

Commission Meeting Agenda



Mayor

Samuel D. Cobb

City Commission

R. Finn Smith – District 1
Christopher R. Mills – District 2
Larron B. Fields – District 3
Joseph D. Calderón – District 4
Dwayne Penick – District 5
Don R. Gerth – District 6

City Manager

Manny Gomez

October 4, 2021



Hobbs City Commission

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

Monday, October 4, 2021 – 6:00 p.m.

Sam D. Cobb, Mayor

R. Finn Smith
Commissioner – District 1

Joseph D. Calderón
Commissioner – District 4

Christopher R. Mills
Commissioner – District 2

Dwayne Penick
Commissioner – District 5

Larron B. Fields
Commissioner – District 3

Don R. Gerth
Commissioner – District 6

Regular in-person meetings have now resumed in the Hobbs City Commission Chamber. Members of the public are asked to wear a face mask and follow social distancing guidelines. The public is invited to address public comments to the Commission in person at the meeting or submit written comments prior to the meeting. Written comments should be submitted no later than 4:30 p.m. on October 4, 2021, addressed via email to the City Clerk at jfletcher@hobbsnm.org or faxed to (575) 397-9334.

A G E N D A

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

CALL TO ORDER AND ROLL CALL

INVOCATION AND PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

1. Minutes of the September 20, 2021, Regular Commission Meeting (*Jan Fletcher, City Clerk*)

PROCLAMATIONS AND AWARDS OF MERIT

2. Proclamation Proclaiming October 3 – 9, 2021, as “*Fire Prevention Week*” (*Barry Young, Fire Chief*)

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.*)

Due to COVID-19, public comment may be submitted in person or in writing. Written comments should be submitted to the City Clerk at ifletcher@hobbsnm.org or faxed to (575) 397-9334 no later than 4:30 p.m. on the day of the meeting, October 4, 2021.

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. 7107 - Approving the Final Plan for Tanglewood Unit 5 at Ranchview Estates Subdivision Located Northwest of the Intersection of East Bender Blvd. and Ranchland Drive (*Kevin Robinson, Development Director*)
4. Resolution No. 7108 - Approving the Final Plan for Tanglewood Unit 6 at Ranchview Estates Subdivision Located Northwest of the Intersection of East Bender Blvd. and Ranchland Drive (*Kevin Robinson, Development Director*)
5. Resolution No. 7109 - Approving the Final Plan for Mesquite Draw Subdivision Located South of the Intersection of Alabama and Braniff Within the Extra-Territorial Jurisdiction (*Kevin Robinson, Development Director*)
6. Resolution No. 7110 – Approving the Vacation and Dedication of Portions of Certain Alleyways Within the Ballew Subdivision Located Northeast of the Intersection of Marland Street and Elm Place (*Kevin Robinson, Development Director*)
7. Resolution No. 7111 – Approving an Encroachment Agreement with Dixie Electric, LLC, Concerning the Placement of Structures Within Public Easements and Setbacks (*Kevin Robinson, Development Director*)
8. Resolution No. 7112 – Approving the Dedication of a Portion of Dal Paso and Public Well Site Located in Section 23, Township 18 South, Range 38 East, N.M.P.M., Lea County, New Mexico (*Kevin Robinson, Development Director*)

DISCUSSION

9. Zia Natural Gas Company – Integrated Resource Plan (*Oscar Saucedo, Business Development Manager, Zia Natural Gas Company*)

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

10. **FINAL ADOPTION:** Ordinance No. 1133 - Adopting Chapter 5.06 of the Hobbs Municipal Code for the Possession, Cultivation, Manufacture and Sale of Cannabis (*Valerie Chacon, Deputy City Attorney*)
11. **FINAL ADOPTION:** Ordinance No. 1134 - Amending the Uniform Traffic Ordinance as Set Forth in Chapter 10.04 of the Hobbs Municipal Code (*Rocio Ocano, Assistant City Attorney*)
12. **FINAL ADOPTION:** Ordinance No. 1135 - Amending Chapter 9.28 of the Hobbs Municipal Code Related to Drugs and Drug Paraphernalia (*Efren Cortez, City Attorney*)
13. Consideration of Approval of a Professional Services Agreement with the Lea County Humane Society (*John Ortolano, Police Chief*)
14. Resolution No. 7113 - Approving a Legislative Grant Agreement for a Capital Appropriation Project in the Amount of \$500,000.00 for Security Improvements and Accessibility Compliance for Public Buildings (*Shelia Baker, General Services Director*)
15. Consideration of Approval of a Professional Services Agreement with ImageTrend, Inc., to Provide Electronic Third-Party Billing Services for Emergency Medical Services Pursuant to RFP No. 523-21 (*Barry Young, Fire Chief*)

COMMENTS BY CITY COMMISSIONERS, CITY MANAGER

16. Next Meeting Date:
 - City Commission:
Regular Meeting – **Monday, October 18, 2021, at 6:00 p.m.**

ADJOURNMENT

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the above meeting, please contact the City Clerk's Office at (575) 397-9200 at least 72 hours prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the City Clerk's Office if a summary or other type of accessible format is needed.



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 4, 2021

SUBJECT: City Commission Meeting Minutes

DEPT. OF ORIGIN: City Clerk's Office
DATE SUBMITTED: September 23, 2021
SUBMITTED BY: Jan Fletcher, City Clerk

Summary:

The following minutes are submitted for approval:

- Regular Commission Meeting of September 20, 2021

Fiscal Impact:

Reviewed By: _____
Finance Department

N/A

Attachments:

Minutes as referenced under "Summary".

Legal Review:

Approved As To Form: _____
City Attorney

Recommendation:

Motion to approve the minutes as presented.

Approved For Submittal By:



Department Director

City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

Resolution No. _____
Ordinance No. _____
Approved _____
Other _____

Continued To: _____
Referred To: _____
Denied _____
File No. _____

Minutes of the regular meeting of the Hobbs City Commission held on Monday, September 20, 2021, in the City Commission Chamber, 200 East Broadway, 1st Floor Annex, Hobbs, New Mexico. This meeting was also viewable to the public via Livestream.

Call to Order and Roll Call

Mayor Pro Tem Calderón called the meeting to order at 6:00 p.m. and welcomed everyone in attendance to the meeting and everyone viewing though Livestream. The City Clerk called the roll and the following answered present:

Mayor Pro Tem Joseph D. Calderón
Commissioner R. Finn Smith
Commissioner Christopher Mills
Commissioner Larron B. Fields
Commissioner Don Gerth

Absent: Mayor Sam D. Cobb
Commissioner Dwayne Penick

Also present: Manny Gomez, City Manager
Efren Cortez, City Attorney
Valerie Chacon, Deputy City Attorney
Kevin Shearer, Fire Battalion Chief
John Ortolano, Police Chief
Nicholas Goulet, Human Resources Director
Toby Spears, Finance Director
Deb Corral, Assistant Finance Director
Shelia Baker, General Services Director
Kevin Robinson, Development Director
Bryan Wagner, Parks & Open Spaces Director
Wade Whitehead, Parks Superintendent
Michal Hughes, Recreation Superintendent
Matt Hughes, Rockwind Golf Course Superintendent
Ron Roberts, Information Technology Director
Meghan Mooney, Communications Director
Shannon Arguello, Court Administrator
Sandy Farrell, Library Director
Ann Betzen, Risk Manager/Executive Assistant
Mollie Maldonado, Deputy City Clerk
Jan Fletcher, City Clerk
12 citizens

Invocation and Pledge of Allegiance

Commissioner Fields delivered the invocation and Commissioner Smith led the Pledge of Allegiance.

Approval of Minutes

Commissioner Gerth moved that the minutes of the regular meeting held on Tuesday, September 7, 2021, be approved as written. Commissioner Smith seconded the motion and the vote was recorded as follows: Smith yes, Mills yes, Fields yes, Calderón yes, Gerth yes. The motion carried.

Proclamations and Awards of Merit

Recognition of City Employees - Milestone Service Awards for the Month of September, 2021

City Manager Manny Gomez recognized the employees who have reached milestone service awards with the City of Hobbs for the month of September, 2021, which total 65 years of service worked. He read their names, job titles and gave a brief summary of the job duties performed by each of the following employees:

- 5 years – Juan Leal, Golf Club House
- 10 years – Joel Anderson, Golf Maintenance
- 20 years – Ann Betzen, City Manager's Office
- 30 years – Jacque Pennington, Hobbs Express

City Manager Gomez thanked the Commission for recognizing the employees and their service to the City. City Manager Gomez stated the City's employees are the most important resource and asset within the organization. He thanked to the Human Resources Department for managing the milestone program. He expressed thanks and appreciation to the employees and their families.

City Manager Gomez stated Ms. Jacque Pennington, who has been with Hobbs Express since 1991, will receive a 30-year shadow box for her 30-year milestone achievement.

City Manager Gomez stated Ms. Ann Betzen, Risk Manager, has announced her retirement as of October 1, 2021. He announced a reception will be held on Wednesday, September 29, 2021, from 2:00 - 4:00 p.m. to honor Ms. Betzen and her service to the City.

Public Comments

Due to COVID-19, public comments may be submitted in person or in writing. Written comments should be submitted to the City Clerk at jfletcher@hobbsnm.org or faxed to (575) 397-9334 no later than 4:30 p.m. on the day of the meeting, September 20, 2021. Ms. Jan Fletcher, City Clerk, read a letter from Mr. Nick Maxwell regarding the closure of the Hobbs Public Library on Saturdays.

Ms. Fletcher also read a letter from Ms. Kristi Gonzales regarding the proposed cannabis ordinance.

Consent Agenda

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

Resolution No. 7101 - Approving FY 2021 Capital Asset Inventory

Resolution No. 7102 - Authorizing the Appointment of Hector Baeza to the Labor Management Relations Board

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

Discussion

American Rescue Plan

Mr. Toby Spears, Finance Director, presented a PowerPoint presentation outlining the United States Department of the Treasury American Rescue Plan Act. He stated the American Rescue Plan Act provided \$126,089,079 to the State of New Mexico and Hobbs was allocated \$9,671,031.00. The City has received the first half of the payment in the amount of \$4,835,515.50 on July 23, 2021. Mr. Spears stated the eligible uses of the funding award include Public Health/Negative Economic Impacts, Premium Pay, Revenue Loss and Investments in Water, Sewer and Broadband. He further stated the funds can be used to cover eligible costs incurred between from March 3, 2021 and December 31, 2024. He added the grant award is available to households, businesses and individuals within the eligible use categories at the City's discretion.

In response to Commissioner Smith's question, Mr. Spears stated the State will be monitoring the Federal funds as a flow through agency. He further stated the American Rescue Plan Act is broadly written so it can be used for many different organizations and agencies.

Mayor Pro Tem Calderón stated the Hobbs Municipal Schools has also received funding as well.

Mr. Spears stated the purpose of this discussion item is to begin thinking about how the City wishes to use and allocate these Federal funds while remaining in compliance with the American Rescue Plan Act guidelines. He stated the City will be doing a budget adjustment at the second Commission meeting held in October, 2021, to designate the project codes.

In answer to Commissioner Gerth's inquiry, Mr. Spears stated the City cannot use funds to "pay back" monies disbursed prior to March 3, 2021. He added there are Federal guidelines to follow with any RFP and bid process.

In response to Commissioner Smith's question, Mr. Spears stated the American Rescue Act Funds can be used on existing City budgeted projects freeing up City dollars for other uses.

Mr. Spears stated the uses of the Federal funds are subject to interpretation and the City will hold more discussions regarding this issue in the future.

Action Items

Resolution No. 7103 – Authorizing Ratification of Related Party Expenditures for Watson Truck & Supply

Ms. Shelia Baker, General Services Director, explained the resolution and stated Watson Truck and Supply has provided service on City vehicles for more than a decade. When Commissioner Smith was appointed to serve on the Commission representing District 1, he disclosed his financial interest in Watson Truck and Supply. Ms. Baker stated the City currently has approximately \$4,706.63 in service invoices for Watson Truck and Supply. She explained in order to comply with the City of Hobbs Procurement Ordinance and Governmental Conduct Act, the following procedure must be followed:

If a conflict of interest arises with an employee/elected official, any future goods or services provided by the related party shall be subject to a competitive process and disclosed at a future City Commission meeting.

A competitive process is defined as written quotes with a minimum of three (3) vendors. The dollar amount threshold for the written quotes is one thousand dollars (\$1,000.00) to seventy five thousand dollars (\$75,000.00). The recommended vendor, if an employee or elected official, shall require disclosure at a City Commission meeting.

Ms. Baker stated the City of Hobbs currently has approximately \$4,706.63 in outstanding service invoices for Watson Truck and Supply which need to be paid.

There being no further discussion, Commissioner Gerth moved that Resolution No. 7103 be approved as presented. Commissioner Mills seconded the motion and the vote was recorded as follows: Smith abstain, Mills yes, Fields yes, Calderón yes, Gerth yes. The motion carried. A copy of the resolution and supporting documentation are attached and made a part of these minutes.

Commissioner Smith explained his abstention on the vote is due to his financial interest in Watson Truck and Supply.

Consideration of Approval of a Contract with MWI, Inc., to Install Signal Equipment at the Intersection of Dal Paso and Sanger Through a State Price Agreement in the Amount of \$141,302.26

Mr. Kevin Robinson, Development Director, stated the City of Hobbs applied for Municipal Arterial Program (MAP) grant funding for traffic signal improvements at the intersection of Dal Paso and Sanger Streets. He further stated the MAP Grant amount is \$266,667.00 with the total Department share at 75% and the City's share at 25%. The City of Hobbs is requesting MWI to remove existing signal equipment and install new signal equipment and conduits at a total cost of \$141,302.26 (including GRT).

In response to Commissioner Gerth's question, Mr. Robinson stated the traffic signal improvements are located within the City's existing right-of-way so there will be no loss of property to any citizens.

There being no further comments or discussion, Commissioner Smith moved to approve a contract with MWI, Inc., to install signal equipment at the intersection of Dal Paso and Sanger through a State Price Agreement in the amount of \$141,302.26 as presented. Commissioner Mills seconded the motion and the vote was recorded as follows: Smith yes, Mills yes, Fields yes, Calderón yes, Gerth yes. The motion carried. A copy of supporting documentation is attached and made a part of these minutes.

Resolution No. 7104 – Approving a Legislative Grant Agreement for a Capital Appropriation Project in the Amount of \$828,000.00 for a Citywide Fiber Network

Mr. Robinson explained the resolution and stated the City of Hobbs is requesting the City Commission to approve and accept a Legislative Capital Appropriation for the Citywide Fiber Network. He stated the fiber optic communications will be completed in two phases using a combination of new conduit installations and existing conduit installations. Mr. Robinson stated the City Commission awarded the design to Lee Engineering; however the project has been on hold until the Legislative Grant Agreement was received.

In response to Commissioner Gerth's inquiry, Mr. Robinson stated this project is the installation of a fiber optic backbone for the transfer of City data and not for internet services.

There being no questions or discussion, Commissioner Fields moved that Resolution No. 7104 be approved as presented. Commissioner Smith seconded the motion and the vote was recorded as follows: Smith yes, Mills yes, Fields yes, Calderón yes, Gerth yes. The motion carried. A copy of the resolution and supporting documentation are attached and made a part of these minutes.

Resolution No. 7105 – Amending the Cemetery Rules and Regulations

Mr. Bryan Wagner, Parks and Open Spaces Department (POSD) Director, stated the City of Hobbs Cemetery Board (Board) met in an open meeting on September 8, 2021, to formulate proposed amendments to the City of Hobbs Cemeteries Rules and Regulations. The Board voted unanimously to propose specific amendments to the City of Hobbs Cemeteries Rules and Regulations aimed at clarifying ambiguities in the current rules. Mr. Wagner explained the Board wishes to redefine a few terms, specifically removing "monuments" and "markers" which will be referred to as "headstones". He stated the material and placement of benches has been clarified. Mr. Wagner further stated monument companies will now be pouring the concrete for headstones.

In response to Mayor Pro Tem Calderón's question, Mr. Wagner stated staffing shortages within the department have made it difficult to get the concrete poured in a timely manner. He further stated there was no cost to pour the concrete; therefore, there was no revenue to the City.

In answer to Commissioner Smith's inquiry, Mr. Wagner confirmed POSD staff will follow up with the monument companies to make sure all of the headstones are uniform and in compliance with all rules.

Commissioner Mills stated the Cemetery is a necessary business that no one particularly wants to be in because it tends to invoke feelings. He further stated the public often expresses concerns regarding the policies and procedures at the Cemetery. Commissioner Mills stated these amendments to the Cemeteries Rules and Regulations are good changes and will create a more orderly process at the Cemetery.

In response to Mayor Pro Tem Calderón's inquiry, Mr. Wagner stated Ms. Monica Mendoza, Cemetery Administrative Assistant, walks the families through the lot purchase as well as the rules and regulations when they purchase property and/or set up a service at the Cemetery.

In answer to Commissioner Fields' question, Mr. Wagner stated the Cemeteries Rules and Regulations will be updated and put on the sign at the entrance to Prairie Haven Cemetery and Prairie Haven Memorial Park for the people who already own property at the cemeteries.

There being no further discussion, Commissioner Smith moved that Resolution No. 7105 be approved as presented. Commissioner Gerth seconded the motion and the vote was recorded as follows: Smith yes, Mills yes, Fields yes, Calderón yes, Gerth yes. The motion carried. A copy of the resolution and supporting documentation are attached and made a part of these minutes.

COMMENTS BY CITY COMMISSIONERS, CITY MANAGER

Mayor Pro Tem Calderón stated the next regular Commission Meeting will be held on Monday, October 4, 2021, at 6:00 p.m.

City Manager Gomez stated the fall 2021 issue of "*The Guide*" will be mailed out this week. He also reminded citizens that the 2021 Water Conservation Period ended on September 15, 2021.

City Manager Gomez stated a work session will be held on Monday, September 27, 2021, regarding the proposed cannabis ordinance. He stated this will be an opportunity for citizens to voice their opinions on the proposed ordinance to the Commission prior to the final consideration of the cannabis ordinance on October 4, 2021.

City Manager Gomez stated the 13th Annual Downtown Slam & Jam, also known as Gus Macker, was held on September 17-19, 2021. He request Mr. Michal Hughes, Recreation Superintendent, to report on the event.

Mr. Hughes stated many organizations partnered with the City of Hobbs POSD, Recreation Department, Fire and Police Departments and the Street Department to collaborate and make this event happen successfully. He stated there were 111 teams and six vendors for the 3-on-3 tournament. The team traveling the furthest to play in Hobbs was from Michigan and the vendor who traveled the furthest was from Tularosa, New Mexico. Mr. Hughes stated the last Slam & Jam hosted in 2019 was larger in attendance with a total of 250 teams. He stated this year's event was very good with no injuries requiring medical transport. Mr. Hughes expressed thanks to Ms. Brittny Huffman, Aquatics Coordinator, and stated she was the real "quarterback" calling shots for the setup of the Gus Macker Tournament and making it such a success.

Commissioner Smith stated the dialog regarding the proposed cannabis ordinance has begun and, for the most part, the feedback he has received has been very professional. He further stated governmental operations should be open and honest with respectful debates. Commissioner Smith stated as Commissioners, they should be open and listen to both sides. He urged everyone to remain professional. He stated profanities and unprofessional behavior does not set well with him. He added unprofessional behavior is not good.

Commissioner Fields stated he also has had numerous calls regarding the proposed cannabis ordinance. He agreed with Commissioner Smith in that they, as a Commission, need to listen to all sides of the discussion and come out with a decision and an ordinance that fits everyone as a community. He stated everyone has an opinion regarding the proposed cannabis ordinance and it is important that the citizens of Hobbs rest assured the Commission will act in the best interests of the City.

Commissioner Mills stated he has gotten ten or more calls and letters regarding the proposed cannabis ordinance. One such letter questioned the six gallons of water usage per marijuana plant. He stated he has done some research and found some of the data came from a 2015 study used to figure the six gallon total which was based on research that was done in 2010. He added some of the claims were ridiculous and he is becoming skeptical of the research. Commissioner Mills stated some of the studies presented to the Commission are 15 years old. He stated there is not one water bill from producers in Colorado that could justify the claim of six gallons of water per mature cannabis plant. He encouraged the City to bring in all of the information possible to the Work Session so the Commission can make an educated decision.

Commissioner Gerth stated he visited a local hemp grower who enlightened him on the actual water usage for mature hemp plants. He stated his concern now is more for the "mom and pop" grower who will be selling cannabis out the back door of their residence to underage people. He stated his concern is there will be no policing of the growers who own and sell from their household limit of mature cannabis plants.

Commissioner Fields agreed with Commissioner Gerth and stated he is also concerned with the influx of people who will be coming into Hobbs and New Mexico from other states to purchase cannabis. He expressed concern for the number of officers it will take to keep the cannabis issue under control.

Mayor Pro Tem Calderón stated he will save his comments for the October 4, 2021, regular Commission Meeting as he will be unable to attend the Work Session on September 27, 2021. He stated the Hobbs Municipal School Board will be hosting a regional meeting in Hobbs which was cancelled in 2020 due to the pandemic.

Ms. Meghan Mooney introduced Mr. Jared De La Cruz of the Communications Department who was recently hired to be the Marketing Director for Rockwind Community Links and the CORE.

Mr. De La Cruz stated he is glad to be working for the City again as he previously worked in the Summer Recess Program for Parks and Recreation for nine years. He stated he is excited to be marketing great facilities offered by the City at the CORE and Rockwind Community Links.

City Manager Gomez wished a Happy Birthday to Commissioner Fields.

Adjournment

There being no further business or comments, Commissioner Fields moved that the meeting adjourn. Commissioner Mills seconded the motion and the vote was recorded as follows: Smith yes, Mills yes, Fields yes, Calderón yes, Gerth yes. The motion carried. The meeting adjourned at 7:05 p.m.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



PROCLAMATIONS

AND

**AWARDS OF
MERIT**

Office of the Mayor
Hobbs, New Mexico

PROCLAMATION

WHEREAS, The City of Hobbs Fire Department is committed to ensuring the safety and security of all those living in and visiting the City of Hobbs; and

WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and

WHEREAS, home fires killed more than 2,770 people in the U.S. in 2019, according to the National Fire Protection Association, and fire departments in the U.S. responded to 339,500 home fires; and

WHEREAS, smoke alarms sense smoke well before you can, alerting you to danger in the event of fire in which you may have as little as 2 minutes to escape safely; and

WHEREAS, working smoke alarms cut the risk of dying in reported home fires in half; and

WHEREAS, residents should be sure everyone in the home understands the sounds of the alarms and knows how to respond; and

WHEREAS, residents who have planned and practiced a home fire escape plan are more prepared and will therefore be more likely to survive a fire; and

WHEREAS, residents will make sure their smoke and CO alarms meet the needs of all their family members, including those with sensory or physical disabilities; and

WHEREAS, firefighters are dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education; and

WHEREAS, residents of the City of Hobbs are responsive to public education measures and are able to take personal steps to increase their safety from fire, especially in their homes.

NOW THEREFORE, I, Sam D. Cobb, Mayor of the City of Hobbs, do hereby proclaim the week of October 3-9, 2021, to be

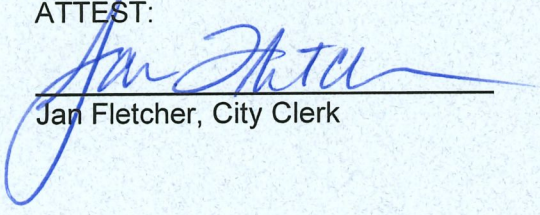
“FIRE PREVENTION WEEK”

with the theme, “**Learn the Sounds of Fire Safety**”, I urge all citizens of Hobbs, NM to ensure your residence has working smoke detectors, to learn the different sounds of smoke and carbon monoxide alarms, and to support the many public safety activities and efforts of the City of Hobbs Fire Department.

IN WITNESS, WHEREOF, I have hereunto set my hand this 4th day of October, 2021, 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: October 4, 2021

SUBJECT: RESOLUTION TO APPROVE THE FINAL PLAN FOR TANGLEWOOD UNIT 5 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: September 27, 2021
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: The Final Plan for Tanglewood Unit 5 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 acres and will contain 45 single family residential lots. The Planning Board consider this item at the September 21, 2021 regular meeting and voted 4-0 to recommend Commission approval.

Fiscal Impact: Reviewed By: 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, Final Plan, Draft Planning Board Minutes.

Legal Review: Efren A. Cortez
Approved As To Form: Cortez
City Attorney

Recommendation: Approval of the Resolution to approve the Tanglewood Unit 5 At Ranchview Estates Subdivision, as recommended by the Planning Board.

Approved For Submittal By: Kevin Robinson, Department Director
City Manager
CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN
Resolution No., Ordinance No., Approved, Other, Continued To, Referred To, Denied, File No.

CITY OF HOBBS

RESOLUTION NO. 7107

**A RESOLUTION TO APPROVE THE FINAL PLAN FOR TANGLEWOOD UNIT 5
AT RANCHVIEW ESTATES SUBDIVISION.**

WHEREAS, ALJO, LLC has submitted a Final Plan for Tanglewood Unit 5 at Ranchview Estates Subdivision; and

WHEREAS, the subdivision Final Plan was reviewed and approved by the Hobbs Planning Board at the September 21, 2021, Planning Board meeting.

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

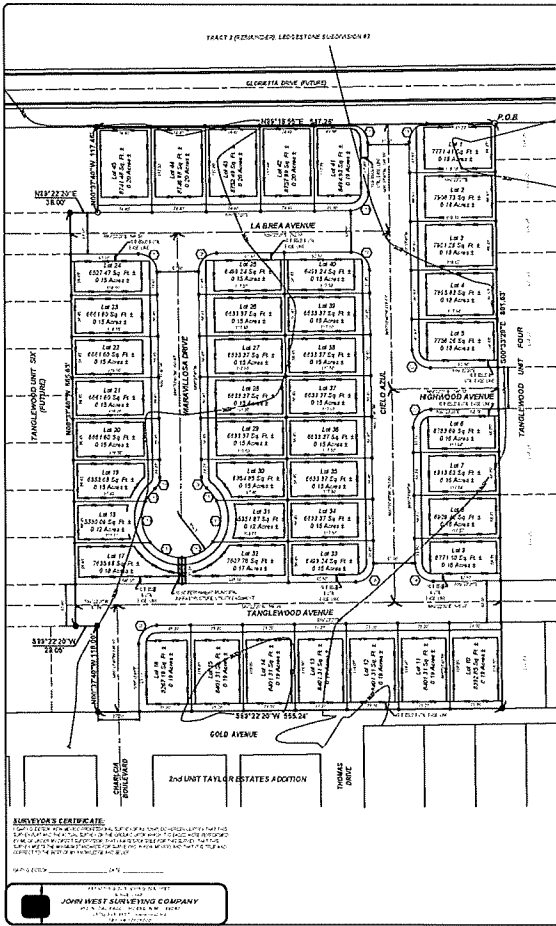
1. The City of Hobbs hereby grants Final Plan Approval to Tanglewood Unit 5 at Ranchview Estates Subdivision; and
2. The City officials and staff are directed to do any and all acts necessary to carry out the intent of this Resolution.

