Skills Fore Youth of the Pecos Valley  
The First Tee  
201 W 19<sup>th</sup> Street  
Roswell, NM 88201

This letter is in reference to the Professional Services Agreement for Rockwind Community Links, which expired March 5, 2019. The City of Hobbs is wishing to extend this contract until 6-30-2019 under the same terms, pro-rated amounts from March 5, 2019 through June 30, 2019, and conditions. Please sign below on the appropriate line and return this letter to:

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

Mayor \_\_\_\_\_

City of Hobbs  
200 E Broadway  
Hobbs, NM 88240

If you have any questions please contact Toby Spears (575)397-9235. Thank you.

\_\_\_\_\_  
Toby Spears  
Finance Director CPA

I agree to extend the above mentioned contract.

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

I DO NOT agree to extend the above mentioned contract.

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

## PROFESSIONAL SERVICES AGREEMENT

### CITY OF HOBBS -- LIFE SKILLS FORE YOUTH OF THE PECOS

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

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

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

NOW, THEREFORE, the City of Hobbs (hereinafter referred to as "City") and Life Skills Fore Youth of the Pecos (hereinafter referred to as "Life Skills") hereby do agree as follows:

#### 1.0 SCOPE OF SERVICES

1.1 Life Skills will provide the following services:

1.1.1 Provide coaches to deliver golf skills and life skills instruction to the youth of the City of Hobbs under The First Tee of Southeastern New Mexico program;

1.1.2 Provide all equipment, instructional materials and other programming materials for The First Tee of Southeastern New Mexico program;

1.1.3 Provide all program management resources including scheduling of class sessions and staff, registration, collection of program fees and supervision for The First Tee of Southeastern New Mexico program;

1.1.4 Provide all coach and volunteer training required for The First Tee of Southeastern New Mexico program delivery. Additionally, perform comprehensive background checks of all coaches and volunteers to help ensure the safety and well-being of the participants of The First Tee of Southeastern New Mexico program ;

1.1.5 Allow for The First Tee of Southeastern New Mexico brand and logo usage on Rockwind Community Links marketing materials;

1.1.6 Provide official designation of Rockwind Community Links as a “The First Tee of Southeastern New Mexico Program Location”;

1.1.7 Provide on-site signage regarding The First Tee of Southeastern New Mexico;

1.1.8 Recognize Rockwind Community Links in marketing and sponsorship materials including The First Tee web site;

1.1.9 Provide accounting services to assure accurate statements of income and expense and make that information available to the City of Hobbs at regularly agreed intervals.

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

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

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

## 2.0 CITY’S CONTRIBUTION

2.1 The City of Hobbs shall pay Life Skills a sum not to exceed ONE HUNDRED AND NINE THOUSAND, FIVE HUNDRED AND SIXTY DOLLARS (\$109,560). The aforesaid amount shall be paid in quarterly installments of \$27,390, payable at the end of each quarter after the services contracted for are actually rendered. The first such payment shall be due on or after October 1, 2019; the second shall be due on or after January 1, 2020; the third payment on or after April 1, 2020; and the last payment on or after June 1, 2020. Life Skills shall submit invoices to the City of Hobbs ten (10) days prior to payment dates and shall be sent to City of Hobbs, 200 E. Broadway, Hobbs, NM 88240 Attn: Shelly Raulston.

2.2 City will provide access to dedicated driving range and practice areas to deliver The First Tee of Southeastern New Mexico program including the Life Skills Experience. Access to the driving range and practice areas shall be coordinated and approved by the Rockwind Community Links General Manager.

2.3 City will allow members of The First Tee of Southeastern New Mexico, during non-program times, to use the driving range/golf course located at Rockwind Community Links at a discounted First Tee rate. This rate will be designated by Rockwind Community Links and Rockwind Community Links will retain this income.

2.4 City will provide areas at Rockwind Community Links to certify program participants

and to deliver life skills classroom instruction. The designation and use of such areas at Rockwind Community Links will be at the sole discretion of the Rockwind Community Links General Manager.

2.5 City will strive to provide Rockwind Community Links staff time, outside the times of their official duties and capacities for the City, for program instruction and/or other programming organizational needs if possible. The designation and use of such staff will be at the sole discretion of the Rockwind Community Links General Manager. Staff will not be compensated for assisting The First Tee of Southeastern New Mexico at Rockwind Community Links.