PASSED, ADOPTED AND APPROVED this 4th day of October, 2021.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, CITY CLERK



TYPICAL DETAILS - LOT EASEMENTS AND SETBACKS
EASEMENT AND SETBACK NOTES:
 1. THE FRONT SETBACK IS TO BE MEASURED FROM THE CENTERLINE OF THE LOT FRONT BOUNDARY TO THE FRONT SETBACK LINE.
 2. THE SIDE SETBACK IS TO BE MEASURED FROM THE CENTERLINE OF THE LOT SIDE BOUNDARY TO THE SIDE SETBACK LINE.
 3. THE REAR SETBACK IS TO BE MEASURED FROM THE CENTERLINE OF THE LOT REAR BOUNDARY TO THE REAR SETBACK LINE.
 4. THE FRONT SETBACK IS TO BE MEASURED FROM THE CENTERLINE OF THE LOT FRONT BOUNDARY TO THE FRONT SETBACK LINE.
 5. THE SIDE SETBACK IS TO BE MEASURED FROM THE CENTERLINE OF THE LOT SIDE BOUNDARY TO THE SIDE SETBACK LINE.
 6. THE REAR SETBACK IS TO BE MEASURED FROM THE CENTERLINE OF THE LOT REAR BOUNDARY TO THE REAR SETBACK LINE.

NOTE:
 1. THE FRONT SETBACK IS TO BE MEASURED FROM THE CENTERLINE OF THE LOT FRONT BOUNDARY TO THE FRONT SETBACK LINE.
 2. THE SIDE SETBACK IS TO BE MEASURED FROM THE CENTERLINE OF THE LOT SIDE BOUNDARY TO THE SIDE SETBACK LINE.
 3. THE REAR SETBACK IS TO BE MEASURED FROM THE CENTERLINE OF THE LOT REAR BOUNDARY TO THE REAR SETBACK LINE.

LEGEND:
 ● UNDEVELOPED LOT
 ○ UNDEVELOPED LOT WITH FRONT YARD
 ○ UNDEVELOPED LOT WITH FRONT YARD AND SIDE YARD
 ○ UNDEVELOPED LOT WITH FRONT YARD AND SIDE YARD AND REAR YARD
 ○ UNDEVELOPED LOT WITH FRONT YARD AND SIDE YARD AND REAR YARD AND DRIVEWAY
 ○ UNDEVELOPED LOT WITH FRONT YARD AND SIDE YARD AND REAR YARD AND DRIVEWAY AND PORCH
 ○ UNDEVELOPED LOT WITH FRONT YARD AND SIDE YARD AND REAR YARD AND DRIVEWAY AND PORCH AND PATIO

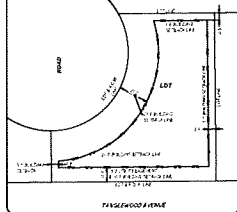
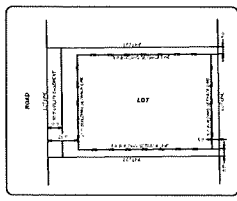
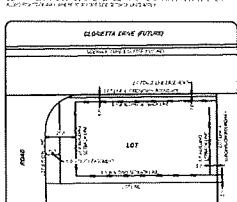
LOT NO.	AREA (ACRES)	FRONT SETBACK (FEET)	SIDE SETBACK (FEET)	REAR SETBACK (FEET)
Lot 1	0.18	10.00	5.00	5.00
Lot 2	0.18	10.00	5.00	5.00
Lot 3	0.18	10.00	5.00	5.00
Lot 4	0.18	10.00	5.00	5.00
Lot 5	0.18	10.00	5.00	5.00
Lot 6	0.18	10.00	5.00	5.00
Lot 7	0.18	10.00	5.00	5.00
Lot 8	0.18	10.00	5.00	5.00
Lot 9	0.18	10.00	5.00	5.00
Lot 10	0.18	10.00	5.00	5.00
Lot 11	0.18	10.00	5.00	5.00
Lot 12	0.18	10.00	5.00	5.00
Lot 13	0.18	10.00	5.00	5.00
Lot 14	0.18	10.00	5.00	5.00
Lot 15	0.18	10.00	5.00	5.00
Lot 16	0.18	10.00	5.00	5.00
Lot 17	0.18	10.00	5.00	5.00
Lot 18	0.18	10.00	5.00	5.00
Lot 19	0.18	10.00	5.00	5.00
Lot 20	0.18	10.00	5.00	5.00
Lot 21	0.18	10.00	5.00	5.00
Lot 22	0.18	10.00	5.00	5.00
Lot 23	0.18	10.00	5.00	5.00
Lot 24	0.18	10.00	5.00	5.00
Lot 25	0.18	10.00	5.00	5.00
Lot 26	0.18	10.00	5.00	5.00
Lot 27	0.18	10.00	5.00	5.00
Lot 28	0.18	10.00	5.00	5.00
Lot 29	0.18	10.00	5.00	5.00
Lot 30	0.18	10.00	5.00	5.00
Lot 31	0.18	10.00	5.00	5.00
Lot 32	0.18	10.00	5.00	5.00
Lot 33	0.18	10.00	5.00	5.00
Lot 34	0.18	10.00	5.00	5.00
Lot 35	0.18	10.00	5.00	5.00
Lot 36	0.18	10.00	5.00	5.00
Lot 37	0.18	10.00	5.00	5.00
Lot 38	0.18	10.00	5.00	5.00
Lot 39	0.18	10.00	5.00	5.00
Lot 40	0.18	10.00	5.00	5.00
Lot 41	0.18	10.00	5.00	5.00
Lot 42	0.18	10.00	5.00	5.00
Lot 43	0.18	10.00	5.00	5.00
Lot 44	0.18	10.00	5.00	5.00
Lot 45	0.18	10.00	5.00	5.00
Lot 46	0.18	10.00	5.00	5.00
Lot 47	0.18	10.00	5.00	5.00
Lot 48	0.18	10.00	5.00	5.00
Lot 49	0.18	10.00	5.00	5.00
Lot 50	0.18	10.00	5.00	5.00
Lot 51	0.18	10.00	5.00	5.00
Lot 52	0.18	10.00	5.00	5.00
Lot 53	0.18	10.00	5.00	5.00
Lot 54	0.18	10.00	5.00	5.00
Lot 55	0.18	10.00	5.00	5.00
Lot 56	0.18	10.00	5.00	5.00
Lot 57	0.18	10.00	5.00	5.00
Lot 58	0.18	10.00	5.00	5.00
Lot 59	0.18	10.00	5.00	5.00
Lot 60	0.18	10.00	5.00	5.00
Lot 61	0.18	10.00	5.00	5.00
Lot 62	0.18	10.00	5.00	5.00
Lot 63	0.18	10.00	5.00	5.00
Lot 64	0.18	10.00	5.00	5.00
Lot 65	0.18	10.00	5.00	5.00
Lot 66	0.18	10.00	5.00	5.00
Lot 67	0.18	10.00	5.00	5.00
Lot 68	0.18	10.00	5.00	5.00
Lot 69	0.18	10.00	5.00	5.00
Lot 70	0.18	10.00	5.00	5.00
Lot 71	0.18	10.00	5.00	5.00
Lot 72	0.18	10.00	5.00	5.00
Lot 73	0.18	10.00	5.00	5.00
Lot 74	0.18	10.00	5.00	5.00
Lot 75	0.18	10.00	5.00	5.00
Lot 76	0.18	10.00	5.00	5.00
Lot 77	0.18	10.00	5.00	5.00
Lot 78	0.18	10.00	5.00	5.00
Lot 79	0.18	10.00	5.00	5.00
Lot 80	0.18	10.00	5.00	5.00
Lot 81	0.18	10.00	5.00	5.00
Lot 82	0.18	10.00	5.00	5.00
Lot 83	0.18	10.00	5.00	5.00
Lot 84	0.18	10.00	5.00	5.00
Lot 85	0.18	10.00	5.00	5.00
Lot 86	0.18	10.00	5.00	5.00
Lot 87	0.18	10.00	5.00	5.00
Lot 88	0.18	10.00	5.00	5.00
Lot 89	0.18	10.00	5.00	5.00
Lot 90	0.18	10.00	5.00	5.00
Lot 91	0.18	10.00	5.00	5.00
Lot 92	0.18	10.00	5.00	5.00
Lot 93	0.18	10.00	5.00	5.00
Lot 94	0.18	10.00	5.00	5.00
Lot 95	0.18	10.00	5.00	5.00
Lot 96	0.18	10.00	5.00	5.00
Lot 97	0.18	10.00	5.00	5.00
Lot 98	0.18	10.00	5.00	5.00
Lot 99	0.18	10.00	5.00	5.00
Lot 100	0.18	10.00	5.00	5.00



CERTIFICATE OF APPROVAL BY THE CITY PLANNING BOARD:
 I, the undersigned, being duly qualified, do hereby certify that the above described subdivision complies with the provisions of the City Planning Board Ordinance No. _____ of the City of Hobbs, New Mexico, and that the same is approved for recording.

ACKNOWLEDGMENT:
 I, the undersigned, do hereby acknowledge that the above described subdivision is approved for recording by the City Planning Board of the City of Hobbs, New Mexico, and that the same is approved for recording.

**TANGLEWOOD UNIT FIVE
 AT RANCHVIEW ESTATES SUBDIVISION
 TO THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO**
 (LOCATED IN THE EAST HALF OF SECTION 1,
 TOWNSHIP 10 NORTH, RANGE 1 EAST, MAP NO. CITY OF HOBBS,
 LEA COUNTY, NEW MEXICO)

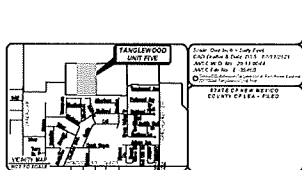


OWNER'S STATEMENT, DEDICATION AND APPROVAL:
 I, the undersigned, do hereby certify that the above described subdivision complies with the provisions of the City Planning Board Ordinance No. _____ of the City of Hobbs, New Mexico, and that the same is approved for recording.

ACKNOWLEDGMENT:
 I, the undersigned, do hereby acknowledge that the above described subdivision is approved for recording by the City Planning Board of the City of Hobbs, New Mexico, and that the same is approved for recording.

ACKNOWLEDGMENT:
 I, the undersigned, do hereby acknowledge that the above described subdivision is approved for recording by the City Planning Board of the City of Hobbs, New Mexico, and that the same is approved for recording.

CERTIFICATE OF MUNICIPAL APPROVAL:
 I, the undersigned, being duly qualified, do hereby certify that the above described subdivision complies with the provisions of the City Planning Board Ordinance No. _____ of the City of Hobbs, New Mexico, and that the same is approved for recording.



SURVEYOR'S CERTIFICATE:
 I, the undersigned, do hereby certify that the above described subdivision complies with the provisions of the City Planning Board Ordinance No. _____ of the City of Hobbs, New Mexico, and that the same is approved for recording.

JOHN HEST SURVEYING COMPANY
 1000 N. 10TH ST. SUITE 100
 HOBBBS, NEW MEXICO 88301

Mr. Hicks asked if everyone has had a chance to read the Special Meeting Minutes from August 9, 2021. Mr. Donahue made a motion, seconded by Mr. Kesner to approve the Special Meeting Minutes as presented. The vote on the motion was 4-0 and the motion carried.

4) Communications from Citizens.

There were no communications from citizens.

ACTION ITEMS

5) Review and Consider Final Plan Approval for The Mesquite Draw Subdivision, as submitted by property owner, Daniel Johncox.

Mr. Robinson said this is a Final Plan Approval for Mesquite Draw. He said they meet the minimum setback requirements. Mr. Kesner said they should be consistent with County rules and regulations. Mr. Kesner made a motion, seconded by Mr. Donahue to approve the Final Plan for Mesquite Draw Subdivision. The vote on the motion was 4-0 and the motion carried.

6) Review and Consider Final Plan Approval for Tanglewood Unit 5 & 6, as presented by property owner, ALJO, LLC.

Mr. Robinson said this is the Final Plan Approval for Unit 5 and 6. He said there is a development agreement adopted by the Commission for the projection of Glorietta Street. He said Cielo Azul will connect to Glorietta. He said Glorietta is not a completed roadway at this time but staff is comfortable with the connectivity at this time as Glorietta will be built out soon. He said this is built and constructed as per the preliminary plat that was approved. He said the municipality will be getting as built soon.

Mr. Robinson said this is unit 6 said these are four 4-plexes. He said the plat was drawn with setbacks for individual lots but it is still correct. He said they will be 0 lot lines. He said for your convenience he showed the boundaries of the entire structure and they would be in compliance with setback rules and regulations.

Mr. Kesner asked about the different sizes in the lots. Mr. Robinson said he could do a triplex on lots 1, 2, 3 and do a house on lot 4. He said as long as they have a fire wall the developer has an options. Mr. Hicks asked if all the lots were designed for 4-plexes? Mr. Caballero said lot number 4 is not designed for 4-plexes but for an oversized home or maintenance facility. Mr. Robinson said each lot can be sold separately. Mr. Hicks asked if all the connected streets are shown except for Glorietta? Mr. Robinson said yes. Mr. Caballero said it will be completed by the end of the year. Mr. Donahue made a motion, seconded by Mr. Kesner to approve the Final Plan for Tanglewood Unit 6. The vote on the motion was 4-0 and the motion carried.



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 4, 2021

SUBJECT: RESOLUTION TO APPROVE THE FINAL PLAN FOR TANGLEWOOD UNIT 6 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: September 27, 2021
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: The Final Plan for Tanglewood Unit 6 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 acres and will contain 45 single family residential lots. The Planning Board consider this item at the September 21, 2021 regular meeting and voted 4-0 to recommend Commission approval.

Fiscal Impact: Reviewed By: 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, Final Plan, Draft Planning Board Minutes.

Legal Review: Eflen A. Cortez
Approved As To Form. City Attorney

Recommendation: Approval of the Resolution to approve the Tanglewood Unit 6 At Ranchview Estates Subdivision, as recommended by the Planning Board.

Approved For Submittal By: Kevin Robinson
Department Director
City Manager

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

CITY OF HOBBS

RESOLUTION NO. 7108

A RESOLUTION TO APPROVE THE FINAL PLAN FOR TANGLEWOOD UNIT 6 AT RANCHVIEW ESTATES SUBDIVISION.

WHEREAS, ALJO, LLC has submitted a Final Plan for Tanglewood Unit 6 at Ranchview Estates Subdivision; and

WHEREAS, the subdivision Final Plan was reviewed and approved by the Hobbs Planning Board at the September 21, 2021, Planning Board meeting.

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 6 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 4th day of October, 2021.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

Mr. Hicks asked if everyone has had a chance to read the Special Meeting Minutes from August 9, 2021. Mr. Donahue made a motion, seconded by Mr. Kesner to approve the Special Meeting Minutes as presented. The vote on the motion was 4-0 and the motion carried.

4) Communications from Citizens.

There were no communications from citizens.

ACTION ITEMS

5) Review and Consider Final Plan Approval for The Mesquite Draw Subdivision, as submitted by property owner, Daniel Johncox.

Mr. Robinson said this is a Final Plan Approval for Mesquite Draw. He said they meet the minimum setback requirements. Mr. Kesner said they should be consistent with County rules and regulations. Mr. Kesner made a motion, seconded by Mr. Donahue to approve the Final Plan for Mesquite Draw Subdivision. The vote on the motion was 4-0 and the motion carried.

6) Review and Consider Final Plan Approval for Tanglewood Unit 5 & 6, as presented by property owner, ALJO, LLC.

Mr. Robinson said this is the Final Plan Approval for Unit 5 and 6. He said there is a development agreement adopted by the Commission for the projection of Glorietta Street. He said Cielo Azul will connect to Glorietta. He said Glorietta is not a completed roadway at this time but staff is comfortable with the connectivity at this time as Glorietta will be built out soon. He said this is built and constructed as per the preliminary plat that was approved. He said the municipality will be getting as built soon.

Mr. Robinson said this is unit 6 said these are four 4-plexes. He said the plat was drawn with setbacks for individual lots but it is still correct. He said they will be 0 lot lines. He said for your convenience he showed the boundaries of the entire structure and they would be in compliance with setback rules and regulations.

Mr. Kesner asked about the different sizes in the lots. Mr. Robinson said he could do a triplex on lots 1, 2, 3 and do a house on lot 4. He said as long as they have a fire wall the developer has an options. Mr. Hicks asked if all the lots were designed for 4-plexes? Mr. Caballero said lot number 4 is not designed for 4-plexes but for an oversized home or maintenance facility. Mr. Robinson said each lot can be sold separately. Mr. Hicks asked if all the connected streets are shown except for Glorietta? Mr. Robinson said yes. Mr. Caballero said it will be completed by the end of the year. Mr. Donahue made a motion, seconded by Mr. Kesner to approve the Final Plan for Tanglewood Unit 6. The vote on the motion was 4-0 and the motion carried.



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 4, 2021

SUBJECT: RESOLUTION TO APPROVE THE FINAL PLAN FOR MESQUITE DRAW SUBDIVISION, AS RECOMMENDED BY THE PLANNING BOARD. Located south of the intersection of Alabama and Braniff within the extra-territorial jurisdiction, submitted by Daniel Johncox.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: September 27, 2021
SUBMITTED BY: Kevin Robinson – Planning Department

Summary: The Final Plan for Mesquite Draw Subdivision is submitted by Daniel Johncox. The subdivision is located south of the intersection of Alabama and Braniff and within the extra-territorial jurisdiction of the municipality. The subdivision encompasses +/- 77 acres and will contain 15 single family residential lots. The Planning Board reviewed this issue on September 21, 2021 and voted 4 to 0 to recommend Commission approval.

Fiscal Impact: _____
Reviewed By: _____
Finance Department

This subdivision is located within the Extraterritorial Jurisdiction of the City of Hobbs; each structure will be served by domestic water wells and private sewer systems. Lea County will assume maintenance of the infrastructure dedicated upon their acceptance of the same.

Attachments: Resolution, Final Plan, Draft Planning Board Minutes.

Legal Review: _____
Efren A. Cortez
Approved As To Form: Cortez
City Attorney

Recommendation:
Consider Approval of the Resolution to approve the Mesquite Draw Subdivision, as recommended by the Planning Board.

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. 7109

A RESOLUTION TO APPROVE THE FINAL PLAN FOR MESQUITE DRAW SUBDIVISION, AS RECOMMENDED BY THE PLANNING BOARD.

WHEREAS, Daniel Johncox has submitted a Final Plan for Mesquite Draw Subdivision, for review by the City Planning Board; and

WHEREAS, the subdivision Final Plan was reviewed and approved by the Hobbs Planning Board at the September 21, 2021 Planning Board meeting.

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 Mesquite Draw Subdivision, as recommended by the Planning Board; and
2. The City officials and staff are directed to do any and all acts necessary to carry out the intent of this Resolution.

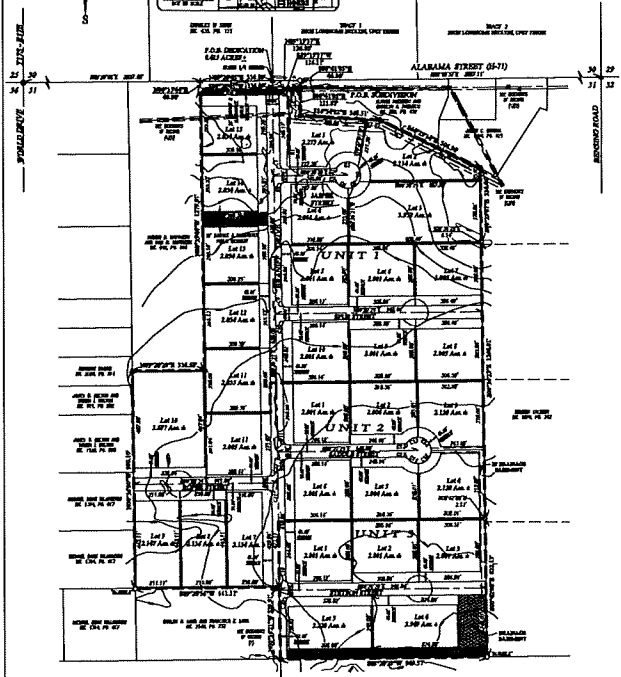
PASSED, ADOPTED AND APPROVED this 4th day of October, 2021.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

MESQUITE DRAW SUBDIVISION
 SITUATED IN THE NORTH HALF OF SECTION 31,
 TOWNSHIP 17 SOUTH, RANGE 38 EAST, N.M.P.M.
 LEA COUNTY, NEW MEXICO



CERTIFICATE OF APPROVAL BY THE CITY PLANNING BOARD

BEFORE ME, the City Planning Board, on this _____ day of _____, 2011, at _____, New Mexico, the following proposed subdivision was presented to me for my approval:

NAME OF THE SUBDIVISION: _____

NAME OF THE APPLICANT: _____

DATE OF APPROVAL: _____

BY: _____

BY: _____

CERTIFICATE OF APPROVAL BY THE LEA COUNTY COMMISSION

BEFORE ME, the Lea County Commission, on this _____ day of _____, 2011, at _____, New Mexico, the following proposed subdivision was presented to me for my approval:

NAME OF THE SUBDIVISION: _____

NAME OF THE APPLICANT: _____

DATE OF APPROVAL: _____

BY: _____

BY: _____

GENERAL NOTES:

1. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
2. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
3. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
4. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
5. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
6. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
7. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.

REMARKS OF RECORD:

1. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
2. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
3. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
4. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
5. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
6. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.
7. ALL LOTS SHALL BE 66 FT. WIDE AND 132 FT. DEEP.

CONTRACT TABLE:

Lot No.	Acres	Owner	Remarks
1	2.200	John Doe	Subdivided
2	2.200	John Doe	Subdivided
3	2.200	John Doe	Subdivided
4	2.200	John Doe	Subdivided
5	2.200	John Doe	Subdivided
6	2.200	John Doe	Subdivided
7	2.200	John Doe	Subdivided
8	2.200	John Doe	Subdivided
9	2.200	John Doe	Subdivided
10	2.200	John Doe	Subdivided
11	2.200	John Doe	Subdivided
12	2.200	John Doe	Subdivided
13	2.200	John Doe	Subdivided
14	2.200	John Doe	Subdivided
15	2.200	John Doe	Subdivided
16	2.200	John Doe	Subdivided
17	2.200	John Doe	Subdivided
18	2.200	John Doe	Subdivided
19	2.200	John Doe	Subdivided
20	2.200	John Doe	Subdivided
21	2.200	John Doe	Subdivided
22	2.200	John Doe	Subdivided
23	2.200	John Doe	Subdivided
24	2.200	John Doe	Subdivided
25	2.200	John Doe	Subdivided
26	2.200	John Doe	Subdivided
27	2.200	John Doe	Subdivided
28	2.200	John Doe	Subdivided
29	2.200	John Doe	Subdivided
30	2.200	John Doe	Subdivided
31	2.200	John Doe	Subdivided
32	2.200	John Doe	Subdivided
33	2.200	John Doe	Subdivided
34	2.200	John Doe	Subdivided
35	2.200	John Doe	Subdivided
36	2.200	John Doe	Subdivided
37	2.200	John Doe	Subdivided
38	2.200	John Doe	Subdivided
39	2.200	John Doe	Subdivided
40	2.200	John Doe	Subdivided
41	2.200	John Doe	Subdivided
42	2.200	John Doe	Subdivided
43	2.200	John Doe	Subdivided
44	2.200	John Doe	Subdivided
45	2.200	John Doe	Subdivided
46	2.200	John Doe	Subdivided
47	2.200	John Doe	Subdivided
48	2.200	John Doe	Subdivided
49	2.200	John Doe	Subdivided
50	2.200	John Doe	Subdivided

APPROVAL BY RECORDERS

BEFORE ME, the County Clerk, on this _____ day of _____, 2011, at _____, New Mexico, the following proposed subdivision was presented to me for my approval:

NAME OF THE SUBDIVISION: _____

NAME OF THE APPLICANT: _____

DATE OF APPROVAL: _____

BY: _____

BY: _____

CERTIFICATE OF APPROVAL BY THE LEA COUNTY COMMISSION

BEFORE ME, the Lea County Commission, on this _____ day of _____, 2011, at _____, New Mexico, the following proposed subdivision was presented to me for my approval:

NAME OF THE SUBDIVISION: _____

NAME OF THE APPLICANT: _____

DATE OF APPROVAL: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

BY: _____

RESERVATIONS
 1. ALL RIGHTS RESERVED.
 2. ALL RIGHTS RESERVED.
 3. ALL RIGHTS RESERVED.
 4. ALL RIGHTS RESERVED.
 5. ALL RIGHTS RESERVED.
 6. ALL RIGHTS RESERVED.
 7. ALL RIGHTS RESERVED.
 8. ALL RIGHTS RESERVED.
 9. ALL RIGHTS RESERVED.
 10. ALL RIGHTS RESERVED.
 11. ALL RIGHTS RESERVED.
 12. ALL RIGHTS RESERVED.
 13. ALL RIGHTS RESERVED.
 14. ALL RIGHTS RESERVED.
 15. ALL RIGHTS RESERVED.
 16. ALL RIGHTS RESERVED.
 17. ALL RIGHTS RESERVED.
 18. ALL RIGHTS RESERVED.
 19. ALL RIGHTS RESERVED.
 20. ALL RIGHTS RESERVED.
 21. ALL RIGHTS RESERVED.
 22. ALL RIGHTS RESERVED.
 23. ALL RIGHTS RESERVED.
 24. ALL RIGHTS RESERVED.
 25. ALL RIGHTS RESERVED.
 26. ALL RIGHTS RESERVED.
 27. ALL RIGHTS RESERVED.
 28. ALL RIGHTS RESERVED.
 29. ALL RIGHTS RESERVED.
 30. ALL RIGHTS RESERVED.
 31. ALL RIGHTS RESERVED.
 32. ALL RIGHTS RESERVED.
 33. ALL RIGHTS RESERVED.
 34. ALL RIGHTS RESERVED.
 35. ALL RIGHTS RESERVED.
 36. ALL RIGHTS RESERVED.
 37. ALL RIGHTS RESERVED.
 38. ALL RIGHTS RESERVED.
 39. ALL RIGHTS RESERVED.
 40. ALL RIGHTS RESERVED.
 41. ALL RIGHTS RESERVED.
 42. ALL RIGHTS RESERVED.
 43. ALL RIGHTS RESERVED.
 44. ALL RIGHTS RESERVED.
 45. ALL RIGHTS RESERVED.
 46. ALL RIGHTS RESERVED.
 47. ALL RIGHTS RESERVED.
 48. ALL RIGHTS RESERVED.
 49. ALL RIGHTS RESERVED.
 50. ALL RIGHTS RESERVED.
 51. ALL RIGHTS RESERVED.
 52. ALL RIGHTS RESERVED.
 53. ALL RIGHTS RESERVED.
 54. ALL RIGHTS RESERVED.
 55. ALL RIGHTS RESERVED.
 56. ALL RIGHTS RESERVED.
 57. ALL RIGHTS RESERVED.
 58. ALL RIGHTS RESERVED.
 59. ALL RIGHTS RESERVED.
 60. ALL RIGHTS RESERVED.
 61. ALL RIGHTS RESERVED.
 62. ALL RIGHTS RESERVED.
 63. ALL RIGHTS RESERVED.
 64. ALL RIGHTS RESERVED.
 65. ALL RIGHTS RESERVED.
 66. ALL RIGHTS RESERVED.
 67. ALL RIGHTS RESERVED.
 68. ALL RIGHTS RESERVED.
 69. ALL RIGHTS RESERVED.
 70. ALL RIGHTS RESERVED.
 71. ALL RIGHTS RESERVED.
 72. ALL RIGHTS RESERVED.
 73. ALL RIGHTS RESERVED.
 74. ALL RIGHTS RESERVED.
 75. ALL RIGHTS RESERVED.
 76. ALL RIGHTS RESERVED.
 77. ALL RIGHTS RESERVED.
 78. ALL RIGHTS RESERVED.
 79. ALL RIGHTS RESERVED.
 80. ALL RIGHTS RESERVED.
 81. ALL RIGHTS RESERVED.
 82. ALL RIGHTS RESERVED.
 83. ALL RIGHTS RESERVED.
 84. ALL RIGHTS RESERVED.
 85. ALL RIGHTS RESERVED.
 86. ALL RIGHTS RESERVED.
 87. ALL RIGHTS RESERVED.
 88. ALL RIGHTS RESERVED.
 89. ALL RIGHTS RESERVED.
 90. ALL RIGHTS RESERVED.
 91. ALL RIGHTS RESERVED.
 92. ALL RIGHTS RESERVED.
 93. ALL RIGHTS RESERVED.
 94. ALL RIGHTS RESERVED.
 95. ALL RIGHTS RESERVED.
 96. ALL RIGHTS RESERVED.
 97. ALL RIGHTS RESERVED.
 98. ALL RIGHTS RESERVED.
 99. ALL RIGHTS RESERVED.
 100. ALL RIGHTS RESERVED.

DRAFT



Asel Surveying
 P.O. Box 383 - 510 N. Taylor
 Hobbs, New Mexico - 88301-0383
 505 (505) 778-1111
 505 (505) 778-1111



STATE OF NEW MEXICO
 COUNTY OF LEA
 I, _____, County Clerk, do hereby certify that the foregoing is a true and correct copy of the original as filed in my office on this _____ day of _____, 2011.

Mr. Hicks asked if everyone has had a chance to read the Special Meeting Minutes from August 9, 2021. Mr. Donahue made a motion, seconded by Mr. Kesner to approve the Special Meeting Minutes as presented. The vote on the motion was 4-0 and the motion carried.

4) **Communications from Citizens.**

There were no communications from citizens.

ACTION ITEMS

5) **Review and Consider Final Plan Approval for The Mesquite Draw Subdivision, as submitted by property owner, Daniel Johncox.**

Mr. Robinson said this is a Final Plan Approval for Mesquite Draw. He said they meet the minimum setback requirements. Mr. Kesner said they should be consistent with County rules and regulations. Mr. Kesner made a motion, seconded by Mr. Donahue to approve the Final Plan for Mesquite Draw Subdivision. The vote on the motion was 4-0 and the motion carried.

6) **Review and Consider Final Plan Approval for Tanglewood Unit 5 & 6, as presented by property owner, ALJO, LLC.**

Mr. Robinson said this is the Final Plan Approval for Unit 5 and 6. He said there is a development agreement adopted by the Commission for the projection of Glorietta Street. He said Cielo Azul will connect to Glorietta. He said Glorietta is not a completed roadway at this time but staff is comfortable with the connectivity at this time as Glorietta will be built out soon. He said this is built and constructed as per the preliminary plat that was approved. He said the municipality will be getting as built soon.

Mr. Robinson said this is unit 6 said these are four 4-plexes. He said the plat was drawn with setbacks for individual lots but it is still correct. He said they will be 0 lot lines. He said for your convenience he showed the boundaries of the entire structure and they would be in compliance with setback rules and regulations.

Mr. Kesner asked about the different sizes in the lots. Mr. Robinson said he could do a triplex on lots 1, 2, 3 and do a house on lot 4. He said as long as they have a fire wall the developer has an options. Mr. Hicks asked if all the lots were designed for 4-plexes? Mr. Caballero said lot number 4 is not designed for 4-plexes but for an oversized home or maintenance facility. Mr. Robinson said each lot can be sold separately. Mr. Hicks asked if all the connected streets are shown except for Glorietta? Mr. Robinson said yes. Mr. Caballero said it will be completed by the end of the year. Mr. Donahue made a motion, seconded by Mr. Kesner to approve the Final Plan for Tanglewood Unit 6. The vote on the motion was 4-0 and the motion carried.



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 4, 2021

SUBJECT: RESOLUTION APPROVING THE VACATION AND DEDICATION OF PORTIONS OF CERTAIN ALLEYWAYS WITHIN THE BALLEW SUBDIVISION LOCATED NORTHEAST OF THE INTERSECTION OF MARLAND STREET AND ELM PLACE.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: September 27, 2021
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: The Property Owner is requesting the vacation of a portion of an alleyway adjacent to the owner's south property line and in return the property owner is dedicating additional properties to the public. The vacation, if approved, will allow the conveyance of fee simple title to the vacated property to the property owner, and the dedications will transfer fee simple title to the public. The Planning Board reviewed this issue on September 21, 2021 and voted 4 to 0 to recommend Commission approval.

Fiscal Impact: Reviewed By: Finance Department

The proposed conveyance(s) should not have a Fiscal Impact.

Attachments: Resolution, Vacation Plat and Dedication Plat(s) and Draft Planning Board Minutes.

Legal Review: Approved As To Form: Cortez City Attorney

Recommendation: Consideration of Approval of the Resolution to approve the Vacation & Dedication Plats, as recommended by the Planning Board.

Table with 2 columns: Approved For Submittal By (Department Director, City Manager) and 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. 7110

A RESOLUTION APPROVING THE VACATION AND DEDICATION OF PORTIONS OF CERTAIN ALLEYWAYS WITHIN THE BALLEW SUBDIVISION LOCATED NORTHEAST OF THE INTERSECTION OF MARLAND STREET AND ELM PLACE.

WHEREAS, the adjacent property owner is requesting the vacation of a portion of an alleyway adjacent to the owner's south property line and in return the property owner is dedicating additional properties to the public; and

WHEREAS, the Vacation and Dedication Plats were then reviewed and recommended for approval by the City of Hobbs Planning Board at the September 21, 2021, meeting; and

WHEREAS, the City Commission has determined that the vacation of a portion of the alleyway will not adversely affect the interests or rights of persons in contiguous territory or within the subdivision and the title of those lands in the vacated area may be transferred in fee simple to the owner of the adjacent lot.

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

1. The City of Hobbs hereby approves the Vacation and Dedication Plats as attached hereto and made a part of this Resolution.
2. The City officials and staff are directed to do any and all acts necessary to carry out the intent of this Resolution.

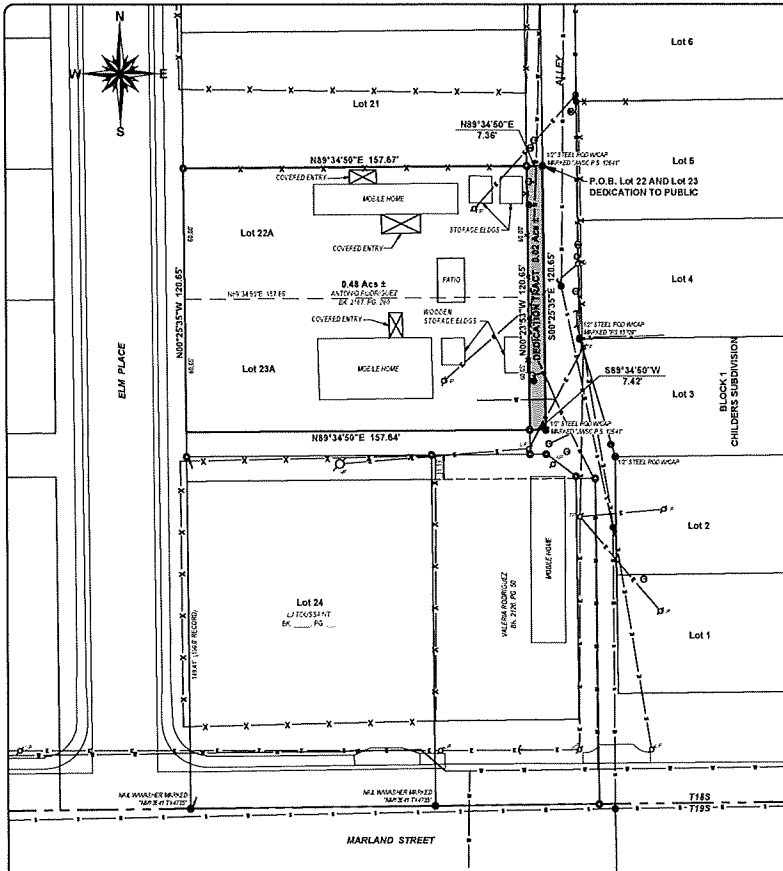
PASSED, ADOPTED AND APPROVED this 4th day of October, 2021.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

PRELIMINARY - AUGUST 29, 2021
This document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document.



DEDICATION OF A PORTION OF LOTS 22 AND 23, BALLEW ADDITION, CITY OF HOBBS, LEA COUNTY, NEW MEXICO

DESCRIPTION OF A PORTION OF LOT 22 AND LOT 23 DEDICATED TO THE PUBLIC:
A TRACT OF LAND DEDICATED FOR PUBLIC USE OUT OF LOT 22 AND LOT 23 BALLEW ADDITION, CITY OF HOBBS, LEA COUNTY, NEW MEXICO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT A 1/2\"/>

ALL ENDS RESERVED (SECTION PAGE 312)

ACKNOWLEDGMENT:

STATE OF NEW MEXICO
COUNTY OF LEA
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2021 A.D., BY ANTONIO ROCHA-GUEZ
NOTARY PUBLIC

CERTIFICATE OF MUNICIPAL APPROVAL:

I, LEA COUNTY DEVELOPMENT DIRECTOR FOR THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO, DO HEREBY CERTIFY THAT THE FOREGOING PLAT IN THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO, HAS REVIEWED AND DEEMED COMPLIANT WITH THE MUNICIPAL Easement PROCESS REGULATIONS ON THIS _____ DAY OF _____, 2021 A.D.
ATTEST: JEFFREY R. GIBSON, CITY CLERK

ACKNOWLEDGMENT:

STATE OF NEW MEXICO
COUNTY OF LEA
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2021 A.D., BY JEFFREY R. GIBSON AND JEFFREY R. GIBSON
NOTARY PUBLIC

LEGEND:

- - DENOTES SET CORNER 1/2\"/>

NOTE:

ALL EASEMENTS SHOWN HEREON ARE THE RESULT OF A FIELD SURVEY CONDUCTED IN THE NEW MEXICO COORDINATE SYSTEM (NAD 83) LAST ZONE NORTH. ALL DISTANCES ARE SURFACE VALUES.
2) ADJACENT OWNERS HAVE OBTAINED FROM LEA COUNTY ASSESSOR'S OFFICE
3) DATE OF SURVEY: SEPTEMBER 15, 2021

Scale: One Inch = Two Hundred Feet
CAD Drafter & Date: DSS - 06/14/2021
JWSC File No.: 201910026
JWSC File No.: D - 1410A

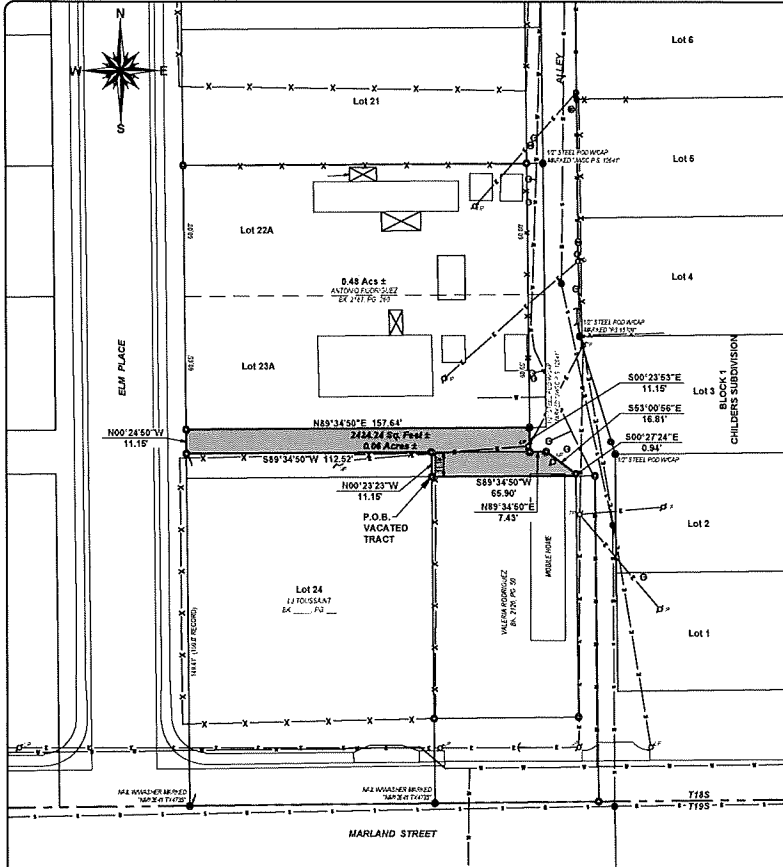
STATE OF NEW MEXICO
COUNTY OF LEA - FILED:

SURVEYOR'S CERTIFICATE:
I, GARY G. EIDSON, NEW MEXICO PROFESSIONAL SURVEYOR No. 15911, 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 AND 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.
DATE _____



PROVIDING SURVEYING SERVICES SINCE 1948
JOHN WEST SURVEYING COMPANY
312 N. DAL PASO, HOBBBS, N.M. 88240
(873) 343-3117 www.jwsc.com
TOP SURVEYING

PRELIMINARY - AUGUST 29, 2021
This document shall not be recorded for any purpose and shall not be used or relied upon as a final survey document.



**VACATION OF A PORTION OF AN ALLEY
BALLEW ADDITION, CITY OF HOBBS, LEA COUNTY, NEW MEXICO**

DESCRIPTION VACATION TRACT:

AN ALLEY VACATION LOCATED WITHIN THE BALLEW ADDITION CITY OF HOBBS, LEA COUNTY, NEW MEXICO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING TO A 10' STEEL ROD WITH CAP MARKED 'INSC PS 1544' SET FOR THE NORTHEAST CORNER OF LOT 24, BALLEW ADDITION TO THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO, THENCE S00°23'53\"/>

CERTIFICATE OF APPROVAL BY THE CITY PLANNING BOARD:

THIS LOCATION PLAN REVIEWED AND APPROVED ON THE _____ DAY OF _____, 2021 A.D., BY THE CITY PLANNING AND ZONING BOARD OF HOBBS, LEA COUNTY, NEW MEXICO

CHIEF CLERK WILLIAM MCKAY III

ACKNOWLEDGMENT:

STATE OF NEW MEXICO

COUNTY OF LEA

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2021 A.D., BY WILLIAM MCKAY III

NOTARY PUBLIC

CERTIFICATE OF MUNICIPAL APPROVAL

I, JAMES FLETCHER, THE CITY APPOINTED AND ACTING CITY CLERK OF THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO, DO HEREBY CERTIFY THAT THE FOREGOING PLAN OF AN ALLEY VACATION BY THE CITY OF HOBBS, NEW MEXICO, WAS APPROVED BY THE COMMISSION OF THE CITY OF HOBBS ON THE _____ DAY OF _____, 2021 A.D.

JAMES FLETCHER, CITY CLERK

LEGEND:

- - DENOTES SET CORNER 10\"/>
- - DENOTES POINT CORNER, AS NOTED
- - DENOTES GAS METER
- X— - DENOTES SEWER LINE W/ MANHOLE
- - DENOTES SEWER LINE CLEAROUT
- W— - DENOTES WATER LINE W/ METER
- E— - DENOTES ELECTRIC LINE W/ POLE AS NOTED
- T— - UTILITY POLE 7\"/>
- G— - DENOTES GUY WIRE OR WIRE
- X— - DENOTES FENCE LINE

NOTE

1) ELEVATIONS SHOWN WERE OBTAINED BY A TOTAL STATION AND CONFORM TO THE NEW MEXICO COORDINATE SYSTEM, NEW MEXICO EAST ZONE, NORTH AMERICAN DATUM 1983. DISTANCES ARE SURFACE VALUES.

2) ADJACENT OWNERSHIP OBTAINED FROM LEA COUNTY ASSESSOR'S OFFICE

3) DATE OF SURVEY: SEPTEMBER 15, 2021

Scale: One Inch = Two Hundred Feet
CAD Drafter & Date: DSS - 06/14/2021
JWSC V/O No. - 20 11 0026
JWSC File No. - D - 1480C
STATE OF NEW MEXICO
COUNTY OF LEA - FILED:

SURVEYOR'S CERTIFICATE:

I, GARY G. EDDSON, NEW MEXICO PROFESSIONAL SURVEYOR NO. 15241, DO HEREBY CERTIFY THAT THIS SURVEY PLAN AND THE ACTIONS THEREON ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION THAT I AM RESPONSIBLE FOR THE 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.

DATE



PROVIDING SURVEYING SERVICES SINCE 1945
JOHN WEST SURVEYING COMPANY
4321 N. DALL PASSO, HOBBS, N.M. 88240
(575) 338-7117 www.jwsc.com
TELEFAX 338-7000

- 7) **Review and Consider Dedication Plat dedicating a portion of North Dal Paso and a water well site as submitted by Armann Enterprises, LLC, property owner.**

Mr. Robinson said this is an RV Site on Dal Paso. He said there were missing dedications from the past on this parcel. He said the infrastructures will be covered under city infrastructures. Mr. Sanderson made a motion, seconded by Mr. Donahue to approve the dedication plat. The vote on the motion was 4-0 and the motion carried.

- 8) **Review and Consider Vacation & Dedication Plat(s) dedicating a portion of Marland Street and the N/S alleyways located NE of the intersection of Marland and Elm Place and vacating the E/W alleyway as submitted by Antonio Rodriguez, property owner.**

Mr. Robinson said this item is for review and consideration of a Vacation and Dedication plats. He said they are dedicating a portion of Marland Street and the N/S alleyways located NE of the intersection of Marland and Elm Place. He said basically the owner and the city are swapping property in the dedications and vacations. Mr. Kesner asked if there was public infrastructure in place. Mr. Robinson said there is sewer in the dedicated alley. Mr. Sanderson made a motion, seconded by Mr. Donahue to recommend approval of the Vacation and Dedication Plat. The vote on the motion was 4-0 and the motion carried.

- 9) **Review and Consider Encroachment Agreement for property located at 4511 Business Park Boulevard as requested by Dixie Electric LLC, property owner.**

Mr. Robinson said this is an encroachment agreement for a property located at 4511 Business Park Boulevard. Mr. Donahue made a motion, seconded by Mr. Sanderson to approve the agreement and the vote was 4-0 and the motion carried.

- 10) **Review and Consider Preliminary Plan Approval Zia Crossing Unit 9, as presented by property owner, Black Gold Estates.**

Mr. Kesner asked about the collector roadway. Mr. Robinson said unit 7 was south of 8 and 9 and the extension of the collector roadway to the west property line so it goes through the subdivision. He said Unit 9 does not go south enough to be affected by the collector roadway. Mr. Hicks asked what the significance of Tract 2 Phase 3? Mr. Robinson said it is identifying the boundaries. He said at Final Plat is supposed to show this subdivisions relationship to the other property lines. Mr. Donahue made a motion, seconded by Mr. Sanderson and the vote on the motion was 4-0 and the motion carried.

- 11) **Review 2nd Sketch Plan for property located southeast of the intersection of Joe Harvey & Central, as presented by Lemke Development.**



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 4, 2021

SUBJECT: CONSIDERATION TO APPROVE AN ENCROACHMENT AGREEMENT WITH DIXIE ELECTRIC, LLC CONCERNING THE PLACEMENT OF STRUCTURES WITHIN PUBLIC EASEMENTS AND SETBACKS.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: September 27, 2021
SUBMITTED BY: Kevin Robinson – Planning Department

Summary: Dixie Electric, LLC, property owner, located at 4511 Business Park Blvd., has located several structures within their property that are encroaching upon public easements and the required setback. The property owner is requesting an encroachment agreement to allow these structures to remain emplaced until such time as the Municipality requires access to the easements. The encroachment agreement requires the property owner to be fiscally responsible for the maintenance, and possible removal, of their asset occupying the public easements. Additionally, the encroachment agreement has an indemnification clause in favor of the City. The Planning Board reviewed this issue on September 21, 2021 and voted 4-0 to recommend approval.

Fiscal Impact:

Reviewed By: _____
Finance Department

The encroachment agreement as written seeks to eliminate any negative impact to the budget associated with the emplacement of the Structures within the Public Easements.

Attachments: Resolution, Encroachment Agreement and Draft Planning Board Minutes.

Legal Review:

Approved As To Form
Efren A. Cortez
Digitally signed by Efren A. Cortez
DN: cn=Efren A. Cortez, o=City of
Hobbs, ou=City Attorney's Office,
email=ecortez@hobbsnm.org, c=US
Date: 2021.09.27 08:49:28 -0600
City Attorney

Recommendation:

Commission to consider approval / denial of the attached Resolution approving an Encroachment Agreement @ 4511 Business Park Blvd..

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. 7111

A RESOLUTION TO APPROVE AN ENCROACHMENT AGREEMENT WITH DIXIE ELECTRIC, LLC CONCERNING THE PLACEMENT OF STRUCTURES WITHIN PUBLIC EASEMENTS AND SETBACKS.

WHEREAS, the City of Hobbs is proposing to enter into an Encroachment Agreement with Dixie Electric, LLC, concerning the placement of structures within the Public Easements and Setback; and

WHEREAS, the aforementioned Encroachment Agreement requires Dixie Electric, LLC, to be fiscally responsible for the maintenance and possible removal of their property located upon the public easements, 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 Encroachment 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 4th day of October, 2021.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (hereinafter "Agreement"), entered into this ___ day of October, 2021, between Dixie Electric LLC, 4511 Business Park Blvd., Hobbs, New Mexico 88240, (hereinafter "Owner") and the City of Hobbs, New Mexico, a New Mexico Municipal Corporation (hereinafter "City").

RECITALS:

WHEREAS, Owner is the owner of certain real property located at 4511 Business Park Boulevard in Hobbs, NM; and

WHEREAS, the parties recognize that certain structures have been constructed upon the above described property, which may encroach into the dedicated public easements and the required setbacks.

NOW, THEREFORE, in consideration of the following covenants, premises, and other considerations, the parties agree as follows;

1. The City agrees to allow the encroachment of the aforementioned structures, at the location further described in Exhibit A attached hereto, on the dedicated public easements and the required setbacks, and approve the Encroachment Easement, Exhibit B attached hereto, provided the Owner complies with the terms of this Agreement.
2. City Use of City's Property and City Liability: The City has the right to enter upon the City's Property at any time and perform whatever maintenance, inspection, repair, modification or reconstruction it deems appropriate without liability to the Owner.
3. Owner's Responsibility for Structures: The Owner will be solely responsible for maintenance of the Structures as deemed necessary either by the Owner or the City. The Owner will be responsible for paying all related costs of said maintenance. The Owner agrees to not permit the structures to become or constitute a hazard to the public health or safety, and to keep the structures properly maintained. Owner further agrees not to interfere with the City's use of the City's Property, and to comply with all applicable laws, ordinances and regulations. Owner agrees that no addition or extension to the structures will be constructed.
4. Removal or Relocation of Structures: At some time in the future, the City may require the structures to be removed or relocated from the dedicated public easements and/or the required setback. Such relocation would occur at such time that the municipal infrastructure within the easement is required to be reconstructed or widened, as deemed necessary by the City to insure proper and efficient maintenance thereof; or for utility improvements deemed necessary by the City.

5. Financial Responsibility for Removal and Relocation: If and when the structures are required to be relocated in the future, financial responsibility for removal and relocation of the structures will be the sole responsibility of the Owner.

6. Condemnation of Structures: If Owner allows or permits the Structure to become deteriorated or to become a threat to the public health, safety and welfare, the City may institute condemnation proceedings to remove Owners Property from the dedicated public easements and the required setbacks. If any part of the Owner's structures are ever condemned by the City, the Owner will forego all claims to compensation for any portion of Owner's structures which encroaches on the dedicated public easements and the required setbacks.

7. Notice: For purposes of giving formal written notice to the Owner, Owner's address shall be the address of record for ownership of property, as listed in the official records of the County Clerk's Office for Lea County, New Mexico. Notice may be given to the Owner either in person or by mailing the notice by certified, return receipt U.S. mail, postage paid. Notice will be considered to have been received by the Owner, when the return receipt mail card is received by the City.

8. Indemnification: The Owner covenant and agree that they will indemnify and save the City harmless from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person or death or damage to property on or off the premises, arising or resulting from Owner's actions, usage and structure located on the dedicated public easements and the required setbacks. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

9. Term: This Agreement may be terminated by removal of the structures from the dedicated public easements and the required setbacks. Termination by either party shall be effective ninety (90) days after mailing by a party of written notice of termination to the other party.

10. Binding on Owner's Property: The obligations of the Owner set forth herein shall be binding upon the Owner, his/her heirs, assigns, purchasers and successors and on Owner's Property, and constitute covenants running with Owner's Property until released by the City.

11. Entire Agreement: This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

12. Changes to Agreement: Changes to this Agreement are not binding unless made in writing and signed by both parties.

13. Construction and Severability: If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

14. Extent of Agreement: Owner understands and agrees that the Owner is solely responsible for ascertaining whether Owner's structures encroaches upon the property or facilities of any other entity and that by entering into this Agreement, the City makes no representations or warranties that the City's property is the only property affected by the encroachment.