2.6 City will provide the use of the Rockwind Community Links golf course facility for a maximum of two (2) special fundraising golf events specifically for Life Skills. The designation of dates and use of the facility for such fundraising events shall be coordinated and approved by the Rockwind Community Links General Manager.

2.7 City will assist with raising awareness of Life Skills through City marketing materials, marketing programs and appropriate signage.

2.8 City will strive to provide Life Skills staff opportunities, where appropriate, for employment and career training in golf course operations. Life Skills staff will not be employees of nor will they be compensated by City for this training.

2.9 City will help to identify and recruit program volunteers to assist with program delivery, transportation and other tasks related to programming, excluding City staff.

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

### 3.0 INSURANCE

Life Skills shall provide the City of Hobbs with a Certificate of Insurance naming the City of Hobbs as an additional insured on all general and/or professional liability and workers' compensation insurance policies.

### 4.0 TERM

The duration of this agreement will be for one year from the date of signatures below with the option to renew, by mutual agreement between the City and Life Skills for three additional one year terms. All options must be renewed by Resolution. With mutual agreement between the parties, either party may terminate this agreement by giving notice at least 120 days prior to the end of any one-year term.

## 5.0 LOGO USAGE

Under the terms of this agreement, there are specific uses of The First Tee of Southeastern New Mexico logo that are allowable. Misuse of the logo could result in breach of contract. The following requirements must be followed anytime The First Tee of Southeastern New Mexico logo is utilized:

5.1 All of the name "The First Tee of Southeastern New Mexico" must be used rather than dropping "The" or "of Southeastern New Mexico" from the name;

5.2 The ® must be included with the first usage of the trademark text unless the logo appears before the text;

5.3 Never use the individual elements of the logo alone or in less than the full design;

5.4 The Chapter must reproduce the secondary mark from artwork or digital files initially obtained from the home office.

## 6.0 MISCELLANEOUS PROVISIONS

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

6.2 Life Skills represents and warrants that the information given to City in support of its request for City's contribution as outlined in this agreement is true and correct; further, that its staff is competent to render the services which are the subject of this Agreement, and finally, that there is no other provider in Lea County of the kind of services contemplated by this Agreement.

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

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

6.5 Life Skills agrees to and shall indemnify, defend and hold the City, the City Commission of the City of Hobbs, its individual commissioners, its officers, employees and agents harmless from any and all causes of action, suits, claims, judgments, losses, costs, expenses and liens, of every kind and nature, including but not limited to court costs and reasonable attorneys' fees arising or alleged to have arisen out of performance of Life Skills

rendition of services or failure to render services pursuant to this Agreement or any breach of this Agreement.

6.6 This Agreement shall be construed pursuant to the laws of the State of New Mexico and the parties agree that any dispute arising out of this agreement shall be heard in the Fifth Judicial District Court of Lea County, New Mexico.

6.7 The parties agree that any changes or modifications to this Agreement suggested or required by any supervising state entity, such as the New Mexico Attorney General's office or the New Mexico Department of Finance and Administration, shall be made in order to fully comply with the law as such agencies might interpret and define it to the parties. City may cancel this Agreement without further responsibility to provide services on behalf of Life Skills if the legality of such is challenged.

6.8 If Life Skills obtains an audit or other type of financial review of its affairs, then City shall receive a copy of same. This provision does not otherwise obligate Life Skills to secure such services.

6.9 This is a personal services contract and neither City nor Life Skills may assign this Agreement, or any interest herein, without prior written approval of the other.

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

6.11 Life Skills grants the City the ability to audit Life Skills' financial standing and all relevant financial documents and information related to the operations of the First Tee Program. Life Skills must submit a Related Party Disclosure Form.

6.12 The City will not act as a trustee for any funds or revenues generated by Life Skills to include sponsorship fees, tournament/green fees, or any other revenue. Said revenue will be collected and retained by Life Skills staff without exception.

6.13 Life Skills will not issue credit cards drawn on any First Tee account to any City staff.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:

THE CITY OF HOBBS, NEW MEXICO

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

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

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

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

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

ATTEST:

LIFE SKILLS FORE YOUTH OF THE PECOS

By: \_\_\_\_\_  
ADRIENNE FIELDS, Executive Director  
The First Tee of Southeastern New Mexico



## RELATED PARTY DISCLOSURE FORM

(Bidders and Proposers only)

1. Are you indebted to or have a receivable from any member of the City of Hobbs Commissioners, elected officials, or City of Hobbs employees?