15. Attorney's Fees and Costs: In the event this matter is litigated the Court shall award reasonable attorney fees to the prevailing party, notwithstanding in-house counsel represent a party.

16. Choice of Law and Venue: 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.

Done and approved on the date first written above.

THE CITY OF HOBBS

Owner

Mayor Sam D. Cobb

ATTEST:

APPROVED AS TO FORM:

Jan Fletcher, City Clerk

Efren Cortez, City Attorney

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

The foregoing was acknowledged before me this _____ day of _____, 2021 by _____, as owner of _____, to me personally known, who being by me duly sworn did say that he/she is the recorded owner of the property, and _____ acknowledged said instrument, and acknowledged that he executed the same as his free act and deed.

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

Notary Public

My Commission Expires:



A TRACT OF LAND LOCATED IN THE SOUTH HALF OF THE NORTHWEST QUARTER (S/2 NW4) OF SECTION 7, TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M. CITY OF HOBBS LEA COUNTY, NEW MEXICO

1 TITLE DESCRIPTION

WE HAVE RECEIVED THE RECORDS AND THE ORIGINAL RECORDS OF LEA COUNTY RECORDS FOR THE TITLE INFORMATION OF THE TRACT OF LAND DESCRIBED IN THE TITLE INFORMATION OF THIS SURVEY. WE HAVE REVIEWED THE RECORDS AND THE ORIGINAL RECORDS AND HAVE FOUND THAT THE RECORDS ARE CORRECT AND COMPLETE. WE HAVE THEREFORE PREPARED THIS SURVEY AND THE ORIGINAL RECORDS OF LEA COUNTY RECORDS FOR THE TITLE INFORMATION OF THIS SURVEY. WE HAVE THEREFORE PREPARED THIS SURVEY AND THE ORIGINAL RECORDS OF LEA COUNTY RECORDS FOR THE TITLE INFORMATION OF THIS SURVEY.

2 TITLE INFORMATION

The Tract of Land is Located in the South Half of the Northwest Quarter (S/2 NW4) of Section 7, Township 18 South, Range 38 East, N.M.P.M. City of Hobbs, Lea County, New Mexico.

3 SCHEDULE B ITEMS

- NOTES CORRESPONDING TO SCHEDULE "B":
- 1. THE TRACT OF LAND IS SUBJECT TO THE EASEMENTS AND RIGHTS OF WAY SET FORTH IN THE ORIGINAL RECORDS OF LEA COUNTY RECORDS FOR THE TITLE INFORMATION OF THIS SURVEY. THE EASEMENTS AND RIGHTS OF WAY SET FORTH IN THE ORIGINAL RECORDS OF LEA COUNTY RECORDS FOR THE TITLE INFORMATION OF THIS SURVEY ARE AS FOLLOWS:
 - 1. EASEMENT DATED 6-10-91 FILED 10-10-91 IN BOOK 1111, PAGE 111. LEA COUNTY RECORDS, LEA COUNTY, NEW MEXICO. EXTENDED BY DEED ELECTRIC, INC. TO LEA COUNTY PUBLIC SERVICE COMPANY. DOES AFFECT AS SHOWN.
 - 2. EASEMENT DATED 6-10-91 FILED 10-10-91 IN BOOK 1111, PAGE 111. LEA COUNTY RECORDS, LEA COUNTY, NEW MEXICO. EXTENDED BY DEED ELECTRIC, INC. TO LEA COUNTY PUBLIC SERVICE COMPANY. DOES AFFECT AS SHOWN.
 - 3. EASEMENT DATED 6-10-91 FILED 10-10-91 IN BOOK 1111, PAGE 111. LEA COUNTY RECORDS, LEA COUNTY, NEW MEXICO. EXTENDED BY DEED ELECTRIC, INC. TO LEA COUNTY PUBLIC SERVICE COMPANY. DOES AFFECT AS SHOWN.
 - 4. EASEMENT DATED 6-10-91 FILED 10-10-91 IN BOOK 1111, PAGE 111. LEA COUNTY RECORDS, LEA COUNTY, NEW MEXICO. EXTENDED BY DEED ELECTRIC, INC. TO LEA COUNTY PUBLIC SERVICE COMPANY. DOES AFFECT AS SHOWN.
 - 2. THE TRACT OF LAND IS SUBJECT TO THE EASEMENTS AND RIGHTS OF WAY SET FORTH IN THE ORIGINAL RECORDS OF LEA COUNTY RECORDS FOR THE TITLE INFORMATION OF THIS SURVEY. THE EASEMENTS AND RIGHTS OF WAY SET FORTH IN THE ORIGINAL RECORDS OF LEA COUNTY RECORDS FOR THE TITLE INFORMATION OF THIS SURVEY ARE AS FOLLOWS:
 - 1. EASEMENT DATED 6-10-91 FILED 10-10-91 IN BOOK 1111, PAGE 111. LEA COUNTY RECORDS, LEA COUNTY, NEW MEXICO. EXTENDED BY DEED ELECTRIC, INC. TO LEA COUNTY PUBLIC SERVICE COMPANY. DOES AFFECT AS SHOWN.
 - 2. EASEMENT DATED 6-10-91 FILED 10-10-91 IN BOOK 1111, PAGE 111. LEA COUNTY RECORDS, LEA COUNTY, NEW MEXICO. EXTENDED BY DEED ELECTRIC, INC. TO LEA COUNTY PUBLIC SERVICE COMPANY. DOES AFFECT AS SHOWN.
 - 3. EASEMENT DATED 6-10-91 FILED 10-10-91 IN BOOK 1111, PAGE 111. LEA COUNTY RECORDS, LEA COUNTY, NEW MEXICO. EXTENDED BY DEED ELECTRIC, INC. TO LEA COUNTY PUBLIC SERVICE COMPANY. DOES AFFECT AS SHOWN.
 - 4. EASEMENT DATED 6-10-91 FILED 10-10-91 IN BOOK 1111, PAGE 111. LEA COUNTY RECORDS, LEA COUNTY, NEW MEXICO. EXTENDED BY DEED ELECTRIC, INC. TO LEA COUNTY PUBLIC SERVICE COMPANY. DOES AFFECT AS SHOWN.

5 FLOOD INFORMATION

The property is not in a flood plain or flood hazard area as shown on the Flood Insurance Rate Map (FIRM) for the City of Hobbs, Lea County, New Mexico, dated 10/10/91.

6 CEMETERY

The property is not in a cemetery as shown on the Flood Insurance Rate Map (FIRM) for the City of Hobbs, Lea County, New Mexico, dated 10/10/91.

8 ZONING INFORMATION

The property is zoned as follows: [Details regarding zoning regulations and compliance]

4 SURVEYOR CERTIFICATION

I, the undersigned, being a duly Licensed Surveyor in the State of New Mexico, do hereby certify that I am a duly Licensed Surveyor in the State of New Mexico, and that I am the author of this Survey. I have read the above and certify that it is a true and correct copy of the original records of the Survey. I have also read the original records of the Survey and certify that they are a true and correct copy of the original records of the Survey.

12 PARKING INFORMATION

The property is not a parking area as shown on the Flood Insurance Rate Map (FIRM) for the City of Hobbs, Lea County, New Mexico, dated 10/10/91.

13 LAND AREA

The total area of the tract is [Area] acres, [Area] square feet.

14 BUILDING AREA

The total building area of the tract is [Area] square feet.

15 BUILDING HEIGHT

The maximum building height of the tract is [Height] feet.

7 STATEMENT OF ENCUMBRANCES

- 1. GASPORT AND PORTABLE STORAGE CONTAINER ENCUMBRANCE IS NOT A UTILITY EASEMENT.
- 2. PORTABLE STORAGE CONTAINER ENCUMBRANCE IS NOT A UTILITY EASEMENT.
- 3. MOBILE HOME ENCUMBRANCE IS NOT A UTILITY EASEMENT.
- 4. GARAGE ENCUMBRANCE IS NOT A UTILITY EASEMENT.

11 SURVEYOR'S NOTES

The survey was conducted on [Date] and the results are as shown on the attached map. The survey was conducted in accordance with the rules and regulations of the State of New Mexico. The survey was conducted in accordance with the rules and regulations of the State of New Mexico.

10 BASIS OF BEARINGS

The bearings were taken from the [Reference Point] and the distances were measured by [Method]. The bearings were taken from the [Reference Point] and the distances were measured by [Method].

Key to CDS ALTA Survey

1	1. TITLE INFORMATION
2	2. TITLE INFORMATION
3	3. SCHEDULE B ITEMS
4	4. SURVEYOR CERTIFICATION
5	5. FLOOD INFORMATION
6	6. CEMETERY
7	7. STATEMENT OF ENCUMBRANCES
8	8. ZONING INFORMATION
9	9. [Blank]
10	10. BASIS OF BEARINGS
11	11. SURVEYOR'S NOTES
12	12. PARKING INFORMATION
13	13. LAND AREA
14	14. BUILDING AREA
15	15. BUILDING HEIGHT
16	16. [Blank]
17	17. [Blank]
18	18. [Blank]
19	19. [Blank]
20	20. PROJECT ADDRESS

18 ALTA/SPS Land Title Survey

CDS COMMERCIAL SURVEYING

Surveyor Name: [Name]
 Address: [Address]
 City: [City]
 State: [State]
 Zip: [Zip]

Project # for: [Project #]
 Date of Survey: [Date]
 Project Address: [Address]
 Project Name: [Name]
 City: [City]
 State: [State]
 Zip: [Zip]

Approved CDS Surveyor
 Surveyor Name: Tim Mester
 Address: 1121 La Vega Road
 Telephone Number: 505-839-8111
 email: tim@cds.com

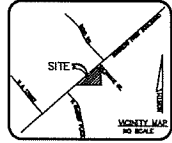


A TRACT OF LAND LOCATED IN THE SOUTH HALF OF THE NORTHWEST QUARTER (S/2 NW/4) OF SECTION 7, TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M. CITY OF HOBBS LEA COUNTY, NEW MEXICO

CDS COMMERCIAL SURVEY SERVICES

19 SURVEY DRAWING

16 VICINITY MAP



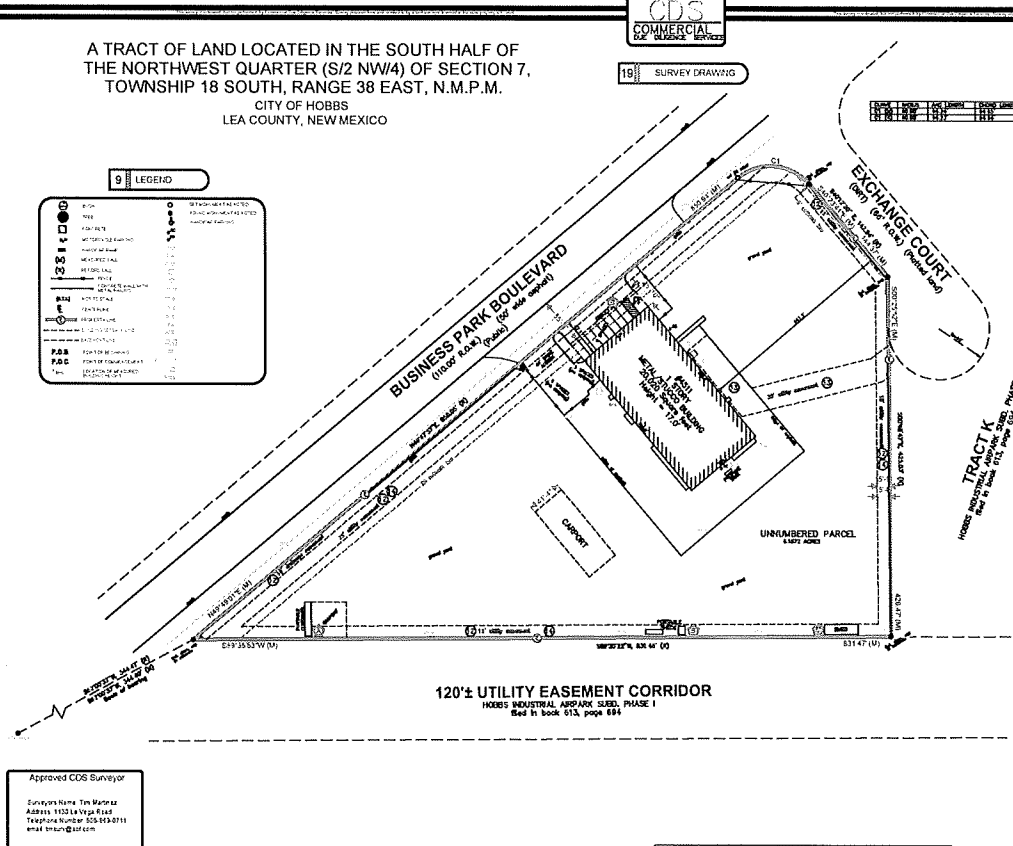
9 LEGEND

1	PROPERTY LINE	2	ADJACENT PROPERTY
3	UTILITY EASEMENT	4	ADJACENT UTILITY EASEMENT
5	ADJACENT ROAD	6	ADJACENT ROAD RIGHT-OF-WAY
7	ADJACENT RAILROAD	8	ADJACENT RAILROAD RIGHT-OF-WAY
9	ADJACENT AIRPORT	10	ADJACENT AIRPORT RIGHT-OF-WAY
11	ADJACENT WATERWAY	12	ADJACENT WATERWAY RIGHT-OF-WAY
13	ADJACENT WOODS	14	ADJACENT WOODS RIGHT-OF-WAY
15	ADJACENT OPEN SPACE	16	ADJACENT OPEN SPACE RIGHT-OF-WAY
17	ADJACENT FARM	18	ADJACENT FARM RIGHT-OF-WAY
19	ADJACENT INDUSTRIAL	20	ADJACENT INDUSTRIAL RIGHT-OF-WAY



SCALE: 1" = 80'

17 NORTH ARROW/SCALE



Key to CDS ALTA Survey

1. TITLE CURVE
2. CURVE DATA
3. CURVE CENTER
4. CURVE TANGENT
5. CURVE PERCENTAGE
6. CURVE CHORD
7. CURVE CHORD BEARING
8. CURVE CHORD DISTANCE
9. CURVE AREA
10. CURVE PERIMETER
11. CURVE PERCENTAGE
12. CURVE CHORD BEARING
13. CURVE CHORD DISTANCE
14. CURVE AREA
15. CURVE PERIMETER
16. CURVE CHORD BEARING
17. CURVE CHORD DISTANCE
18. CURVE AREA
19. CURVE PERIMETER
20. CURVE CHORD BEARING

18 ALTA/SPE Land Title Survey

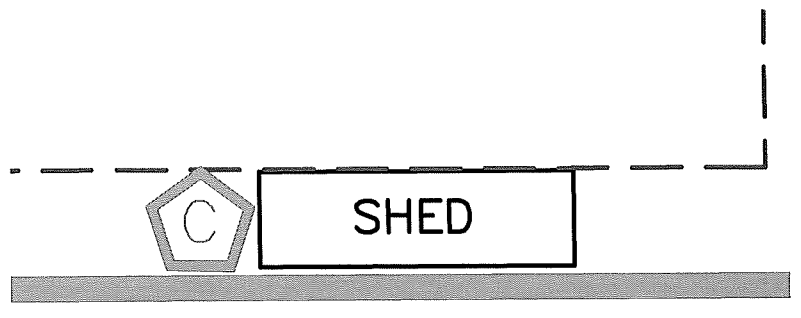
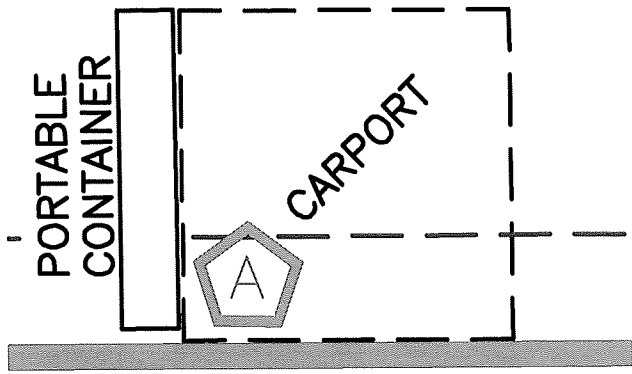
CDS COMMERCIAL SURVEY SERVICES

4511 BUSINESS PARK BLVD
HOBBS, NEW MEXICO

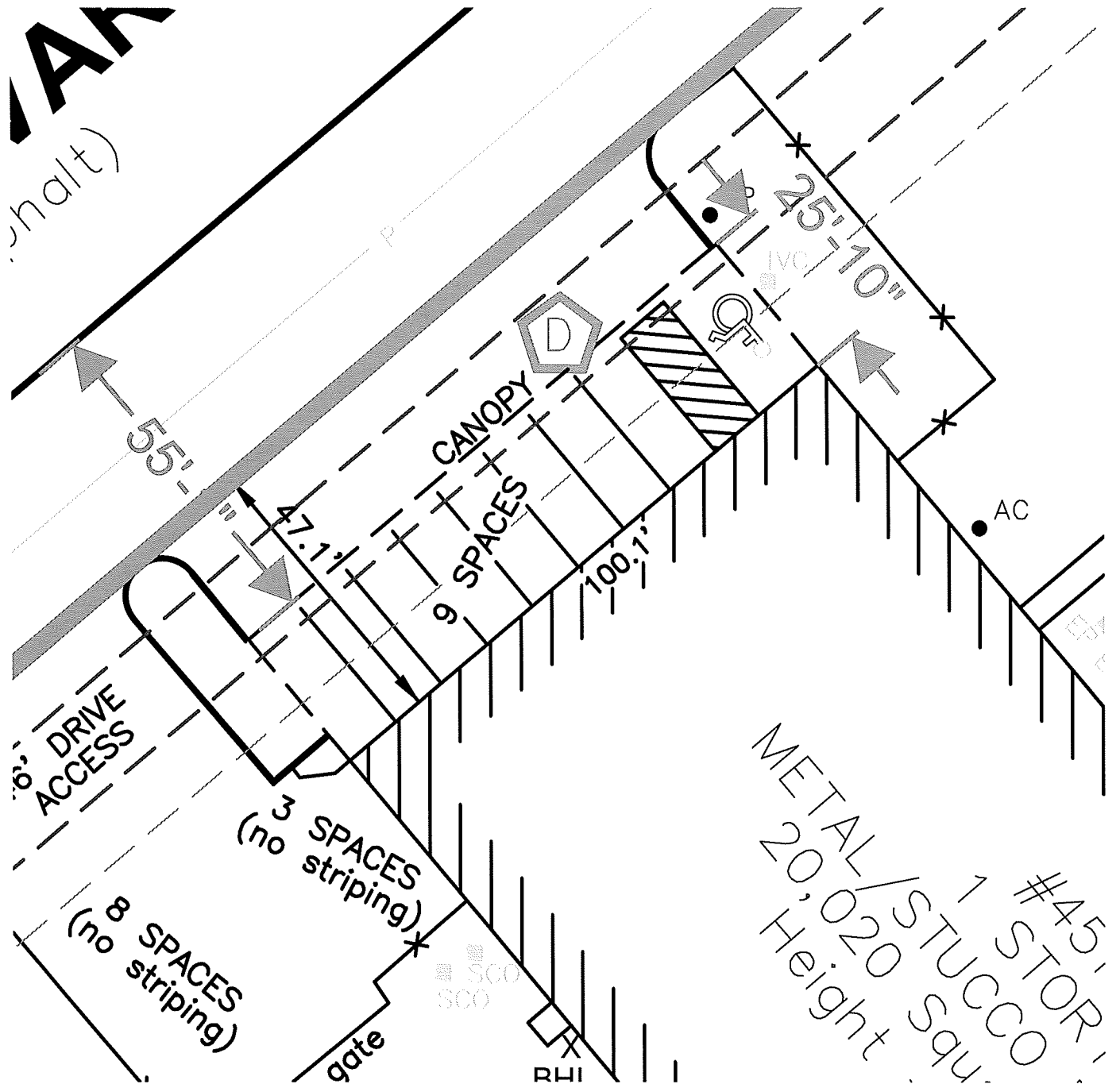
Project Name: Electric Yard Portfolio
CDS Project Number: 18-12-0047.5

Approved CDS Surveyor
Surveyor Name: Tom Muehle
Address: 1122 La Vega Blvd
Telephone Number: 505.838.0711
email: tom@cds.com

18-12-0047.5



831.47' (M)



- 7) **Review and Consider Dedication Plat dedicating a portion of North Dal Paso and a water well site as submitted by Armann Enterprises, LLC, property owner.**

Mr. Robinson said this is an RV Site on Dal Paso. He said there were missing dedications from the past on this parcel. He said the infrastructures will be covered under city infrastructures. Mr. Sanderson made a motion, seconded by Mr. Donahue to approve the dedication plat. The vote on the motion was 4-0 and the motion carried.

- 8) **Review and Consider Vacation & Dedication Plat(s) dedicating a portion of Marland Street and the N/S alleyways located NE of the intersection of Marland and Elm Place and vacating the E/W alleyway as submitted by Antonio Rodriguez, property owner.**

Mr. Robinson said this item is for review and consideration of a Vacation and Dedication plats. He said they are dedicating a portion of Marland Street and the N/S alleyways located NE of the intersection of Marland and Elm Place. He said basically the owner and the city are swapping property in the dedications and vacations. Mr. Kesner asked if there was public infrastructure in place. Mr. Robinson said there is sewer in the dedicated alley. Mr. Sanderson made a motion, seconded by Mr. Donahue to recommend approval of the Vacation and Dedication Plat. The vote on the motion was 4-0 and the motion carried.

- 9) **Review and Consider Encroachment Agreement for property located at 4511 Business Park Boulevard as requested by Dixie Electric LLC, property owner.**

Mr. Robinson said this is an encroachment agreement for a property located at 4511 Business Park Boulevard. Mr. Donahue made a motion, seconded by Mr. Sanderson to approve the agreement and the vote was 4-0 and the motion carried.

- 10) **Review and Consider Preliminary Plan Approval Zia Crossing Unit 9, as presented by property owner, Black Gold Estates.**

Mr. Kesner asked about the collector roadway. Mr. Robinson said unit 7 was south of 8 and 9 and the extension of the collector roadway to the west property line so it goes through the subdivision. He said Unit 9 does not go south enough to be affected by the collector roadway. Mr. Hicks asked what the significance of Tract 2 Phase 3? Mr. Robinson said it is identifying the boundaries. He said at Final Plat is supposed to show this subdivisions relationship to the other property lines. Mr. Donahue made a motion, seconded by Mr. Sanderson and the vote on the motion was 4-0 and the motion carried.

- 11) **Review 2nd Sketch Plan for property located southeast of the intersection of Joe Harvey & Central, as presented by Lemke Development.**



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 4, 2021

SUBJECT: RESOLUTION APPROVING THE DEDICATION OF A PORTION OF DAL PASO AND PUBLIC WELL SITE LOCATED IN SECTION 23, TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M., LEA COUNTY, NEW MEXICO.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: September 27, 2021
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: The Dedication Plat for a portion of North Dal Paso and a Public Well Site is submitted for your review and consideration. The dedication parcel will contain +/- .42 acres.

The Planning Board reviewed this issue on September 21, 2021 and voted 4-0 to recommend approval.

Fiscal Impact:

Reviewed By: Efrén A. Cortez
Finance Department

Attachments:

Resolution, Dedication plat, Draft Planning Board Minutes.

Legal Review:

Approved As To Form: Efrén A. Cortez
City Attorney

Recommendation:

Consider to Approve the Resolution to dedicate a portion of North Dal Paso and a Public Well Site.

Approved For Submittal By:

Kevin Robinson
Department Director

[Signature]
City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 7112

A RESOLUTION APPROVING THE DEDICATION OF A PORTION OF DAL PASO AND PUBLIC WELL SITE LOCATED IN SECTION 23, TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M., LEA COUNTY, NEW MEXICO.

WHEREAS, the City of Hobbs has recently received the dedication plat from Armann Enterprises, LLC, property owner, dedicating a portion of North Dal Paso and a Public Well Site to the City of Hobbs; and

WHEREAS, that portion of the dedication is located wholly within the municipal boundaries of the City of Hobbs.

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 dedication of a portion of North Dal Paso and a Public Well Site, as shown on the plats attached hereto as Exhibit "A" and made a part of this resolution.

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 4th day of October, 2021

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

- 7) **Review and Consider Dedication Plat dedicating a portion of North Dal Paso and a water well site as submitted by Armann Enterprises, LLC, property owner.**

Mr. Robinson said this is an RV Site on Dal Paso. He said there were missing dedications from the past on this parcel. He said the infrastructures will be covered under city infrastructures. Mr. Sanderson made a motion, seconded by Mr. Donahue to approve the dedication plat. The vote on the motion was 4-0 and the motion carried.

- 8) **Review and Consider Vacation & Dedication Plat(s) dedicating a portion of Marland Street and the N\S alleyways located NE of the intersection of Marland and Elm Place and vacating the E\W alleyway as submitted by Antonio Rodriguez, property owner.**

Mr. Robinson said this item is for review and consideration of a Vacation and Dedication plats. He said they are dedicating a portion of Marland Street and the N/S alleyways located NE of the intersection of Marland and Elm Place. He said basically the owner and the city are swapping property in the dedications and vacations. Mr. Kesner asked if there was public infrastructure in place. Mr. Robinson said there is sewer in the dedicated alley. Mr. Sanderson made a motion, seconded by Mr. Donahue to recommend approval of the Vacation and Dedication Plat. The vote on the motion was 4-0 and the motion carried.

- 9) **Review and Consider Encroachment Agreement for property located at 4511 Business Park Boulevard as requested by Dixie Electric LLC, property owner.**

Mr. Robinson said this is an encroachment agreement for a property located at 4511 Business Park Boulevard. Mr. Donahue made a motion, seconded by Mr. Sanderson to approve the agreement and the vote was 4-0 and the motion carried.

- 10) **Review and Consider Preliminary Plan Approval Zia Crossing Unit 9, as presented by property owner, Black Gold Estates.**

Mr. Kesner asked about the collector roadway. Mr. Robinson said unit 7 was south of 8 and 9 and the extension of the collector roadway to the west property line so it goes through the subdivision. He said Unit 9 does not go south enough to be affected by the collector roadway. Mr. Hicks asked what the significance of Tract 2 Phase 3? Mr. Robinson said it is identifying the boundaries. He said at Final Plat is supposed to show this subdivisions relationship to the other property lines. Mr. Donahue made a motion, seconded by Mr. Sanderson and the vote on the motion was 4-0 and the motion carried.

- 11) **Review 2nd Sketch Plan for property located southeast of the intersection of Joe Harvey & Central, as presented by Lemke Development.**



ACTION ITEMS



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 4, 2021

SUBJECT: AN ORDINANCE ADOPTING CHAPTER 5.06 OF THE HOBBS MUNICIPAL CODE FOR THE POSSESSION, CULTIVATION, MANUFACTURE AND SALE OF CANNABIS

DEPT. OF ORIGIN: Legal Department
DATE SUBMITTED: September 22, 2021
SUBMITTED BY: Valerie S. Chacon, Deputy City Attorney

Summary: The proposed ordinance complies with House Bill (H.B.) 2 which was passed during the 2021 First Special Session of the 55th Legislature and is now codified in NMSA 1978, Section 26-2C-1, et seq. The legislation authorized the possession, cultivation, manufacture, and sale of cannabis and cannabis-derived products in New Mexico. NMSA 1978, Section 26-2C-12 authorizes a municipality to adopt time, place and manner rules regarding cannabis establishments. This ordinance establishes the time, place and manner rules in Hobbs, New Mexico.

Pursuant to NMSA 1978, § 3-17-3, publication of this proposed ordinance was published in the Hobbs News-Sun on September 14, 2021.

Fiscal Impact:

Reviewed By: Deborah Corral

Finance Department

There is no direct fiscal impact for this ordinance. Any gross receipts taxes (GRT) derived from the production, manufacture and sale of cannabis shall be distributed to the City of Hobbs pursuant to NMSA 1978, Section 7-1-6.4.

Attachments:

Ordinance; Affidavit of Publication

Legal Review:

Approved As To Form: Valerie Schwan

City Attorney

Recommendation:

The Commission should consider adoption of the proposed ordinance.

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

ORDINANCE NO. 1133

AN ORDINANCE ADOPTING CHAPTER 5.06 OF THE HOBBS MUNICIPAL CODE FOR THE POSSESSION, CULTIVATION, MANUFACTURE AND SALE OF CANNABIS

WHEREAS, during the 2021 First Special Session of the 55th Legislature, the New Mexico Legislature adopted House Bill (H.B.) 2, now codified as the Cannabis Regulation Act (NMSA 1978, §§ 26-2C-1 through 26-2C-42), which established a comprehensive regulatory framework for possession, cultivation, manufacture, and sale of cannabis and cannabis-derived products; and

WHEREAS, on August 24, 2021, the New Mexico Regulation & Licensing Department, Cannabis Control Division published rules “to ensure the safe production, testing, sale, and consumption of commercial and medical cannabis”; and

WHEREAS, the Cannabis Regulation Act provides that local government may adopt time, place, and manner rules that comply with the Cannabis Regulation Act, the Dee Johnson Clean Indoor Air Act and reasonably limit density of licenses, permissible consumption areas, and operating hours; and

WHEREAS, the City of Hobbs chooses to exercise the authority granted to it by the Cannabis Regulation Act to control and restrict the cultivation, manufacture and sale of cannabis and cannabis-derived products which shall be consistent with the provisions of the Cannabis Regulation Act and the Dee Johnson Clean Indoor Air Act.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that Chapter 5.06, is hereby adopted as more specifically described as follows:

Chapter 5.06 POSSESSION, CULTIVATION, MANUFACTURE AND SALE OF CANNABIS

5.06.010 Title and purpose.

This chapter may be cited as the "Cannabis Regulation Ordinance." This Cannabis Regulation Ordinance is set forth to help ensure the safe production, testing, sale, and consumption of commercial and medical cannabis following appropriate time, place, and manner rules for the cultivation, manufacture, and sale of cannabis and cannabis-derived products.

5.06.020 Definitions.

Unless otherwise defined below, terms used in the Cannabis Regulation Ordinance shall have the same meanings as set forth in the Cannabis Regulation Act (NMSA 1978, Section 26-2C-1, et seq.) and the Lynn and Erin Compassionate Use Act. The following terms shall have the meanings respectively ascribed to them by this subsection:

"Applicant" means any person who is seeking to become licensed pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or rules adopted by the New Mexico Regulation and Licensing Department and who is seeking to establish a cannabis establishment within the municipal boundaries of Hobbs, New Mexico.

"Cannabis" means all parts of the plant genus Cannabis containing delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and does not include:

1. the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or
2. the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product.

"Cannabis consumption area" means an area where cannabis products may be served and consumed.

"Cannabis establishment" means:

1. a cannabis testing laboratory;
2. a cannabis manufacturer;
3. a cannabis producer;
4. a cannabis retailer;
5. a cannabis research laboratory;

6. a vertically integrated cannabis establishment;
7. a cannabis producer microbusiness; or
8. an integrated cannabis microbusiness.

"Cannabis extract" means a product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction methods approved by the division and does not include the weight of any other ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink or another product.

"Cannabis manufacturer" means a person that:

1. manufactures cannabis products;
2. packages cannabis products; and
3. has cannabis products tested by a cannabis testing laboratory; or
4. purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments.

"Cannabis producer" means a person that:

1. cultivates cannabis plants;
2. has unprocessed cannabis products tested by a cannabis testing laboratory;
3. transports unprocessed cannabis products only to other cannabis establishments; or
4. sells cannabis products wholesale.

"Cannabis producer microbusiness" means a cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time.

"Cannabis product" means a product that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.

"Cannabis research laboratory" means a facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses.

"Cannabis retailer" means a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

"Cannabis testing laboratory" means a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing.

"Cannabis waste" means all parts of the genus Cannabis which may or may not contain delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant;

and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination which has been designated as no longer usable cannabis.

"Commercial cannabis activity" means the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, and sale or consignment of cannabis products and does not include activities related only to the medical cannabis program.

"Consumer" means a person twenty-one years of age or older who purchases, acquires, owns, possesses or uses a cannabis product for a purpose other than resale.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

"Department" means the regulation and licensing department of the State of New Mexico.

"Director" means the executive director of the cannabis control division.

"Division" means the cannabis control division of the department.

"Facility" means a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products.

"Integrated cannabis microbusiness" means a person that is authorized to conduct one or more of the following:

1. production of cannabis at a single licensed premises; provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;
2. manufacture of cannabis products at a single licensed premises;
3. sales and transportation of only cannabis products produced or manufactured by that person;
4. operation of only one retail establishment; and
5. couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to customers.

"Law enforcement" means the Hobbs Police Department, the divisions of the Hobbs Police Department, and the individual officers and enforcement personnel of the Hobbs Police Department.

"Licensed premises" means a location that is licensed pursuant to the Cannabis Regulation Act and includes:

1. all enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms;
2. all areas outside of a building specifically included in the license for the production, manufacturing, wholesale or retail sale of cannabis products; and
3. with respect to a location specifically licensed for the production of cannabis outside of a building, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases or has a right to occupy.

"Licensee" means any person who holds a license issued by the division pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

"Limited-access area" means an indoor or outdoor area on the premises of a licensed cannabis establishment where cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale (POS) areas, and any room or area storing a digital video surveillance system storage device.

"Manufacture" means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

"Produce" means to engage in any activity related to the planting or cultivation of cannabis.

"Public place" means a place to which the general public has access and includes hallways, lobbies and other parts of apartment houses and hotels that do not constitute rooms or apartments designed for actual residence; highways; streets; schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation.

"Retail establishment" means a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers.

"Security alarm system" means any device or series of devices capable of alerting law enforcement, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.

"Vertically integrated cannabis establishment" means a person that is authorized to act as any of the following:

1. A cannabis courier;

2. A cannabis manufacturer;
3. A cannabis producer; and
4. A cannabis retailer.

“Waste” or “wastage” means the process of rendering cannabis or cannabis products unusable and unrecognizable, including the destruction of cannabis or cannabis products.

5.06.030 Enforcement of federal law.

The activities described in the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, the rules and regulations authorized by the division, and this Cannabis Regulation Ordinance may be considered a violation of federal law. Persons cultivating, manufacturing, collecting samples of, testing, selling, purchasing or otherwise receiving cannabis or cannabis products may be subject to federal prosecution and penalties for what may otherwise be considered authorized conduct in the State of New Mexico, and compliance with the rule does not exempt licensees, their employees or customers from possible federal prosecution. The City of Hobbs is not responsible or liable for the actions of licensed cannabis establishments under the Cannabis Regulation Act, the Lynn and Erin Compassionate use Act, or the rules and regulations authorized by the division. It should be expressly understood that 21 U.S.C. § 841(a) likely prohibits law enforcement, including any jail staff, from returning any controlled substance back to an alleged offender once the same is placed in the possession of law enforcement, including any jail staff, for any reason.

5.06.040 Use or possession – restrictions.

- A. It shall be a violation of the Cannabis Regulation Ordinance to possess or intentionally distribute any amount of a cannabis product on the premises of a school or daycare center unless the person is a qualified patient, a primary caregiver or a reciprocal participant; provided that this section shall not apply to a person who possesses a cannabis product for authorized purposes on the premises of a licensed cannabis training and education program. A person who violates this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of NMSA 1978, Section 31-19-1.
- B. It shall be a violation of the Cannabis Regulation Ordinance to consume a cannabis product in any public place, except in a licensed cannabis consumption area. A person who violates this subsection shall be subject to a penalty assessment of fifty dollars (\$50.00) pursuant to NMSA 1978, Section 31-19A-1.

5.06.050 Cannabis establishments and licensees – restrictions.

- A. To protect the health, safety and welfare of the community, cannabis establishments shall not be permitted within 300 feet of all school property, all church property, and all military installations.

- B. To protect the health, safety and welfare of the community, cannabis consumption areas shall not be permitted within 300 feet of all school property and all daycare center property.
- C. Cannabis establishments shall be allowed to operate daily only between the hours of 7:00 a.m. and 12:00 a.m. MDT.
- D. Cannabis establishments shall prohibit the consumption of cannabis or cannabis products on or within the licensed premises unless a cannabis consumption area has been approved by the division.
- E. Cannabis establishments shall not engage in the sale of alcoholic beverages.
- F. Cannabis establishments shall not begin licensed cannabis activity in Hobbs, New Mexico, under a provisional license.
- G. Cannabis establishments shall not conduct cannabis establishment operations outside of the licensed premises boundaries as approved by the division.
- H. Cannabis establishments shall display a current valid division-issued license in a conspicuous place on the licensed premises and said license must be made available upon request by relevant City of Hobbs personnel. If the licensed premises is open to the public, the cannabis establishment shall display the current valid division-issued license in an area within plain sight of the public.
- I. Cannabis establishments and licensees shall comply with all adopted City of Hobbs ordinances including, but not limited to, ordinances governing food and product safety, environmental impacts, natural resource protection, construction and building codes, operation of cannabis establishments, building and fire codes, water use and water quality, water supply and restrictions, hazardous materials, waste including solid waste, and business and professional licensing.
- J. Licensed premises may contain multiple licensees in a single licensed premises, provided that each licensee is individually licensed by the division.
- K. Licensees shall notify law enforcement of any attempted theft, theft, assault of employees or patrons, robbery or attempted robbery, break-in, or security breach that occurs on the licensed premises, no later than 24 hours after the licensee first became aware of the event. Licensee shall submit a request to the City under the Inspection of Public Records Act (NMSA 1978, 14-2-1, et seq.), in order to access any law enforcement records.
- L. Licensees must notify the City Clerk's Office when any one of the following occurs:

1. ownership of the licensed premises changes;
 2. location of the licensed premises change;
 3. the discontinuance of operation at a licensed premises; or
 4. suspension or revocation of the license by the division.
- M. Licensees must provide a physical mailing address and an email address upon application for a business registration with the City Clerk's Office. General correspondence from the City of Hobbs will be sent to the licensee's email address of record. Licensees must inform the City of Hobbs in writing of any change to their physical mailing address and/or email address within 10 days of the change. A Licensee's failure to notify the City of Hobbs of a change in physical or email address does not relieve the licensee from the obligation of responding to a City of Hobbs communication.
- N. Licensees that anticipate permanently ceasing their business operations shall notify the City Clerk's Office no later than 30 days prior to closure. The Cannabis establishment shall post public notice of the anticipated closure at all licensed premises that are accessible to the public at least 14 days prior to the closure. Licensees shall also abide by all rules related to closure of a licensed cannabis establishment as set forth by the division.
- O. Licensees shall abide by all applicable state laws and regulations promulgated thereunder, and any specific additional operating procedures or requirements which may be imposed as a condition of approval of the cannabis business permit.

5.06.060 Cannabis establishments – security and limited-access area.

- A. All phases where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale (POS) areas, and any room or area storing a digital video surveillance system storage device shall take place in a designated limited-access area where cannabis and cannabis products are not visible from a public place without the use of binoculars, aircraft, or other optical aids.
- B. All limited-access areas must be securely locked using commercial- grade, nonresidential door locks that meet applicable building and fire codes. All points of entry and exit to the licensed premises and access points to areas where cannabis and cannabis products are stored must also be securely locked using commercial- grade, nonresidential door locks that meet applicable building and fire codes.
- C. A limited-access area shall only be accessible to a cannabis establishment and its authorized employees, authorized vendors, contractors or other individuals conducting business that requires access to a limited- access area, division staff or authorized

designees, state and local law enforcement authorities acting within their lawful jurisdictions, fire departments and emergency medical services acting in the course of their official capacity.

- D. Any gate or perimeter entry point of a cannabis establishment must have lighting sufficient for observers to see, and cameras to record, any activity within 20 feet of the gate or entry; and a motion detection lighting system may be employed to light required areas in low-light conditions.
- E. All external entrances to indoor facilities at the cannabis establishment must be able to be locked and all perimeter doors and windows or indoor facilities must be in good condition and lockable.
- F. Any cannabis establishment that is an outdoor area or greenhouse shall have adequate security measures to ensure that the outdoor area or greenhouse is not accessible to unauthorized individuals and is secure to prevent and detect diversion, theft, or loss of cannabis, which shall at a minimum include:
 - 1. a perimeter security fence designed to prevent unauthorized entry to any cannabis cultivation areas and signs that shall be a minimum of 12"x 12" and which state: "Do Not Enter- Limited Access Area- Access Limited to Authorized Personnel Only" in lettering no smaller than once inch in height; and
 - 2. a cover that obscures cannabis cultivation areas from being readily viewed from outside of the fenced area.

5.06.070 Cannabis establishments – construction or alteration of buildings.

- A. Licensees shall ensure that all licensed premises are in compliance with the Construction Industries Licensing Act (NMSA 1978, Section 60-13-1, et seq.) and the LPG and CNG Act (NMSA 1978, Section 70-5-1, et seq.) including associated rules, as well as applicable codes, standards, zoning laws, licensing laws, and fire codes. Licensees shall also ensure that each structure obtains a Certificate of Occupancy from the City of Hobbs prior to occupancy and use of the structure.
- B. Licensees shall ensure that all licensed premises are in compliance with Title 15 of the Hobbs Municipal Code titled, "Buildings and Construction." Additionally, Licensees shall ensure compliance with the Commercial Building Code which encompasses the International Building Code, adopted by the City of Hobbs by reference and amended from time to time, and as set forth in Section 15.04.010 of the Hobbs Municipal Code.
- C. Licensee shall comply with all ordinances and regulations adopted by the City of Hobbs related in any way to construction, alterations, demolition, and maintenance of all buildings owned or operated by the licensee in Hobbs, New Mexico, including, but not limited to, Title 16 and Title 18 where applicable.

5.06.080 Application of fire safety laws.

- A. Licensees shall ensure all licensed premises are compliant with Article 52 of the New Mexico Statutes Annotated and any associated rules, including rules governing: posting of address, exit signs, emergency lighting, egress paths, evaluation plan, electrical wiring and lighting, exits and exit access, doors, egress hardware, aisle width, chemical storage, fire extinguishers, fire alarm, sprinkler system and fire suppression system, firewalls, combustible waste and housekeeping, storage, access from the exterior, and weeds, grass, vines or other growth capable of igniting.
- B. Licensees shall ensure compliance with the Chapter 8.32 of the Hobbs Municipal Code titled "Fire Code." Additionally, Licensees shall ensure compliance with the International Fire Code, adopted by the City of Hobbs by reference and amended from time to time, published by the International Fire Code Institute, and as set forth in Section 8.32.010 of the Hobbs Municipal Code.

5.06.090 Transportation of Cannabis

The following apply when disposing of wasted cannabis or cannabis plants or transporting cannabis or cannabis products between licensees or licensed premises.

- A. Transportation of cannabis or cannabis products shall only be conducted by persons holding a cannabis establishment license under the Cannabis Regulation Act or designated employees, or contractors, of a licensee.
- B. Prior to transporting any cannabis or cannabis products to another licensee, the licensee shall have a completed transfer or sales invoice or receipt and a chain of custody form, the licensee shall only transport cannabis or cannabis products listed on the invoice or receipt and chain of custody form, and the invoice or receipt and chain of custody form may not be altered or changed once transport begins.
- C. The driver of the vehicle used to transport cannabis or cannabis products must be prepared to show proper identification, including a licensee employee badge, driver's license, vehicle registration and proof of insurance, and the appropriate shipping manifest and chain of custody form to law enforcement when requested.
- D. A shipping manifest and chain of custody form, on forms approved by the division, shall accompany every transport of cannabis products.

5.06.100 Wastage of Cannabis or Cannabis Products.

- A. Licensees that waste cannabis or cannabis products shall do so by rendering the cannabis or cannabis products unusable and unrecognizable prior to removal from

licensed premises. The wastage of cannabis or cannabis products shall be documented, tracked by batch, and recorded in an electronic track and trace system specified by the division. Wastage of cannabis products shall occur only within the licensee's ordinary business hours. Licensees shall dispose of wasted cannabis or cannabis products and shall not attempt to incorporate wasted cannabis or cannabis plants into any product intended for human consumption.

- B. Wastage of cannabis or cannabis plants shall be accomplished by grinding and incorporating the cannabis into other ground material, such as soil, compost material, or leaf and yard waste, so that the resulting mixture is at least fifty percent non-cannabis material by volume.
- C. Wastage of cannabis or cannabis plants shall constitute "solid waste" as that term is defined in the Hobbs Municipal Code Section 8.16.010. Any disposal of wasted cannabis or cannabis plants shall be conducted in accordance with Chapter 8.16 of the Hobbs Municipal Code unless the division promulgates rules that provide for greater requirements for wasted cannabis or cannabis plants disposal. Licensees shall not discharge any wasted cannabis or cannabis plants into the City of Hobbs' publicly owned treatment works (POTW) at any time.

5.06.110 Cannabis Producers – restrictions.

Pursuant to Chapter 13.04 of the Hobbs Municipal Code, the City of Hobbs operates and maintains the public water distribution system in Hobbs, New Mexico. It has been a matter of public policy that water conservation is of high importance to the City of Hobbs as the geographical location of Hobbs, New Mexico, is situated in an area with no natural surface water. Pursuant to NMSA 1978, Section 26-2C-7(B)(3), the City of Hobbs municipal water supply is not designed to sustain agricultural activity and depletion of the municipal water supply presents a substantial risk to the health, safety and welfare of the residents of Hobbs, New Mexico.

- A. Cannabis producers engaged in cultivation of cannabis plants shall not connect to the City of Hobbs water service at the cannabis establishment wherein the cultivation activity shall occur. Exceptions to this subsection shall include personal use producers (as set forth in NMSA 1978, Section 26-2C-27), cannabis producer microbusinesses (1-200 mature cannabis plants), integrated cannabis microbusinesses (1-200 mature cannabis plants), and vertically integrated cannabis establishments (1-200 mature cannabis plants) engaged in the cultivation of two hundred (200) or fewer cannabis plants. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments shall be required to connect to a 10 inch water line at minimum, to ensure adequate water services to neighboring properties, and submit a satisfactory cultivation plan to the City of Hobbs Utilities Director that

exhibits the producer's steps to limit impact on neighboring properties through use of water reduction and water conservation opportunities, including:

1. drip irrigation or subsurface drip irrigation;
2. water reclamation and reuse systems;
3. measures to limit or prohibit evaporation;
4. renewable energy generation and energy efficiency measures; and
5. measures to limit or prohibit noxious odors.

- B. Upon review of the required cultivation plan, the City of Hobbs Utilities Director may approve or deny a request to connect to the City of Hobbs water service from a Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments. Within ten (10) business days after the request, the City of Hobbs Utilities Director shall state in writing the basis of their decision to approve or deny the request. The City of Hobbs Utilities Director's decision may be appealed to the City of Hobbs Utilities Board. A written appeal must be filed with the City of Hobbs Utilities Director within fifteen (15) days of the City of Hobbs Utility Director's written decision. Failure to timely file a written appeal shall preclude the applicant from further appeal of the Utility Director's decision.
- C. The appeal will be heard by the Utilities Board within thirty (30) days of the written notice of appeal. Notice of the date and time of the appeal hearing shall be mailed to the applicant, via US Postal mail, to the applicant's address of record. The appeal hearing shall be recorded and witnesses in support of and opposed to the approval may testify before the Utilities Board. A decision will be rendered by the Utilities Board via majority vote in an open meeting. Within ten (10) days of the Board's decision, the Utilities Board chair shall render a written decision either upholding or overturning the decision of the Utilities Director. The written decision of the Utilities Board may be appealed to the City Commission. A written appeal must be filed with the City of Hobbs Utilities Board within fifteen (15) days of the Utilities Board's written decision. Failure to timely file a written appeal shall preclude the applicant from further appeal of the Utilities Board's decision.
- D. The appeal of the Utilities Board's decision will be heard by the City Commission within thirty (30) days of the written notice of appeal. Notice of the date and time of the appeal hearing shall be published once in the Hobbs News-Sun and also mailed to the applicant, via US Postal mail, to the applicant's address of record. The appeal hearing shall be recorded and witnesses in support of and opposed to the approval may testify before the City Commission. A decision will be rendered by the City Commission via majority vote in an open meeting. Within ten (10) days of the Commission's decision, the Mayor shall render a written decision either upholding or overturning the decision of the Utilities Board. The written decision of the City Commission shall be final.

- E. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments that connect to the City of Hobbs water service, as set forth herein, shall abide by all requirements as outlined in Chapter 13.04 of the Hobbs Municipal Code. Cannabis producers engaged in the cultivation of cannabis plants shall constitute “commercial consumers” and pay the applicable water and sewer service rates.
- F. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments that connect to the City of Hobbs water service, as set forth herein, shall abide by the City of Hobbs water conservation and water restriction ordinance as outlined in Chapter 13.20 of the Hobbs Municipal Code titled, “Regulations For Water Conservation, Water Restrictions and Water Waste.”
- G. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments that connect to the City of Hobbs water service, as set forth herein, shall submit, and have approved by the Utilities Director, a cultivation plan as contemplated by 16.8.2.27(B) NMAC.
- H. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments that connect to the City of Hobbs water service, as set forth herein, shall submit, and have approved by the Utilities Director, cannabis waste procedures as contemplated by 16.8.2.27(E) NMAC.
- I. It shall be unlawful for any person who is less than twenty-one years of age to intentionally produce cannabis. A person that violates this subsection shall be subject to penalties as outlined in the Cannabis Regulation Act.
- J. It shall be unlawful for any person 21 years of age or older, unless licensed under the Act and permitted as required by this Chapter, to intentionally produce cannabis or any cannabis product in excess of those amounts permitted by the Cannabis Regulation Act. A person that violates this subsection shall be subject to penalties as outlined in the Cannabis Regulation Act.

5.06.120 Packaging and labeling.

- A. Pursuant to NMSA 1978, Section 26-2C-16, before the sale or transport via cannabis courier of a cannabis product, cannabis establishments shall labeled and packaged the cannabis product as provided in Section 17 of the Cannabis Regulation Act.
- B. City of Hobbs logos and symbols are registered marks and are thus protected by state and federal law. Cannabis establishments shall not utilize the City of Hobbs logos or symbols in packaging, labeling, or promoting their cannabis products, goods, or businesses.

5.06.130 State law applicable.

Nothing contained in the City of Hobbs Cannabis Regulation Ordinance is intended in any way to nullify or otherwise render unenforceable any of the provisions outlined in the Cannabis Regulation Act (NMSA 1978, §§ 26-2C-1 through 26-2C-42). Any violation of the Cannabis Regulation Act shall be enforceable through the department and division as well as state and local law enforcement, where applicable. Furthermore, a violation of the Cannabis Regulation Act shall subject the violator to any penalties outlined therein.

5.06.140 Violations of the Cannabis Regulation Ordinance.

- A. Pursuant to the Hobbs Municipal Code Section 1.16.010, the maximum penalty for violation of any municipal ordinance is a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days or both, unless a lesser maximum penalty or a specific penalty is established for a particular offense.
- B. Pursuant to the Hobbs Municipal Code Section 15.04.010, the City of Hobbs Building Official, or their authorized agent shall have enforcement authority to ensure compliance with Title 15 of the Hobbs Municipal Code. The authority contemplated herein includes, but is not limited to, the authority to refuse to issue a Certificate of Occupancy.
- C. Pursuant to Chapter 13.04 of the Hobbs Municipal Code, the City Manager or their designee shall have the authority to assess charges, discontinue services, and place and enforce liens on the property and the tract or parcel of land being serviced.

PASSED, ADOPTED AND APPROVED this 4th day of October, 2021.

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
September 14, 2021
and ending with the issue dated
September 14, 2021.



Publisher

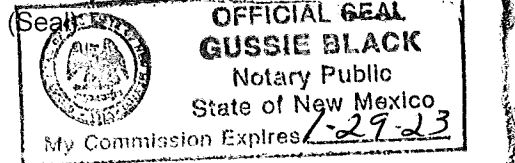
Sworn and subscribed to before me this
14th day of September 2021.



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 September 14, 2021

NOTICE OF ORDINANCE

NOTICE IS HEREBY GIVEN that on the 4th day of October, 2021, 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 adopting Chapter 5.06 of the Hobbs Municipal Code for the possession, cultivation, manufacture and sale of cannabis. A summary of the ordinance is contained in its title as follows:

AN ORDINANCE ADOPTING CHAPTER 5.06 OF THE HOBBS MUNICIPAL CODE FOR THE POSSESSION, CULTIVATION, MANUFACTURE AND SALE OF CANNABIS

Chapter 5.06 POSSESSION, CULTIVATION, MANUFACTURE AND SALE OF CANNABIS

- 5.06.010 Title and purpose.
- 5.06.020 Definitions.
- 5.06.030 Enforcement of federal law.
- 5.06.040 Use or possession – restrictions.
- 5.06.050 Cannabis establishments and licensees – restrictions.
- 5.06.060 Cannabis establishments – security and limited-access area.
- 5.06.070 Cannabis establishments – construction or alteration of buildings.
- 5.06.080 Application of fire safety laws.
- 5.06.090 Transportation of Cannabis
- 5.06.100 Wastage of Cannabis or Cannabis Products.
- 5.06.110 Cannabis Producers – restrictions.
- 5.06.120 Packaging and labeling.
- 5.06.130 State law applicable.
- 5.06.140 Violations of the Cannabis Regulation Ordinance.