YES \_\_\_ NO \_\_\_

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2. Are you, or any officer of your company related to any member of the City of Hobbs Commissioners, elected officials, or City of Hobbs employees and have you had any of the following transactions beginning the current calendar year to which City of Hobbs was, is to be, a party?

Sales, Purchase or leasing of property? YES \_\_\_ NO \_\_\_

Receiving, furnishing of goods, services  
or facilities? YES \_\_\_ NO \_\_\_

Commissions or royalty payments? YES \_\_\_ NO \_\_\_

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3. Does any member of the City Commission, elected officials, or City of Hobbs employees, have any financial interest in your company whether a sole proprietorship, partnership, or corporation of any kind that currently conducts business with the City of Hobbs?

YES \_\_\_ NO \_\_\_

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4. At any time, did you, your company, or any officer of your company have an interest in or signature authority over a bank account for the benefit of a member of the City Commission, elected officials, or City of Hobbs employees?

YES \_\_\_ NO \_\_\_

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5. Are you negotiating to employ or do you currently employ any employee, elected official, or family member of an employee or elected official for the City of Hobbs? (family means: spouse, children, grandchildren, siblings, grandparents, nieces or nephews)

6. Are you an employee of the City of Hobbs or a member of your family an employee of the City of Hobbs? (family means: spouse, children, grandchildren, siblings, grandparents, nieces or nephews)

YES \_\_\_ NO \_\_\_

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The answers to the foregoing questions are correctly stated to the best of my knowledge and belief.

Signature of Owner or Company President \_\_\_\_\_ Date \_\_\_\_\_

(Print Name and Title): \_\_\_\_\_



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 3, 2019

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

DEPT. OF ORIGIN: Legal Department  
DATE SUBMITTED: May 30, 2019  
SUBMITTED BY: Erik M. Scramlin, Deputy City Attorney

Summary:

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

Fiscal Impact:

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

Reviewed By:   
Finance Department

Attachments:

Proposed Resolution and Agreement

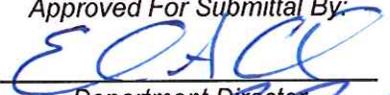
Legal Review:

Approved As To Form:   
City Attorney

Recommendation:

The Commission should consider the Resolution as presented.

Approved For Submittal By:

  
Department Director  
  
City Manager

CITY CLERK'S USE ONLY  
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 6808

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

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

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

WHEREAS, the City agrees to pay a contingent fee of the total recovery (gross) in favor of the City as an attorney fee. There is no fee if there is no recovery.

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

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

PASSED, ADOPTED AND APPROVED this 3rd day of June, 2019.

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SAM D. COBB, Mayor

ATTEST:

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JAN FLETCHER, City Clerk



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

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

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Scope of work shall consist of the following:

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

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

C. Continuing investigation and litigation against potentially responsible parties.

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

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

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

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

## 2. Compensation.

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

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

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

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

State tax identification number(s).

**3. Term.**

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

**4. Termination.**

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

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

**5. Appropriations.**

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

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

6. **Status of Contractor.**

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

7. **Assignment.**

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

8. **Subcontracting.**

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

9. **Release.**

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

10. **Confidentiality.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

this Article 12(B).

**13. Amendment.**

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

**14. Merger.**

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

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

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

**16. Equal Opportunity Compliance.**

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

**17. Applicable Law.**

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

**18. Workers Compensation.**

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

**19. Records and Financial Audit.**

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

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

**20. Disclaimer and Hold Harmless.**

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

**21. Indemnification.**

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

**22. Invalid Term or Condition.**

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

**23. Enforcement of Agreement.**

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

**24. Authority.**

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

**25. Lobbying.**

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

**26. Approval of Contractor Personnel.**

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

**27. Survival.**

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

**28. Succession.**

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

**29. Force Majeure.**

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

**30. Mediation.**

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

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

**31. Notice to Proceed.**

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

**32. Attorney's Fees.**

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

**33. Cooperation.**

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

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

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

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

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

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

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

**35. Professional Liability Insurance.**

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

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

**36. Notices.**

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

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

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

and

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

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

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

**CITY OF HOBBS**

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

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

APPROVED AS TO FORM:

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

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

**CONTRACTOR**

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

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

SEAL

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

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

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

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

My Commission Expires:

\_\_\_\_\_

## **Attachment A Contingent Fee**

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

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

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

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

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

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

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

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

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