A copy of the ordinance is available to interested persons during regular business hours in the Office of the City Clerk, City Hall, 200 East Broadway, Hobbs, New Mexico. The ordinance is also available for viewing online at www.hobbsnm.org.

Due to COVID-19, the meeting is subject to change to a virtual remote meeting if an in-person meeting cannot be held. If any persons desire to submit public comment related to this proposed ordinance, please submit written comments by email to jfletcher@hobbsnm.org by 4:30 p.m. on October 4, 2021.

/s/Jan Fletcher
Jan Fletcher, City Clerk
#36855

67108146

00258361

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



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 4, 2021

SUBJECT: AN ORDINANCE AMENDING THE UNIFORM TRAFFIC ORDINANCE AS SET FORTH IN CHAPTER 10.04 OF THE HOBBS MUNICIPAL CODE

DEPT. OF ORIGIN: Legal Department
DATE SUBMITTED: September 22, 2021
SUBMITTED BY: Rocío A. Ocano, Assistant City Attorney

Summary: The Uniform Traffic Ordinance (“UTO”) was adopted by the City of Hobbs on September 5, 2016, via Ordinance No. 1095. In 2017, 2019, and 2020, the New Mexico Municipal League (“NMML”) proposed amendments to the UTO which corresponded to changes the New Mexico Legislature implemented to the State’s Motor Vehicle Code (NMSA 1978, Chapter 66). The proposed ordinance amendments are authorized by Section 10.04.030 of the Hobbs Municipal Code. The proposed amendments pertain to Articles VI, VII, IX, and X of the UTO. These proposed amendments may be summarized as follows:

- Article VI: 12-6-12.2A—Driving while Intoxicated with a Minor in the Vehicle (new section); 12-6-12.6—Unlawful Use of License; Driving when Privilege to do so has been Suspended or Revoked (amended); 12-6-12.8—Driving while License Administratively Suspended (new section);
- Article VII: Section 12-7-9.2—Operation of Off-Highway Motor Vehicles on Streets or Highways – Prohibited Areas (amended);
- Article IX: Section 12-9-9(A) (amended);
- Article X: Section 12-10-6 (amended).

All amendments are set forth in the attachment and comply with various changes to the Motor Vehicle Code enacted by the New Mexico Legislature. Pursuant to NMSA 1978, § 3-17-3, the proposed ordinance was published in the Hobbs News-Sun on September 14, 2021.

Fiscal Impact:

There is no direct fiscal impact for this ordinance.

Reviewed By:

Finance Department

Attachments:

Ordinance; 2017, 2019, and 2020 UTO Amendments by Section; Affidavit of Publication

Legal Review:

Approved As To Form:

City Attorney

Recommendation:

The Commission should consider adoption of 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. 1134

AN ORDINANCE AMENDING THE UNIFORM TRAFFIC ORDINANCE AS SET FORTH
IN CHAPTER 10.04 OF THE HOBBS MUNICIPAL CODE

WHEREAS, on September 5, 2016, the City of Hobbs adopted the Uniform Traffic Ordinance via Ordinance No. 1095; and

WHEREAS, pursuant to NMSA 1978, § 3-17-6(C) the City of Hobbs may adopt any amendments to the Uniform Traffic Ordinance in the same manner as other ordinances are adopted; and

WHEREAS, in 2017 the New Mexico Municipal League authored and disseminated amendments to Title VII of the Uniform Traffic Ordinance; and

WHEREAS, in 2019 and 2020 the New Mexico Municipal League authored and disseminated amendments to Titles VI, IX, and X of the Uniform Traffic Ordinance; and

WHEREAS, the proposed amendments seek to bring the Uniform Traffic Ordinance in compliance with the New Mexico Motor Vehicle Code following changes to the Motor Vehicle Code enacted by the New Mexico Legislature; and

WHEREAS, pursuant to Section 10.04.030 of the Hobbs Municipal Code, proposed amendments to the Uniform Traffic Ordinance shall only be adopted by ordinance through an affirmative vote of the City Commission; and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the proposed amendments to Article VI be adopted hereby: adopting the addition of Sections 12-6-12.2A—Driving while Intoxicated with a Minor in the Vehicle; adopting the proposed changes to Section 12-6-

12.6—Unlawful use of License; Driving when Privilege to do so has been Suspended or Revoked; and adopting 12-6-12.6A—Driving while License Administratively Suspended;

BE IT FURTHER ORDAINED that the proposed amendments to Article VII be adopted, hereby adopting the proposed changes to Section 12-7-9.2—Operation of Off-Highway Motor Vehicles on Streets or Highways – Prohibited Areas;

BE IT FURTHER ORDAINED that the proposed amendments to Article IX be adopted, hereby adopting the proposed changes to Section 12-9-9—Parking in Designated Disabled Parking Spaces;

BE IT FURTHER ORDAINED that the proposed amendments to Article X be adopted, hereby adopting the proposed changes to Section 12-10-6.1—Mandatory Financial Responsibility;

BE IT FURTHER ORDAINED that the current UTO Sections UTO front cover, 2015 Intro, Article VI, Article VII, Article IX, Article X, and 2015 Index be removed and replaced with the updated UTO Sections front cover, 2018 Intro, Article VI, Article VII, Article IX, Article X, and 2019 Index and that a complete and accurate copy of the Uniform Traffic Ordinance, including the amendments adopted herein, shall be available for inspection during normal business hours in the City Clerk’s Office.

PASSED, ADOPTED AND APPROVED this 4th day of October, 2021.

ATTEST:

SAM D. COBB, Mayor

JAN FLETCHER, City Clerk

2017, 2019, and 2020 Uniform Traffic Ordinance (2010 Compilation)

Amendments by Section

(The following sections of the UTO show the 2017, 2019, and 2020, changes for the individual sections.)

[—] = deleted

 = additions

12-6-12.2A DRIVING WHILE INTOXICATED WITH A MINOR IN THE VEHICLE

- A. Driving while intoxicated with a minor in the vehicle consists of a person committing a violation of 12-6-12.3 when a minor is in the vehicle and when the minor does not suffer great bodily harm or death. Whoever commits driving while intoxicated with a minor in the vehicle is guilty of a misdemeanor.
- B. A charge for a violation of Subsection A of this section shall be in addition to a charge for the violation of 12-6-12.3 and shall be punished as a separate offense.
- C. As used in this section, “minor” means an individual who is younger than thirteen years of age. (66-8-102.5 NMSA 1978)

12-6-12.6 UNLAWFUL USE OF LICENSE; DRIVING WHEN PRIVILEGE TO DO SO HAS BEEN SUSPENDED OR REVOKED.

(6) drive a motor vehicle on any public street or highway at a time when his privilege to do so is suspended and who knows or should have known that ~~[his]~~ the persons license was suspended . ~~[Upon conviction, the person shall]~~ maybe punished ~~[by imprisonment for not less than four days]~~ Pursuant to Subsection B of 12-6-12.7 or for no more than ninety days or participation for an equivalent period of time in a certified alternative sentencing program, [and there may be imposed in addition a fine of not more than five hundred dollars (\$500.00).] When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court. Any municipal ordinance prohibiting driving with a suspended license shall provide penalties no less stringent than provided in this section. (66-5-39 NMSA 1978)

- B. In addition to any other penalties imposed pursuant to the provisions of this section, when a person is convicted pursuant to the provisions of this section, or a municipal ordinance that prohibits driving on a suspended license, the motor vehicle the person was driving shall be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle. (66-5-39.1 NMSA 1978)

12-6-12.6A DRIVING WHILE LICENSE ADMINISTRATIVELY SUSPENDED

- A. The division may issue an administrative suspension of the instruction permit, driver’s license or provisional license of a driver without preliminary hearing upon a showing by its records or other sufficient evidence, including information provided to the state

pursuant to an intergovernmental agreement authorized by Section 66-5-27.1 NMSA 1978, that the license has failed to:

- (1) Fulfill a signed promise to appear or notice to appear in court as evidenced by notice from a state court or tribal court, whenever appearance is required by law or by the court as a consequence of a charge or conviction under the Motor Vehicle Code of pursuant to the laws of the tribe;
 - (2) Pay a penalty assessment within thirty days of the date of issuance by the state or a tribe; or
 - (3) Comply with the terms of a citation issued in a foreign jurisdiction that is a party to the Nonresident Violator Compact and that has notified the department of the failure in accordance with the Nonresident Violator Compact.
- B. If a person whose license was issued by a jurisdiction outside New Mexico that is a party to the Nonresident Violator Compact fails to comply with the terms of a citation issued in New Mexico, the department shall notify that other jurisdiction of the failure and that jurisdiction shall initiate a license suspension action in accordance with the provisions of Article IV of the Nonresident Violator Compact. (66-5-39.2 NMSA 1978)

**12-7-9.2 OPERATION OF OFF-HIGHWAY MOTOR VEHICLES ON
STREETS OR HIGHWAYS -- PROHIBITED AREAS.**

A. No person shall operate an off-highway motor vehicle on any limited access street at any time or any paved street or highway except as provided in Subsection B, C, D or E of this section.

B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the street. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then crossing in the most direct manner, as close to a perpendicular angle as possible.

C. If authorized by ordinance or resolution of a local authority or the State Transportation Commission, a recreational off-highway vehicle or an all-terrain vehicle may be operated on a paved street or highway owned and controlled by the authorizing authority if:

(1) the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act;

(2) the vehicle has brakes, mirrors and mufflers;

(3) the operator has valid driver's licenses or permits as required under the Motor Vehicle Code and off-highway motor vehicle safety permits as required under the Off-Highway Motor Vehicle Act;

(4) the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act; and

(5) the operator of the vehicle is using eye protection that comply with the Off-Highway Motor Vehicle Act; and

(6) if the operator is under eighteen years of age, the operator is wearing a safety helmet that complies with the Off-Highway Motor Vehicle Act.

D. Except for sections of the Motor Vehicle Code that are in conflict with the licensing and equipment requirements of the Off-Highway Motor Vehicle Act, any operator using an off-highway motor vehicle on a paved street or highway shall be subject to the requirements and penalties for operators of moving or parked vehicles under the Motor Vehicle Code.

E. By ordinance or resolution, a local authority or the State Transportation Commission may establish separate speed limits and operating restrictions for off-highway vehicles where they are authorized to operate on paved streets or highways pursuant to Subsection C of this section.

F. A person shall not operate an off-highway motor vehicle on state game commission-owned, -controlled or -administered land except as specifically allowed pursuant to Chapter 17, Article 6 NMSA 1978.

G. A person shall not operate an off-highway motor vehicle on land owned, controlled or administered by the state parks division of the Energy, Minerals and Natural Resources Department, pursuant to Chapter 16, Article 2 NMSA 1978, except in areas designated by and permitted by rules adopted by the secretary of Energy, Minerals and Natural Resources.

H. Unless authorized, a person shall not:

- (1) remove, deface or destroy any official sign installed by a state, federal, local or private land management agency; or
- (2) install any off-highway motor vehicle-related sign. (66-3-1011 NMSA)

12-9-9 **PARKING IN DESIGNATED DISABLED PARKING SPACES.**
Amended July, 2010

A. It is unlawful for any person to park a motor vehicle not carrying registration plates or a placard indicating disability in accordance with Section 66-3-16 NMSA 1978 in a designated accessible parking space for persons with significant mobility limitation or in such a manner as to block access to any part of a curb cut a designated accessible parking space for persons with significant mobility limitations. Any person who violates this section shall be subject to a fine of not less than two hundred fifty dollars (\$250) or more than five hundred dollars (\$500). Failure to properly display a parking placard or special registration plate issued pursuant to Section 66-3-16

NMSA 1978 is not a defense against a charge of violation of Subsection A of this section.
(66-7-352.5 NMSA 1978)

12-10-6 **MANDATORY FINANCIAL RESPONSIBILITY**

D. When financial responsibility is satisfied through coverage under a motor vehicle insurance policy, the owner's or operator's carrying of evidence in print or accessible through a portable electronic device is acceptable. An owner or operator of a vehicle who provides evidence of financial responsibility through a portable electronic device.

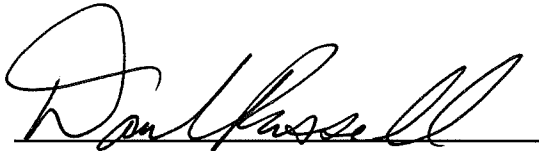
1. assumes all liability for any resulting damage to the portable electronic evidence: and
2. is presumed not to consent to provide access to a law enforcement officer to any other information stored in the portable electronic device. (66-5-229 NMSA 1978)

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
September 14, 2021
and ending with the issue dated
September 14, 2021.



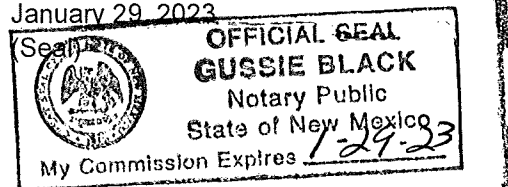
Publisher

Sworn and subscribed to before me this
14th day of September 2021.



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
September 14, 2021

NOTICE OF ORDINANCE

NOTICE IS HEREBY GIVEN that on the 4th day of October, 2021, 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 the Uniform Traffic Ordinance as set forth in Chapter 10.04. A summary of the ordinance is contained in its title as follows:

AN ORDINANCE AMENDING THE UNIFORM TRAFFIC ORDINANCE AS SET FORTH IN CHAPTER 10.04 OF THE HOBBS MUNICIPAL CODE

WHEREAS, on September 5, 2016, the City of Hobbs adopted the Uniform Traffic Ordinance via Ordinance No. 1095; and
WHEREAS, pursuant to NMSA 1978, § 3-17-6(C) the City of Hobbs may adopt any amendments to the Uniform Traffic Ordinance in the same manner as other ordinances are adopted; and

WHEREAS, in 2017 the New Mexico Municipal League authored and disseminated amendments to Title VII of the Uniform Traffic Ordinance; and
WHEREAS, in 2019 and 2020 the New Mexico Municipal League authored and disseminated amendments to Titles VI, IX, and X of the Uniform Traffic Ordinance; and

WHEREAS, the proposed amendments seek to bring the Uniform Traffic Ordinance in compliance with the New Mexico Motor Vehicle Code following changes to the Motor Vehicle Code enacted by the New Mexico Legislature; and

WHEREAS, pursuant to Section 10.04.030 of the Hobbs Municipal Code, proposed amendments to the Uniform Traffic Ordinance shall only be adopted by ordinance through an affirmative vote of the City Commission; and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the proposed amendments to Article VI be adopted hereby: adopting the addition of Sections 12-6-12.2A—Driving while Intoxicated with a Minor in the Vehicle; adopting the proposed changes to Section 12-6-12.6—Unlawful use of License; Driving when Privilege to do so has been Suspended or Revoked; and adopting 12-6-12.6A—Driving while License Administratively Suspended;

BE IT FURTHER ORDAINED that the proposed amendments to Article VII be adopted, hereby adopting the proposed changes to Section 12-7-9.2—Operation of Off-Highway Motor Vehicles on Streets or Highways – Prohibited Areas;

BE IT FURTHER ORDAINED that the proposed amendments to Article IX be adopted, hereby adopting the proposed changes to Section 12-9-9—Parking in Designated Disabled Parking Spaces;

BE IT FURTHER ORDAINED that the proposed amendments to Article X be adopted, hereby adopting the proposed changes to Section 12-10-6.1—Mandatory Financial Responsibility;

BE IT FURTHER ORDAINED that the current UTO Sections UTO front cover, 2015 Intro, Article VI, Article VII, Article IX, Article X, and 2015 Index be removed and replaced with the updated UTO Sections front cover, 2018 Intro, Article VI, Article VII, Article IX, Article X, and 2019 Index and that a complete and accurate copy of the Uniform Traffic Ordinance, including the amendments adopted herein, shall be available for inspection during normal business hours in the City Clerk's Office.

A copy of the ordinance is available to interested persons during regular business hours in the Office of the City Clerk, City Hall, 200 East Broadway, Hobbs, New Mexico. The ordinance is also available for viewing online at www.hobbsnm.org.

Due to COVID-19, the meeting is subject to change to a virtual remote meeting if an in-person meeting cannot be held. If any persons desire to submit public comment related to this proposed ordinance, please submit written comments by email to jfletcher@hobbsnm.org by 4:30 p.m. on October 4, 2021.

/s/Jan Fletcher
Jan Fletcher, City Clerk
#36857

67108146

00258372

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



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 4, 2021

SUBJECT: AN ORDINANCE AMENDING CHAPTER 9.28 OF THE HOBBS MUNICIPAL CODE RELATED TO DRUGS AND DRUG PARAPHERNALIA

DEPT. OF ORIGIN: Legal Department
DATE SUBMITTED: September 27, 2021
SUBMITTED BY: Efren A. Cortez, City Attorney

Summary: The proposed Ordinance amends Chapter 9.28 of the Hobbs Municipal Code which is titled "Drugs and Drug Paraphernalia." Specifically, the amendments bring Chapter 9.28 into compliance with the statutory changes enacted by the New Mexico Legislature related to "paraphernalia" (S.B. 323)(2019)(also H.B. 2)(2021) and the decriminalization of marijuana (H.B. 2)(2021). The proposed Ordinance:

- Changes Section 9.28.010 to a "definition" section only;
- Strikes references to "marijuana" in the definition section (9.28.010);
- Amends the factors to determine "paraphernalia" to comply with state statute;
- Adds a Section 9.28.015 which addresses possession of paraphernalia to comply with state statute;
- Repeals Section 9.28.020 which in its current state criminalizes possession of one (1) ounce or less of marijuana; and
- Leaves unchanged all other sections of Chapter 9.28 outside of the three (3) sections referenced.

Pursuant to NMSA 1978, § 3-17-3, this proposed ordinance was published in the Hobbs News-Sun on September 14, 2021. Pursuant to NMSA 1978, § 3-17-5(B), if adopted, this ordinance will become effective five (5) days after it has been published.

Fiscal Impact:

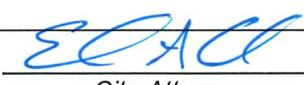
Reviewed By: 
Finance Department

There is no direct fiscal impact for this proposed Ordinance.

Attachments:

Proposed Ordinance; Proof of Publication

Legal Review:

Approved As To Form: 
City Attorney

Recommendation:

The Commission should consider adoption of the proposed ordinance.

Approved For Submittal By:


Department Director


City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

Resolution No. _____
Ordinance No. _____
Approved _____
Other _____

Continued To: _____
Referred To: _____
Denied _____
File No. _____

CITY OF HOBBS

ORDINANCE NO. 1135

AN ORDINANCE AMENDING CHAPTER 9.28 OF THE HOBBS MUNICIPAL CODE
RELATED TO DRUGS AND DRUG PARAPHERNALIA

WHEREAS, during the First Regular Session of the 54th Legislature (2019), the New Mexico Legislature adopted Senate Bill (S.B.) 323, which amended NMSA 1978, § 30-31-25.1, to remove and/or change the criminalization of “paraphernalia” under New Mexico’s Controlled Substances Act (NMSA 1978, § 30-31-1 through 30-31-41); and

WHEREAS, during the First Special Session of the 55th Legislature (2021), the New Mexico Legislature adopted House Bill (H.B.) 2, which amended NMSA 1978, § 30-31-23, to remove the criminalization of “marijuana” under New Mexico’s Controlled Substances Act (NMSA 1978, § 30-31-1 through 30-31-41) and also amended the definition of “paraphernalia” under NMSA 1978, § 30-31-2; and

WHEREAS, the City of Hobbs seeks to amend Sections 9.28.010, 9.28.020, and add a Section 9.28.015 to Chapter 9.28 of the Hobbs Municipal Code which in its current state addresses both “paraphernalia” and “marijuana” in a manner that is contrary to S.B. 323 (2019) and H.B. 2 (2021); and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that Chapter 9.28, is hereby amended as more specifically described as follows:

Chapter 9.28 DRUGS AND DRUG PARAPHERNALIA

9.28.010 ~~Paraphernalia—Use, possession, delivery and advertisement~~ Definitions.

A. As used in this section, the following terms shall have the meanings respectively ascribed to them by this subsection:

"Controlled substance" means a drug, substance or immediate precursor listed in Schedules I through V of the State Controlled Substances Act or regulations adopted thereto (Sections 30-31-6 to 30-31-10 NMSA 1978). A copy of the Controlled Substances Act will be kept on file in the office of the City Clerk for public inspection or copying upon payment of a reasonable fee.

"Deliver" means the actual, constructive or attempted transfer from one (1) person to another of paraphernalia as defined herein.

~~"Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. Such term does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.~~

"Paraphernalia" means, except as to use in accordance with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens. It includes, but is not limited to:

1. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens or from which a controlled substance, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens can be derived;
2. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
3. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
4. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
5. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;

7. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, ~~marijuana~~, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
9. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
10. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
11. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens into the human body; and
12. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing ~~marijuana~~, cocaine, ~~hashish or hashish oil~~, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens into the human body, such as:
 - a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - b. Water pipes;
 - c. Carburetion tubes and devices;
 - d. Smoking and carburetion masks;
 - ~~e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;~~
 - ~~fe.~~ Miniature cocaine spoons and cocaine vials;
 - ~~gf.~~ Chamber pipes;
 - ~~hg.~~ Carburetor pipes;
 - ~~ih.~~ Electric pipes;
 - ~~ji.~~ Air-driven pipes;
 - ~~kj.~~ Chilams;
 - ~~lk.~~ Bongs; and
 - ~~ml.~~ Ice pipes or chillers.

In determining whether an object is paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;
- ~~2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any State or Federal law relating to any controlled substance;~~
- ~~3.~~ The proximity of the object, in time and space, to a direct violation of laws relating to controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;

43. The proximity of the object to controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
54. The existence of any residue of controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens on the object;
- ~~6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of laws relating to controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use or designed for use as paraphernalia;~~
75. Instructions, oral or written, provided with the object concerning its use;
86. Descriptive materials accompanying the object which explain or depict its use;
- ~~9. National and local advertising concerning its use;~~
107. The manner in which the object is displayed for sale; and
- ~~11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;~~
- ~~12. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;~~
- ~~13. The existence and scope of legitimate uses for the object in the community; and~~
148. Expert testimony concerning its use.

"Paraphernalia" shall not include hypodermic syringes or needles in the possession of a person who is required to give himself or herself injections of medicine prescribed by a physician while the person is under the care of such physician, or in the possession of a licensed physician, dentist, veterinarian, nurse, dealer in surgical and medical instruments and supplies, pharmacist or employee of a hospital, sanitarium or institution where such items are used for medical purposes by licensed medical professionals, or in the possession of an owner of livestock to be used for administering medical attention to such livestock.

"*Salvia divinorum*" means an herb belonging to the Lamiaceae family, genus *Salvia*, species *divinorum*, all parts of the plant presently classified as *Salvia divinorum* or *Salvinorum A*, whether growing or not, the seeds of the plant, an extract from a part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of that plant, its seeds or extracts.

"Synthetic cannabinoids" means any substance, presented under a variety of street names, whether described as tobacco, herbs, incense, spice or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked, which contains any one (1) or more of the following chemicals:

1. 1-[2-(4-(morpholinyl) ethyl)-3-(1-naphthoyl) indole, commonly known as JWH-200.
2. 1-butyl-3-(1-naphthoyl) indole; commonly known as JWH-073.
3. 1-hexyl-3-(1-naphthoyl) indole, commonly known as JWH-019.
4. 1-pentyl-3-(1-naphthoyl) indole, commonly known as JWH-018 and AM-678.
5. 1-pentyl-3-(2-methoxyphenylacetyl) indole, commonly known as JWH-250.
6. cannabicyclohexanol (CP 47, 497 and homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47, 497); and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
7. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol), commonly known as HU-210;

8. dexanabinol, (6aS, 10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
9. 1-pentyl-3-(4-chloro naphthoyl)indole, commonly known as JWH-398;
10. (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone, commonly known as JWH-015;
11. 5-(1,1-dimethylheptyl)-2-(3-hydroxy cyclohexyl)-phenol;
12. 1-(5-fluoropentyl)-3-(1-naphthoyl)indole, commonly known as AM-2201;
13. 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole, commonly known as AM-694;
14. 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole, commonly known as RCS-8, SR-18, BTM-8;
15. 1-(N-methylpiperdin-2-yl)methyl-2-methyl-3-(1-naphthoyl)-6-nitroindole, commonly known as AM-1221;
16. 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole, commonly known as JWH-081;
17. 1-pentyl-3-(2-chlorophenylacetyl)indole, commonly known as JWH-203;
18. 1-pentyl-3-[(4-methoxy)-benzoyl]indole, commonly known as RCS-4, SR-19, BTM-4, Eric-4, E-4, OBT-199;
19. 1-pentyl-3-(4-methyl-1-naphthoyl)indole, commonly known as JWH-122;
20. 2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo-1,4-benzooxazin-6-yl)-1-naphthalenylmethanone, commonly known as WIN-55, 212-2;
21. 3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran, commonly known as JWH-133;
22. 4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone and 1-pentyl-3-(4-ethylnaphthoyl)indole, commonly known as JWH-210;
23. 4-methoxyphenyl-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl]methanone, commonly known as Pravadoline, WIN-49,098;
24. 5-hydroxy-2-(3-hydroxypropyl)cyclohexyl-5-(2-methyloctan-2-yl)phenol, commonly known as CP-55,940;
25. (hydroxymethyl)-4-[2-hydroxy-4-(2-methyloctan-2-yl)phenyl]-1,2,3,4,4a,5,6,7,8,8a-decahydronaphthalen-2-ol, commonly known as CP-55,244);
26. ((1-5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone), commonly known as XLR11;
27. ((1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)-methanone), commonly known as UR-144;
28. [3-(3-carbamoylphenyl)phenyl] N-cyclohexylcarbamate, commonly known as URB 597, KDS-4103;
29. 6-methyl-2-[(4-methylphenyl)amino]-4H-3,1-benzoxazin-4-one, commonly known as URB 754;
30. 1-[(N-methylpiperidin-2-yl)methyl]-3-(2-iodobenzoyl)indole, commonly known as AM-2233;
31. (RS)-1-(4-Fluorophenyl)propan-2-amine, commonly known as 4-fluoroamphetamine;
32. 1-pentyl-8-quinolinyl ester-1H-indole-3-carboxylic acid, commonly known as PB-22;
33. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide, commonly known as 5F-ADBICA;
34. N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, commonly known as 5F-AKB48;

35. 1-(5-fluoropentyl)-8-quinolinyl ester-1H-indole-3-carboxylic acid, commonly known as 5F-PB-22;
36. N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide, commonly known as ADB-FUBINACA;
37. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-carboxamide, commonly known as ADBICA;
38. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, commonly known as ADB-PINACA;
39. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, commonly known as 5F-ADB-PINACA;
40. (1s,3s)-adamantan-1-yl(1-pentyl-1H-indol-3-yl)methanone, commonly known as JWH-018 adamantyl;
41. naphthalen-1-yl(1-pentyl-1H-benzo[d]imidazol-2-yl)methanone, commonly known as JWH-018 benzimidazole;
42. 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone, commonly known as JWH-018 indazole;
43. 1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indole-3-carboxamide, commonly known as JWH-018 adamantyl carboxamide;
44. 1-(5-fluoropentyl)-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indole-3-carboxamide, commonly known as STS-135.

"Synthetic hallucinogens" means any substance, presented under a variety of street names, regardless of whether the substance is marketed for the purpose of human consumption, which contains any one (1) or more of the following chemicals:

1. 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, commonly known as 25I-NBOMe.

"Synthetic stimulants" means any substance, presented under a variety of street names, whether described as bath salts, plant food, room odorizer, or any blend thereof, regardless of whether the substance is marketed for the purpose of human consumption, which contains any one (1) or more of the following chemicals:

1. 3,4-methylenedioxymethcathinone, commonly known as methylone;
2. 3,4-methylenedioxyprovalerone, commonly known as MDPV;
3. 4-methylmethcathinone, commonly known as mephedrone;
4. 4-methoxymethcathinone;
5. 3-fluoromethcathinone;
6. 4-fluoromethcathinone;
7. 2-ethylamino-1-phenyl-propan-1-one;
8. 3',4'-methylenedioxy-alpha-pyrrolidinobutiophenone;
9. 3',4'-methylenedioxy-alpha-pyrrolidinopropiophenone;
10. 3,4-methylenedioxyethcathinone;
11. 4-ethyl-methcathinone;
12. 4'-methyl- α -pyrrolidinobutiophenone;
13. 4'-methoxy-alpha-pyrrolidinopropiophenone;
14. 4'-methyl- α -pyrrolidinopropiophenone;

15. 4-methyl-ethylcathinone;
16. 5,6-methylenedioxy-2-aminoindane;
17. alpha-methylamino-butyrophenone;
18. alpha-pyrrolidinobutiophenone;
19. alpha-pyrrolidinopropiophenone;
20. alpha-pyrrolidinovalerophenone;
21. beta-Keto-ethylbenzodioxolylbutanamine;
22. beta-Keto-ethylbenzodioxolylpentanamine;
23. beta-keto-N-methyl-3,4-benzodioxolylbutanamine;
24. naphthylpyrovalerone; and
25. N,N-dimethylcathinone.

9.28.015 Possession, delivery or manufacture of drug paraphernalia prohibited; exceptions.

- ~~BA.~~ It is unlawful for any person to use, or to possess with intent to use, paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance. The provisions of this subsection do not apply to a person who is in possession of hypodermic syringes or needles at the time the person is directly and immediately engaged in a harm reduction program, as provided in the State of New Mexico Harm Reduction Act.
- ~~CB.~~ It is unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance. The provisions of this subsection do not apply to:
1. department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act; or
 2. the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the State of New Mexico Pharmacy Act.
- ~~D.~~ It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as paraphernalia.
- ~~EC.~~ Any person found guilty of violating this section shall be punished by a fine of up to five hundred dollars (\$500.00) or a jail sentence of not more than ninety (90) days, or both such fine and imprisonment. A person who violates the provisions of Subsection A of this section shall be issued a penalty assessment and is subject to a fine of fifty dollars (\$50.00). A person who violates the provisions of Subsection B of this section is guilty of a misdemeanor. Pursuant to Chapter 31 NMSA 1978, payment of a fine pursuant to a penalty assessment citation as contemplated in this section shall not be considered a criminal conviction.
- ~~FD.~~ Paraphernalia, as defined herein, shall be subject to summary forfeiture and shall be destroyed as provided by law in the same manner as controlled substances.

(Prior code § 19-58.1)

(Ord. No. 1042, 4-4-2011; Ord. No. 1059, 2-4-2013 ; Ord. No. 1066, 5-6-2013 ; Ord. No. 1076 , 7-7-2014)

~~9.28.020 Possessing one ounce or less of marijuana.~~

- ~~A. It is unlawful for any person intentionally to possess one (1) ounce or less of marijuana, as defined in Subsection 9.28.010(A).~~
- ~~B. Any person who violates this section shall be punished by a fine of not less than fifty dollars (50.00) or more than one hundred dollars (\$100.00) and by imprisonment for not more than fifteen (15) days, or both, for the first offense.~~
- ~~C. Any person who violates this section shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00), and by imprisonment for not more than ninety (90) days, or both, for the second or subsequent offenses.~~

~~{Ord. 869 § 3 (part), 2001; Ord. 849, 1998; prior code § 19-58.3~~

~~{Ord. No. 1042, 4-4-2011; Ord. No. 1059, 2-4-2013 ; Ord. No. 1066, 5-6-2013 }~~

PASSED, ADOPTED AND APPROVED this 4th day of October, 2021.

SAM D. COBB, Mayor

ATTEST:

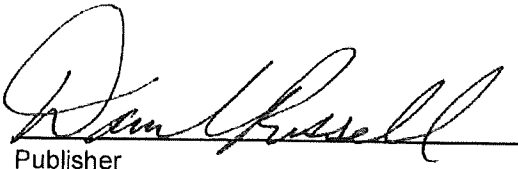
JAN FLETCHER, City Clerk

Affidavit of Publication

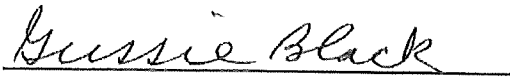
STATE OF NEW MEXICO
COUNTY OF LEA

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).

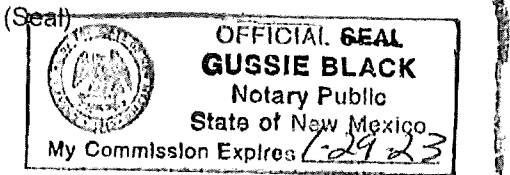
Beginning with the issue dated
September 14, 2021
and ending with the issue dated
September 14, 2021.


Publisher

Sworn and subscribed to before me this
14th day of September 2021.


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 September 14, 2021

NOTICE OF ORDINANCE

NOTICE IS HEREBY GIVEN that on the 4th day of October, 2021, 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 9.28 the Hobbs Municipal Code related to drugs and drug paraphernalia. A summary of the ordinance is contained in its title as follows:

AN ORDINANCE AMENDING CHAPTER 9.28 OF THE HOBBS MUNICIPAL CODE RELATED TO DRUGS AND DRUG PARAPHERNALIA

Chapter 9.28 DRUGS AND DRUG PARAPHERNALIA

~~9.28.010-Paraphernalia—Use, possession, delivery and advertisement Definitions.~~
~~9.28.015 Possession, delivery or manufacture of drug paraphernalia prohibited; exceptions.~~
~~9.28.020 Possessing one ounce or less of marijuana.~~

A copy of the ordinance is available to interested persons during regular business hours in the Office of the City Clerk, City Hall, 200 East Broadway, Hobbs, New Mexico. The ordinance is also available for viewing online at www.hobbsnm.org.

Due to COVID-19, the meeting is subject to change to a virtual remote meeting if an in-person meeting cannot be held. If any persons desire to submit public comment related to this proposed ordinance, please submit written comments by email to fletcher@hobbsnm.org by 4:30 p.m. on October 4, 2021.

/s/Jan Fletcher
Jan Fletcher, City Clerk

#36856

67108146

00258371

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



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 4, 2021

SUBJECT: Professional Service Agreement with Lea County Humane Society

DEPT. OF ORIGIN: **Hobbs Police Department**
DATE SUBMITTED: **9/16/2021**
SUBMITTED BY: **Chief John Ortolano**

Summary: **In 2009 a partnership between Lea County Humane Society and the City of Hobbs and a shared commitment to become a no kill facility. That commitment has been realized early thanks to the successful partnership. The LCHS partnership provides multiple adoption events, shot clinics, and spay and neuter certificates to Lea County residents. The partnership also includes the rescue transport that rescues thousands of animals annually by transporting them to places for adoption nationally and internationally.**

The professional services agreement exist to establish the relationship of the City of Hobbs and the Lea County Humane Society and designate the duties of each party

Fiscal Impact: **N/A**

Reviewed By: 
Finance Department

There will be minimal fiscal impact regarding this professional service agreement.

Attachments:

Professional Services Agreement Between the City of Hobbs and Lea County Humane Society, INC

Legal Review:

Approved As To Form: 
City Attorney

This agreement was reviewed by the City Attorney

Recommendation:

Motion authorizing the Mayor to approve the Professional Services Agreement Between the City of Hobbs and Lea County Humane Society, INC

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. _____

**A PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF HOBBS AND
LEA COUNTY HUMANE SOCIETY, INC.**

WHEREAS, NMSA 1978 Section 3-171 (1993) 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 of Hobbs recognizes that through cooperation with the Lea County Humane Society we will more effectively address the high number of unwanted and nuisance dogs and cats within the City of Hobbs; and

NOW, THEREFORE, the City of Hobbs (hereinafter referred to as "City") and Lea County Humane Society, Inc. (hereinafter referred to as "LCHS"), hereby do agree as follows:

1. PARTNERSHIP

City and LCHS agree to partner in order to accomplish the following goals:

- 1.1 Adopt dogs and cats to properly screened and approved adopters based on adoption policies as set forth by City.
- 1.2 Reduce the numbers and consequently the expense of euthanasia of dogs and cats by objectives set forth by the City.

2. FACILITY

- 2.1 City may permit LCHS use of the educational/public meeting room, to include usage during evenings and weekends when necessary and convenient for LCHS to perform its duties under this Agreement. Scheduling shall occur by and through the HAAC Manager who has sole authority as to scheduling.
- 2.2 LCHS volunteers will abide by Facility policy, rules and regulations.
- 2.3 City retains the right to bar any LCHS volunteers from the facility who fails to follow City policies and procedure. The determination shall be at the sole discretion of the City Manager or his designee.
- 2.4 LCHS may conduct up to four spay/neuter clinics per year. LCHS shall bear all costs, including but not limited to; reimbursement of Veterinarian services, reimbursement of drugs used in surgical procedures (pre-surgical, surgical and post-surgical). All HAAC guidelines shall be adhered to during all surgical procedures. Clinics shall be scheduled through City Manager or his designee.

3. ADOPTIONS/RESCUES

- 3.1 LCHS may develop, advertise, and conduct In conformity with Facility policy as set forth by the City three (3) adoption events throughout Lea County each year. LCHS may bear all costs associated with these events.
- 3.2 LCHS may assist HAAC staff regarding adoption statistics and events.
- 3.3 LCHS shall regularly and consistently promote adoptions and responsible pet ownership through advertising, public events and educational programs.

4. LCHS RESPONSIBILTIES

- 4.1 LCHS shall provide up to five (5) spay/neuter certificates per month to Lea County residents whom qualify for the low cost guidelines set forth by the City.

5. ANIMAL HOUSING AND EUTHANASIA

- 5.1 It is the parties' goal to be a no-kill facility.
- 5.2 City shall maintain adoptable animals in the Adoption Building, unless the animal becomes unhealthy or unadoptable.
- 5.3 City shall be responsible for all euthanasia and the determination of which animal(s) are unhealthy or unadoptable.

6. PERSONNEL

- 6.1 LCHS shall assist city staff to develop weekly work schedules for LCHS volunteers at least one week in advance.
- 6.2 LCHS may provide volunteers to assist in the daily care of animals in the- adoption facility, maintain PACFA standing for transports of animals to other communities, and maintain good standing and open relationships with rescue groups through proper channels of communication. All LCHS volunteers shall be subject to supervision by HAAC Manager.
- 6.3 LCHS volunteers are not employees of City. They shall not be entitled to City benefits, Workers' Compensation, or retirement

7. MISCELLANEOUS PROVISIONS

- 7.1 This agreement, shall commence on October 1, 2021, and pursuant to NMSA 1978, §13-1-150(B), shall be for one (1) year, subject to ruminant as described herein.

- 7.2 This agreement may be renewed for (3) one- year extensions with the mutual written consent of the parties. Mutual written consent to renew this Agreement must be executed prior to the expiration of the current one-year term.
- 7.3 LCHS shall maintain a General Liability Insurance policy in the amount of \$1,000,000.00 that will cover its volunteers for any damages or injuries incurred at, or on adjoining properties of, the Hobbs Animal Adoption Center and for any damages or injuries sustained by others from LCHS volunteers' negligence. The City of Hobbs shall be named as an additional insured party. LCHS shall provide to the City a copy of the complete policy evidencing said coverage.
- 7.4 Either party may terminate this agreement upon the other party's substantial breach of any term or condition contained in this document, provided that the breaching party shall be given thirty (30) days from the receipt of written notice of a substantial breach to cure the breach or to begin and proceed, with due diligence, to cure a breach that cannot be cured within thirty (30) days. In the event of a substantial breach, the non-breaching party that, unless the breach is cured within the time limits contained herein¹ the agreement shall terminate without further notice at the end of the cure period. Upon termination of the agreement, LCHS shall surrender the premises to City.
- 7.5 LCHS does not have the right to assign this agreement.
- 7.6 LCHS shall give City prompt and timely notice of any claim made or suit instituted against LCHS which may in any way directly or indirectly, contingently or otherwise result in a claim or judgment against City.
- 7.7 LCHS shall indemnify the city of al actions, negligence resulting from the actions of LCHS employees or volunteers including, but not limited to, negotiated settlements, judgments, attorneys' fees and costs. In the event a matter is litigated the Court shall award reasonable attorney fees to the prevailing party, notwithstanding in-house counsel represents a party.
- 7.8 This agreement shall not be altered or amended except by instrument in writing executed by the parties.
- 7.9 This agreement incorporates all of the conditions, agreements and understandings between the parties concerning the subject matter of this service, and all such conditions, agreements and understandings have been merged into the written agreement. No prior condition, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written agreement.

City of Hobbs, New Mexico:

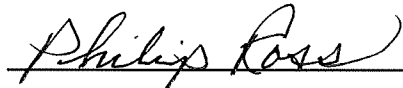
Jan Fletcher, City Clerk – City of Hobbs

Sam Cobb, Mayor – City of Hobbs

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Efren Cortez, City Attorney

Lea County Human Society, INC.

A handwritten signature in cursive script that reads "Philip Ross". The signature is written in black ink and is positioned above a horizontal line.

Philip Ross, President



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 4, 2021

SUBJECT: Resolution to Execute a Grant Agreement with Department of Finance and Administration for Capital Outlay Appropriation Project 21-F2780

DEPT. OF ORIGIN: General Services Department

DATE SUBMITTED: 9-27-21

SUBMITTED BY: Shelia Baker, General Services Director

Summary:

The City of Hobbs has received a Capital Appropriation Project grant agreement for \$500,000 to plan, design, construct, purchase, furnish, equip, install, renovate and improve infrastructure, including security improvements and accessibility compliance, for public buildings.

The General Services Department intends to utilize the funding for security improvements at Municipal Court and the Police Department. The safety improvements are designed to provide ability for the staff to Run. Hide. Fight. Main components of the construction include:

- protection barriers at reception areas
 - consisting of bullet resistant glass above the counter and bullet-resistant wall below the counter, addition of pass through trays);
- replacement of glass with bullet resistant glass
- addition of bullet resistant walls
- creating separate seating area for inmates and improving line-of-sight at Municipal Court

Fiscal Impact:

Reviewed By: [Signature]

Grant Agreement Amount: \$500,000
MUNIS budget 214021-44901-00279 \$500,000

Attachments:

Resolution, Grant Agreement

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: _____
Denied _____
File No. _____

CITY OF HOBBS

RESOLUTION NO. 7113

A RESOLUTION AUTHORIZING THE MAYOR TO
EXECUTE A LEGISLATIVE GRANT AGREEMENT FOR
2021 CAPITAL APPROPRIATION PROJECT NUMBER 21-F2780
FOR SECURITY IMPROVEMENTS AND ACCESSIBILITY COMPLIANCE

WHEREAS, the State of New Mexico 2021 Legislative Capital Appropriation Project has been awarded to the City of Hobbs; and

WHEREAS, this grant appropriation in the amount of **\$500,000.00** is to plan, design, construct, purchase, furnish, equip, install, renovate and improve infrastructure, including security improvements and accessibility compliance, for public buildings in Hobbs in Lea County.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be and hereby is authorized and directed to take all necessary and appropriate action to effectuate this Resolution for a Grant Agreement with the State of New Mexico, Department of Finance and Administration for Project Number 21-F2780, a copy of which is attached hereto and incorporated herein.

PASSED, APPROVED AND ADOPTED this 4th day of October, 2021.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

**STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 89200 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 20 ____, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or abbreviation such as "DFA/LGD", and the **City of Hobbs**, hereinafter called the "Grantee." This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 29, Para. 221, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

21-F2780 \$500,000.00 Appropriation Reversion Date: 30-JUN-25
Laws of 2021, Chapter 138, Section 29, Paragraph 221, Five Hundred Thousand Dollars
(\$500,000.00) to plan, design, construct, purchase, furnish, equip, install, renovate and improve
infrastructure, including security improvements and accessibility compliance, for public buildings
in Hobbs in Lea county.

The Grantee's total reimbursements shall not exceed Five Hundred Thousand Dollars (**\$500,000.00**) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")^[1], if applicable, Zero Dollars (**\$0.00**), which equals Five Hundred Thousand Dollars (**\$500,000.00**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I (A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I (A) is referred to collectively throughout the remainder of this Agreement as the "Project Description". The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse^[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve of the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
 - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
 - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
 - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
 - C. Project funds shall not be used for purposes other than those specified in the Project Description.
 - D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor as their official representative(s) concerning all matters related to this Agreement.

Grantee: City of Hobbs
 Name: Shelia Baker
 Title: General Services Director
 Address: 200 E. Broadway St., Hobbs, NM 88240
 Email: sbaker@hobbsnm.org
 Telephone: 575-397-9236

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement.

Grantee: City of Hobbs
 Name: Toby Spears
 Title: Finance Director
 Address: 200 E. Broadway St., Hobbs, NM 88240
 Email: tspears@hobbsnm.org
 Telephone: 575-397-9235

The Department designates the persons listed below, or their successors, as Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Ms. Dawn Webster
Title: Project Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, New Mexico 87501
Email: Dawn.Webster3@state.nm.us
Telephone: 505-490-1529

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I (A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2025**, the Reversion Date, unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (A).

B. Early Termination Before Reversion Date Due to Non-Appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI (D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI (A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give the Grantee with a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or the liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of the acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum of thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed incurred during the previous fiscal year; or
- (iii) Twenty (20) days from the date of Early Termination; or
- (iv) Twenty (20) days from the reversion date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- (ii) The project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, "Anti-Donation Clause."
- (iv) The Grantee shall not for a period of 10 years, from the date of this agreement convert any property acquired, built, renovated, required, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance written approval, which may include requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of five (5) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **City of Hobbs** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **City of Hobbs'** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **City of Hobbs**, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Hobbs** or the Department.”

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under DFA/LGD Grant Agreement. Should DFA/LGD early terminate the grant agreement, the **City of Hobbs** may early terminate this

contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the **City of Hobbs'** only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V (A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND PROJECT AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this agreement is subject to the SBOF's Bond Project Disbursements

rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.]

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed Agreement as of the date of execution by the Department.

GRANTEE

Entity Name

By: _____
(Type or Print Name)

Its: _____
(Type or Print Title)

Signature of Official with Authority to Bind Grantee

Date

**DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION**

Its: Division Director

Signature

Date

**STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1**

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
 B. Address: _____
 (Complete Mailing, including Suite, if applicable)

 City, State, Zip
 C. Phone No: _____
 D. Grant No: _____
 E. Project Title: _____
 F. Grant Expiration Date: _____

II. Payment Computation

- A. Payment Request No. _____
 B. Grant Amount: _____
 C. AIPP Amount (If Applicable): _____
 D. Funds Requested to Date: _____
 E. Amount Requested this Payment: _____
 F. Reversion Amount (If Applicable): _____
 G. Grant Balance: _____
 H. GF GOB STB (attach wire if first draw)
 I. Final Request for Payment (if Applicable)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. Reporting Certification: I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. Compliance Certification: Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
 or Fiscal Agent (if applicable)

Grantee Representative

 Printed Name

 Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loc No.: _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

 Division Fiscal Officer Date

 Division Project Manager Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2**

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____
Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: _____
Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____ \$ 0.00

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

¹ Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: **October 4, 2021**

SUBJECT: Approval of Professional Services Agreement with Imagetrend to provide Third-Party EMS Billing pursuant to RFP #523-21

DEPT. OF ORIGIN: Fire Department
DATE SUBMITTED: September 27, 2021
SUBMITTED BY: Barry Young, Fire Chief

Summary:

The City of Hobbs solicited proposals to provide electronic third-party billing services for emergency medical services (ambulance billing). The scope of the proposal consisted of, but not limited to: preparing and submitting accurate and complete insurance claims electronically to include, but not limited to, Medicare, Medicaid, and any other applicable carriers including both commercial and private insurances; verification and missing information for follow up; prepare and mail invoices to patients responsible for co-pays and/or deductibles, private pay, and uninsured patients; provide the City of Hobbs with reconciled monthly receivables showing beginning balances, charges, adjustments, collections, and ending balances; and provide training to EMS staff and the Finance Department.

The City of Hobbs awarded RFP #523-21 to Imagetrend on June 7, 2021 and now wishes to enter into a professional services agreement for the Third-Party EMS Billing services.

Fiscal Impact:

Reviewed By: 
Finance Department

The fiscal impact for this service would be 5.85% commission on collections. The City of Hobbs based the RFP on the collection rate of \$2,000,000. The estimated contract would be \$117,000 plus applicable taxes. The 3 year history of collections is as follows:


Fiscal year 2020 – 1,759,595
Fiscal year 2019 – 1,614,079
Fiscal year 2018 – 1,313,395

Any contract awarded would be budgeted in fiscal year 2022 and start on December 1, 2021 for an estimated quantity amount.

Attachments:

1. Evaluation and scoring form
2. Imagetrend Professional Services Agreement

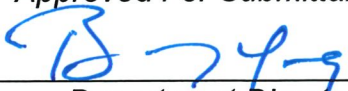
Legal Review:

Approved As To Form: 
City Attorney

Recommendation:

The staff recommends approving the professional services agreement with Imagetrend pursuant to RFP #523-21.

Approved For Submittal By:



Department Director



City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

Resolution No. _____

Continued To: _____

Ordinance No. _____

Referred To: _____

Approved _____

Denied _____

Other _____

File No. _____

RFP No. 523-21 TOTAL SCORE SHEET

ELECTRONIC THIRD-PARTY BILLING SERVICES FOR EMERGENCY MEDICAL SERVICES (AMBULANCE) BILLING	MAX POINTS	IMAGE TREND	QUICK MED CLAIMS	CHANGE HEALTHCARE
Written narrative statement describing proposer's organization data, including size, billable volume, structure of the company and overall EXS/Fire billing experience.	20	17.67	14.67	17
A description of the Proposer's history in providing the required services. A description of the method and plan for providing the service described herein.	20	18.67	14.33	15.33
Listing of the Proposer's management and staff personnel to be used for this project detailing qualifications and current experience relative to the services described herein.	15	13	10	14.33
Detailed description of current technology employed to provide increased revenue and access to client specific financial data.	15	15	9.33	11.67
A written non-binding estimate of the cost to provide these services. (Current City of Hobbs annual run volume and billed revenue is approximately 5,068 runs and \$3,500,000 respectively)	20	15.67	16	19.67
Resident Bidder/Veterans Preference	10	0	0	0
Totals	100	80.01	64.33	77.34

Professional Services Agreement

CONTRACT NUMBER: 00003298.0

BETWEEN

**Hobbs Fire Department
301 E. White Street
Hobbs, NM 88240**

AND

IMAGETREND®

ImageTrend, Inc.
20855 Kensington Blvd.
Lakeville, Minnesota 55044

THIS AGREEMENT is made and entered into on the date last written below, by and between the ImageTrend, Inc., a Minnesota corporation (hereinafter "ImageTrend"), and Hobbs Fire Department (hereinafter "Client"), together "the Parties."

RECITALS

WHEREAS, Client desires to have services performed by ImageTrend; or

WHEREAS, Client desires to purchase Commercial-Off-The-Shelf Software from ImageTrend; or

WHEREAS, Client desires to purchase Custom Software Development from ImageTrend; and

WHEREAS, ImageTrend possesses technical skill, knowledge, and capability in consulting and designing custom and off-the-shelf software solutions and performing technical software services and Client desires such services.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

"Agreement" and **"This Agreement"** means this Professional Claims Services Agreement, the Work Orders issued hereunder, all Attachments and Exhibits attached hereto, or any Amendments made in mutually executed hereto.

"Business Day" means a single 8 hour period occurring on a Monday, Tuesday, Wednesday, Thursday or Friday, 9:00am CST to 5:00pm CST, excluding holidays per §14(b) below. Unless specified in a Service Order, ImageTrend personnel will only perform services during Business Days.

"Business Week" means a 5 day period, beginning Monday at 9:00am CST and ending Friday at 5:00pm CST, excluding holidays per below.

"Confidential information" means the proprietary products and trade secrets, including, but not limited to, computer software, code, technical parameters, price lists, methods of pricing, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed. Information shall be considered Confidential Information if it is identified in writing as confidential or proprietary, or if disclosed verbally or visually in discussion, upon written notice specifying and describing the nature of the orally disclosed Confidential Information at that time, or within fifteen (15) days of such disclosure. Confidential Information is subject to the New Mexico Inspection of Public Records law.

"Commercial Off The Shelf" or "COTS" means pre-designed software products which are made available for sale by ImageTrend to many customers. COTS is mutually exclusive to Custom Software or Custom IP. MOTS means Modified Off The Shelf, and is a derivative work of ImageTrend COTS Software.

"Custom IP" or "Custom Software" means software products, or other Intellectual Property, which is designed for a specific purpose, for a specific customer or CLIENT.

“Deliverable” means an intangible or tangible product, material, or service produced as a result of a Work Order, and each Deliverable is specified in the corresponding Work Order from which it is produced.

“Disclosing Party” means the party disclosing Confidential Information to the other party, see also Receiving Party.

“Effective Date” means the date upon which the last party has signed and executed this Agreement.

“Fixed Fee” means a fixed amount of compensation due in return for a fixed Deliverable.

“Governmental Entity” shall have the same meaning as “State and local government entities” as defined in the General Services Administration Acquisition Manual (GSAM) at 538.7001, as updated.

“Intellectual Property” means any intellectual property or proprietary rights in any jurisdiction, whether owned or held for use under license, whether registered or unregistered, including such rights in and to: (i) trademarks, trade dress, service marks, certification marks, logos, trade names, brand names, corporate names, assumed names and business names (“Trademarks”, which term shall include the items described in clause (viii) below); (ii) patents and any and all divisions, continuations, continuations-in-part, reissues, continuing patent applications, reexaminations or extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention, certificates of registration and like statutory rights; inventions, invention disclosures, discoveries and improvements, whether patentable or not; (iii) copyrights and works of authorship; (iv) trade secrets (including those trade secrets defined in the Uniform Trade Secrets Act and under corresponding federal, state or foreign statutory or common law), business, technical and know-how information, non-public information, and confidential information and rights to limit the use or disclosure thereof by any Person; (v) mask works; (vi) moral rights, author’s rights or rights of publicity; (vii) suits, causes of action and defenses relating to the enforcement of any of the foregoing; (viii) any applications for registration of any of the foregoing, and all renewals or extensions of any of the foregoing, whether now existing or hereafter arising; and (ix) the goodwill associated with each of the foregoing. For the avoidance of doubt, “Intellectual Property Rights” includes any and all of the foregoing related to computer software, data files, Source Code, Object Code, APIs, manuals, documentation, specifications, databases or other materials or information.

“Licensed Information” means any information pertaining to the Software which is owned by IMAGETREND and is licensed to CLIENT. Licensed Information includes such information as input form, user manuals and user documentation, interface format and input/output format, and any other materials pertaining to the Software.

“Local Travel” means travel to a destination in the Twin Cities Metro area, within 30 miles of Lakeville, MN.

“Materials” and “Expenses” means but is not limited to third party software licenses, physical hardware, test devices, or other items, reasonable travel expenses (including but not limited to food, lodging, and transportation), printing, delivery of materials, or any other cost reasonably incurred arising out of this Agreement.

“Professional Claims Services Agreement” means this document excluding Work Orders issued from this document.

“Pre-Existing Materials” means code, documentation, frameworks, development accelerators, tool sets or any other materials owned by ImageTrend and not developed as part of the services performed for Client. It may include, without limitation, Security Framework, Dashboard, ImageTrend Frameworks, Report Writer and any other tools or Intellectual Property made or used by ImageTrend unrelated to this Agreement.

“On-Site Hour” means time an hour worked by ImageTrend personnel on Client premises, or other premises of Client’s choosing that are not ImageTrend’s corporate offices.

“Statement of Work” means the technical document which outlines a mutually agreed upon specification for particular Custom Development projects and associated costs, payment terms and acceptance procedures. This document requires client acceptance and signature prior to beginning work.

“Support” means technical support for the configuration and functioning of the products, including taking and monitoring defect reports, as defined further below in the Service Level Agreement between ImageTrend and Client.

“Software” means ImageTrend software provided to Client by ImageTrend, specifically software developed and/or written by ImageTrend. Software developed by a third-party which is purchased on behalf of Client is considered Third Party Material.

“Receiving Party” means the party receiving Confidential Information from the Disclosing Party.

“The Agreement” means collectively this Professional Claims Services Agreement, its Exhibits, all Work Orders issued from this Professional Claims Services Agreement, and all Exhibits to Work Orders.

“Third Party Material(s)” means software or other materials owned by a party other than Client or ImageTrend.

“Time and Materials Basis” means charges billable to the Client based upon each hour worked, multiplied by the hourly rate for the work, plus the cost of any Materials necessary (including but not limited to, the cost of third party software licenses, travel and accommodation expenses, or otherwise), or Materials beneficial (conditioned upon mutual assent of the parties), billed on a monthly basis in arrears.

“Work Order” means the document which outlines a mutually agreed upon set of services, products, or Deliverables and associated costs, payment terms, and acceptance procedures.

SECTION 2. TERM OF AGREEMENT

The Term of this Agreement shall be 12 months from the Effective Date of this Agreement (“Initial Term”). Upon expiration of a Term, the Term shall automatically renew under the same terms and conditions for additional subsequent 12 month term (“Renewal Term”), unless terminated under the terms of this Agreement or by otherwise giving the other party no less than 180 days of written notice prior to the last day of the then-current Term.

SECTION 3. WORK ORDERS

CREATION OF WORK ORDERS. The parties may, from time to time, work together to detail the specific engagement scope, pricing, acceptance criteria, and terms of services to be performed and Deliverables to be delivered by ImageTrend. ImageTrend will set forth these details as a Work Order. If the Work Order is for the purchase of COTS Software or Services, the Work Order shall also outline the quantity

and SKU of each product or service as applicable. Should a Work Order contain no term regarding a topic, the terms of this Professional Claims Services Agreement shall hold instead.

LIMITATIONS OF WORK ORDERS. Work Orders may include requirements on the Client. Such requirements, when executed as part of a mutual agreed writing, form a material part of this Agreement and of the Work Order where the requirement is presented. Additionally, either party may set forth factual assumptions (“Assumption”) in each Work Order. Notwithstanding anything in this Agreement or the Work Order, a Work Order will be rendered void to the extent that ImageTrend is obligated to perform services which are impossible or impracticable. Further, a Work Order will be rendered voidable to the extent that ImageTrend is obligated to perform services materially different than originally set out in that Work Order due to an inaccurate Assumption. The parties will make commercially reasonable efforts to negotiate an alternative or modified Work Order in light of the inaccurate Assumption.

MODIFICATION OF WORK ORDERS. Any modification to the scope or tasks identified within the Work Order that change the work budget by an estimated 10 hours of work or more shall require a new modified written Work Order or written Change Order. ImageTrend shall not work on the new tasks in the modified Work Order until the Client has provided signed written acceptance of the new Work Order. The parties may waive this requirement on a case-by-case basis in writing. Modifications requiring less than an estimated 10 hours of work may be proposed and accepted verbally, with such modifications requiring less than 10 hours of work billed on a Time and Materials basis.

LEGAL EFFECT. Work Orders issued under this Professional Claims Services Agreement are incorporated by reference into this Professional Claims Services Agreement which collectively is called “the Agreement.” Work Orders do not override the terms of this Professional Claims Services Agreement unless specifically stated that they do so. Work Orders may contain their own Fee/Payment Schedules and Payment Terms; those terms are binding insofar as they concern the services or Deliverables contemplated by the Work Order. For Work Orders without their own fee and payment terms, the payment terms the Professional Claims Processing Fees attachment below control.

SECTION 4. PERFORMANCE OF SERVICES

COMMENCEMENT. ImageTrend shall begin services described in the Work Order subsequent mutual signed execution the Work Order. No services shall begin before mutual signed and written final acceptance of each Work Order.

USE OF KNOW HOW. ImageTrend shall use its know-how, Intellectual Property, talent, skills, and employees to perform the services. Client shall receive no license to any Intellectual Property, and shall instead receive only the benefit of the services rendered hereunder unless otherwise specified in a Work Order.

ACCEPTANCE OF SERVICES AND DELIVERABLES. ImageTrend shall deliver completed Deliverables and services to Client for acceptance. Each Work Order must detail the acceptance criteria for each Deliverable or service contained within that Work Order. If a Deliverable or services acceptance criteria is measurable objectively, it shall be complete upon satisfaction of that objective measurement without regard to either party’s satisfaction with the Deliverable. If 1) a Deliverable’s acceptance criteria is based

on Client's satisfaction with the Deliverable, or 2) no acceptance criteria is detailed, then the following default clause shall apply:

After delivery of the Deliverable or performance of the service, Client shall have no more than 15 days to: 1) accept the deliverable or service, or 2) reject the deliverable or service by providing a written rejection that reasonably sets forth the reason for the rejection and the changes required to gain Client's acceptance, or 3) provide a written request for a 15 additional day extension to review the Deliverable or service; ImageTrend shall not unreasonably withhold approval of such 15 day extension. If Client does not provide an acceptance within the above time frame inclusive of extensions, the Deliverable or service will be deemed accepted. After delivery of the fourth revision of the service or Deliverable, the service or Deliverable shall be deemed accepted by Client.

SECTION 5. FEES, INVOICING, AND PAYMENT TERMS

PROMPT PAYMENT ACTS. IF CLIENT IS A GOVERNMENTAL ENTITY, THE FOLLOWING PARAGRAPH

APPLIES: To the degree any term in this Section, or any payment related term in any Work Order, conflicts with the governing prompt payment act or similar procurement act which unambiguously limits client's ability to agree or comply with any term in this section 5 or in any payment related term in any work order ("The PPA"), the term in the PPA will instead control. For clarity, unless there is an unambiguous conflict between the terms of this Section or in any Work Order, the PPA shall not control and this Agreement shall still control.

FEES. Client shall owe to ImageTrend such fees as set forth in each mutually executed Work Order.

SCHEDULING NON-LOCAL TRAVEL. For air travel Client may, and is strongly advised to, schedule travel no less than 3 weeks in advance of the first on-site date by written request; ImageTrend reserves the right to approve or deny travel requests on a per-request basis. Client may also request travel by writing with 3 weeks or less advance notice; ImageTrend reserves the right to approve or deny such travel requests, and to invoice costs to Client due to scheduling changes ImageTrend must make to accommodate such a request if approved.

CANCELLATION, RESCHEDULE, OR DELAY. Client will provide to ImageTrend (10) ten business days prior written notice of Client's intent to delay, reschedule, or cancel ("Staffing Change") any service in a Work Order which requires an ImageTrend employee to perform work at a specific location or at a specific time (e.g. face-to-face meetings, on-site visits, after hours on-call status). If Client fails to provide such notice, Client shall reimburse ImageTrend for loss caused by the Staffing Change. ImageTrend shall use commercially reasonable efforts to mitigate any losses that would be incurred by a Staffing Change and due to ImageTrend by Client.

INVOICING. Unless otherwise specified in a Work Order, invoices must be paid on Net 30 terms. Any objection to an invoice must be made in writing. Client may request up to an additional 15 days to review Deliverables associated with an invoice, approval to which ImageTrend shall not unreasonably withhold. If Client does not object to an invoice, or request an extension to review Deliverables, within

15 days after receipt of the invoice then the invoice is deemed accepted and any right to object to the invoice is waived. Payment shall be made by check or by ACH transfer to ImageTrend.

REMEDIES FOR NON-PAYMENT. Should Client fail to pay per the terms of this Agreement and this Section 5, ImageTrend may 1) suspend services under all Work Orders until such payment is made in full, and/or 2) charge a late fee at the lesser of 1.5% or the maximum allowed by law, and/or 3) invoice Client for the costs of collection including reasonable attorney's fees.

TRAVEL COSTS. Should Client desire ImageTrend to send personnel to a location of Client's choosing in the continental United States, Client may pay \$1,750 per ImageTrend trainer per trip and a further \$1,400 per trainer per day spent at Client's chosen location. Travel outside of the continental US will be quoted by ImageTrend upon request. Travel may only be scheduled for a maximum of one business week of Monday through Friday per trip; however Client may book consecutive trips. Non-local travel scheduling which runs from one business week into a subsequent business week(s) (e.g. start date on Friday at 8:00am, end date Wednesday at 5:00pm, "Overlapped Weekend") will result in ImageTrend invoicing Client an additional trip for each Overlapped Weekend. ImageTrend staff will work 8 hours each day, except on the first and last day of each trip ImageTrend may reserve up to 2 hours of the Business Day for travel time. ImageTrend further reserves the right to escalate travel prices once per year upon written notice to Client. Such travel price increases will only affect future travel prices and will not change the price or amount due to ImageTrend for previously rendered travel.

TIME AND MATERIALS RATE. Unless otherwise specified in a Work Order, ImageTrend's Time and Materials rate is \$175.00 per hour.

SECTION 6. DATA AND INTELLECTUAL PROPERTY

CLIENT DATA. All Client data provided to ImageTrend remains at all times the property of the Client unless otherwise specified by a Work Order. ImageTrend will not to use or make available any personally identifiable information or patient health information other than for performing the services outlined in a Work Order, and for use in an aggregated manner to monitor, operate, train artificial intelligence, and conduct statistical analyses relevant to the application's proper functioning, maintenance, optimization, or improvement. ImageTrend will not in any way transfer to any third party any Confidential Information of Client.

DE-IDENTIFICATION. ImageTrend may create a de-identified data set of Client's data ("the De-identified Data Set") and ImageTrend may, in ImageTrend's discretion, transform, analyze, distribute and redistribute, create derivative works of, license, make available to 3rd party researchers, or otherwise use the De-identified Data Set except as limited by: 1) this Agreement, 2) applicable law and regulation, e.g. State and Local data privacy law and HIPAA/HITECH, 3) notwithstanding any of the prior, ImageTrend shall create the De-identified Data Set in accordance with the then current HIPAA Safe Harbor Rule at 45 CFR § 164.514(2)(i) by removing the 18 listed data elements, and any additional data element designated as 'Personal Information' by State and Local data breach law (or equivalent laws). ImageTrend shall ensure its methods for creating the De-identified Data Set comport with industry best practices and guidance such as NISTIR 8053 'De-Identification of Personal Information' (available at

<http://dx.doi.org/10.6028/NIST.IR.8053>). ImageTrend shall use reasonable administrative, technical, and physical safeguards to protect and prevent unauthorized disclosure of the De-identified Data Set. ImageTrend shall not attempt to re-identify any de-identified records.

GRANT OF LICENSE TO IMAGETREND'S PRE-EXISTING IP AND OWNERSHIP OF NEW IP. All Intellectual Property Rights connected to the ImageTrend pre-existing materials such as architectural structure, modules, processes, and Know-How that may be used in Deliverables ("Pre-existing IP"), shall remain owned by ImageTrend. ImageTrend agrees to grant to Client a royalty-free, worldwide, transferable, non-exclusive, use license for these architectural structures, modules, and processes that may be used solely in conjunction with the Deliverables and services performed under Work Orders and in accordance with the license selected below at Exhibit A, conditioned upon full payment of the Work Order from which the Deliverable containing Pre-Existing IP originates. This license may not be transferred, and Client may not sublicense, use, reproduce, distribute or prepare derivative works of ImageTrend's Pre-Existing IP except to the extent strictly necessary to fulfill the purpose of a Work Order. New Deliverables utilizing the same Pre-Existing IP may require another license for that new Deliverable, in ImageTrend's discretion. New Custom Intellectual Property authored by the parties in the course of performing a Work Order shall be owned by the party that authored the Intellectual Property and in the case of derivative works, it shall be owned by the party who owns the work from which the derivative is made, or as otherwise set forth in the Work Order. In the case of ImageTrend Software products licensed per Exhibit A below, or "Modified Off The Shelf Software" as defined above, ImageTrend shall own all Intellectual Property related to or arising out of any Work Order. A Work Order may specify who owns the intellectual property embodied in a Deliverable; however, absent such terms in the Work Order, the terms of this Agreement shall control. Any right not hereby granted is reserved.

SECTION 7. CONFIDENTIALITY

CONFIDENTIALITY ACKNOWLEDGEMENT. Each party hereby acknowledges and agrees that the other Party's Data, potential clients or customers, client or customer lists, business plans, pricing structures, software and database designs, and any other information a Party has marked as Confidential, constitute Confidential Information. Each party agrees to treat (and take precautions to ensure that its authorized personnel treat) Confidential Information as confidential in accordance with the confidentiality requirements and conditions set forth below. Orally transmitted information shall not be Confidential Information unless specified as such in a writing transmitted from the Disclosing party to the Receiving party within 15 days of the oral transmission, with such writing providing a reasonable description and scope of the Confidential Information transmitted.

CONFIDENTIALITY OBLIGATIONS. Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the provisions of this §7 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by a Party by means other than the disclosure of the information by the Disclosing Party; (iii) is duly obtained by a Party directly or indirectly from a third party who has independently developed the information and is entitled to disclose the information to the Party, and such disclosure does not directly or indirectly violate the confidentiality obligation of such third party; (iv) becomes

known publicly, without fault on the part of a Party, subsequent to the receipt of the information by Party or (v) is required to be disclosed pursuant to the Inspection of Public Records Act.

SURVIVAL. This §7 shall survive the termination of this Agreement or of any license granted under this Agreement.

SECTION 8. WARRANTIES

NO CONFLICTS OF INTEREST. ImageTrend does not have any express or implied obligation to a third party which in any way conflicts with any of ImageTrend's obligations under this Agreement.

SERVICES. All services and will be provided in a professional and workmanlike manner in accordance with applicable industry standards and will comply with all applicable laws. All Deliverables will substantially conform to the agreed-upon specifications set forth in the applicable Work Order or as otherwise set forth in this Agreement.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT ABOVE, THE SERVICES IMAGETREND PROVIDES TO CLIENT ARE PROVIDED WITHOUT ADDITIONAL WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS, OR STATEMENTS MADE PRIOR TO THIS AGREEMENT. IMAGETREND HEREBY EXPRESSLY DISCLAIM, AND CLIENT HEREBY WAIVES, ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED IN THIS AGREEMENT ARE CLIENT'S SOLE AND EXCLUSIVE REMEDIES.

SECTION 9. LIMITATION OF LIABILITY

EACH PARTY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THAT PARTY IS ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY'S CUMULATIVE LIABILITY ARISING OUT OF OR IN ANY MANNER RELATED TO THIS SHALL BE LIMITED TO THE AMOUNT OF THE FEES DUE UNDER THIS AGREEMENT.

SECTION 10. DISPUTE RESOLUTION

DUTY TO NEGOTIATE IN GOOD FAITH PRIOR TO FORMAL DISPUTES. IF CLIENT IS A GOVERNMENTAL ENTITY, THE FOLLOWING 2 PARAGRAPHS APPLY:

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place, or by teleconference.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

ARBITRATION. If Client is NOT a Governmental Entity the following paragraph applies:

Any dispute between ImageTrend and Client under this Agreement shall be resolved by arbitration by an arbitrator selected under the rules of the American Arbitration Association in the State of the defending party and the arbitration shall be conducted in that same location under the rules of said Association. If an arbitrator cannot be agreed upon by the parties, ImageTrend and Client shall each choose an arbitrator, and those two chosen arbitrators shall choose a third arbitrator, that third arbitrator shall preside over any dispute. ImageTrend and Client shall each be entitled to present evidence and argument to the arbitrator. The arbitrator shall have the right only to interpret and apply the provisions of this Agreement and may not change any of its provisions. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by the arbitrator. The arbitrator shall endeavor to keep costs as low as possible while still allowing for the just and fair disposition of the dispute. The determination of the arbitrator shall be conclusive, final and binding upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The arbitrator shall give written notice to the parties stating his determination, and shall furnish to each party a signed copy of such determination. ImageTrend and Client shall equally share the cost of the arbitrator(s) fees. The arbitrator may award reasonable costs and expenses, including reasonable attorney fees, to the prevailing party.

SECTION 11. NON-EXCLUSIVITY

This Agreement does not establish any exclusivity of service, contract, customer relationship, or otherwise between the parties.

SECTION 12. AMENDMENTS

This Agreement may only be modified by a mutually executed writing including but not limited to Work Orders, signed by a person having authority to sign.

SECTION 13. TERMINATION

Either Party may terminate this Agreement upon giving the other Party thirty days (30) days' prior written notice to the other Party in addition to any other remedy or right contained in this Agreement. This right of termination is additive to other rights of termination identified above in this Agreement and does not preclude the exercise of those other rights.

ImageTrend requires the ability to work down all accounts for a period of 120 days following the contract termination date. After the work down period, ImageTrend will return all Client's data within 60 days of conclusion of work down period.

SECTION 14. INDEMNIFICATION

IMAGETREND INDEMNITY. ImageTrend shall defend and indemnify Client from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses ("Indemnity Claims"), which arise out of any negligent act or omission, or willful misconduct of ImageTrend. Client shall promptly notify ImageTrend for any actual or prospective Indemnity Claim for which indemnification is sought. In the event that any third-party Indemnity Claim is made and Client invokes this clause, ImageTrend shall have the right and option to undertake and control such defense

of such action with counsel of Client's recommendation and ImageTrend's choice with control to settle any such Indemnity Claim with notice of such settlement to client. ImageTrend shall have no obligation to defend or indemnify Client from Indemnity Claims arising out of Client's negligent or intentional wrongful acts or omissions. Because ImageTrend must provide its own insurers with notice of an Indemnity Claim within 60 days of actual knowledge of an Indemnity Claim, Client accordingly must provide ImageTrend written notice no more than 60 days after Client has actual knowledge of an Indemnity Claim else ImageTrend shall have no obligation to indemnify Client.

CLIENT INDEMNITY. IF CLIENT IS A GOVERNMENTAL ENTITY THE FOLLOWING PARAGRAPH DOES NOT APPLY. Client shall defend and indemnify ImageTrend from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses ("Indemnity Claims"), which arise out of any negligent act or omission, or willful misconduct of Client. ImageTrend shall promptly notify Client for any actual or prospective Indemnity Claim for which indemnification is sought. In the event that any third-party Indemnity Claim is made and Client invokes this clause, Client shall have the right and option to undertake and control such defense of such action with counsel of Client's choice with control to settle any such Indemnity Claim. Client shall have no obligation to defend or indemnify ImageTrend from Indemnity Claims arising out of Client's negligent or intentional wrongful acts or omissions. ImageTrend accordingly must provide Client written notice no more than 60 days after ImageTrend has actual knowledge of an Indemnity Claim else Client shall have no obligation to indemnify Client.

SECTION 15. GENERAL TERMS

- a. **INSURANCE REQUIREMENTS.** ImageTrend will provide to Client a Certificate of Insurance upon request.
- b. **ELECTRONIC SIGNATURES.** The parties agree to conduct transactions primarily via electronic means. Accordingly, each party accepts electronic signatures and Deliverables as equivalent to physical versions of the same.
- c. **BUSINESS DAYS AND HOLIDAYS.** The parties agree a business day is 8 hours long, and excludes Saturdays, Sundays, and days reasonably considered a holiday by either party per each party's written policies. Unless otherwise specified in a Work Order, ImageTrend shall perform services only during business days, from 9:00am CST to 5:00pm CST.
- d. **COUNTERPARTS.** This Agreement may be executed in counterpart originals, duly signed by both parties, each of which will be deemed an original but all of which, together, will constitute one and the same Agreement. Any terms not present in all counterpart copies are severed and void. Electronic counterparts are equally as valid as original counterparts.
- e. **FORCE MAJEURE.** Neither party will be liable for delays nor for non-performance due to an unforeseeable event, external to this Agreement and the parties, where the occurrence of the event beyond the non-performing or delayed party's reasonable control ("Force Majeure Events.") Force Majeure Events may include, but are not limited to: war, terrorism or threats of terrorism, civil disorder, labor strikes, fire, disease, medical epidemics or outbreaks, events which curtail necessary transportation

facilities (e.g. airports), or other unforeseeable events where the occurrence of the event is beyond the non-performing or delayed party's control.

- f. **REASONABLE COOPERATION.** Client will reasonably cooperate with ImageTrend to the extent reasonably necessary to enable ImageTrend to perform the Services contemplated in each Work Order. Accordingly, Client will provide access, information or other materials in a fashion timely to the schedule of each Work Order. ImageTrend shall have no liability to Client for delays arising out the actions or non-actions of Client.
- g. **NON ASSIGNABILITY.** A party shall not assign this Agreement or its rights hereunder without the prior written consent of the other party.
- h. **JURISDICTION AND VENUE.** The parties agree that the law governing this Agreement shall be that of the State of Minnesota without regard to its conflict of laws principles. **IF CLIENT IS A GOVERNMENTAL ENTITY** the law governing this Agreement shall be that of the Client's jurisdiction without regard to its conflict of laws principles.
- i. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties, with respect to this subject matter, including, but not limited to the services, goods, products, and Software provided by ImageTrend for Client and the compensation provided by Client for said provision of such services therefore, and supersedes all previous proposals, both oral and written, negotiations, representations, writings and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by the parties.
- j. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- k. **WAIVER.** No waiver by either party of any of any provision hereof shall constitute a waiver of any other term of this Agreement nor shall it preclude either party from enforcing its rights.
- l. **NONAPPROPRIATION. IF CLIENT IS A GOVERNMENTAL ENTITY THE FOLLOWING PARAGRAPH APPLIES.** The continuation of this Agreement is contingent upon the appropriation of funds by the legislature or other sources as applicable to fulfill the requirements of the Agreement. If the insufficient monies are appropriated to provide for the continuation of the Contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the applicable appropriation laws or regulations for any lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of this Agreement or any Work Order hereto, the Agreement or applicable Work Order(s) shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated. ImageTrend shall be entitled to payment for deliverables in progress, to the extent work has been performed pursuant to this Agreement or any Work Order hereto; obligations that have been incurred that extend beyond the date of termination; and reasonable contract close-out costs.

- m. **ATTORNEYS' FEES.** In any action between the parties to enforce any of the terms of this Agreement, the each party shall be responsible for their own attorney's fees.
- n. **INDEPENDENT CONTRACTORS.** It is the express intention of Client and ImageTrend that ImageTrend and its employees and agents will perform the services hereunder as independent contractors to Client. Nothing in this Agreement shall in any way be construed to constitute ImageTrend or its employees or agents as an agent, employee or representative of Client. Without limiting the generality of the foregoing, ImageTrend is not authorized to bind Client to any liability or obligation or to represent ImageTrend has any such authority. Client and ImageTrend agree that neither ImageTrend employees nor its agents will receive Client - sponsored benefits from Client.
- o. **NOTICES.** Any notice required to be given by either party to the other shall be deemed given if in writing on the date actually delivered (including electronic methods such as e-mail), or if deposited in the United States mail in registered or certified form with return receipt requested, postage prepaid, on the postmarked date and addressed to the notified party at the address set forth below, or to such other address as a party may designate from time to time by means of notice given hereunder to the other party.

If to Client:

Hobbs Fire Department
Attn: Michael Prudencio
301 E. White Street
Hobbs, NM 88240

If to ImageTrend:

ImageTrend, Inc.
Attn: Mike McBrady
20855 Kensington Boulevard
Lakeville, MN 55044

IN WITNESS WHEREOF: the undersigned parties, each having authority to bind their respective organizations, hereby agree

Client _____

ImageTrend _____

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

RCM AND PROFESSIONAL CLAIMS SERVICES ATTACHMENT

This attachment shall be the first Work Order for professional claims services and revenue cycle management services, as detailed below:

Processing a Claim means taking commercially reasonable efforts to prepare a Claim (or Fire Claim if applicable) for submission to a Payor with the goal of ensuring the maximum chance of successful reimbursement (subject to all applicable State, Federal and local laws and regulations as well as applicable Payor policies and procedures); however this shall be limited to: correcting data on remitted claims (including modifying claim coding and modifiers), calling insurance providers to check on the status of claims, suggesting which claims should or must be written off, coding claims appropriately, moving claims to self-pay for collection from patients, preparing and mailing self-pay invoices, undertaking any task described in the Service Description sections below, submitting the non-paying self-pay claims to the Client's debt collection agency, and any other task that is reasonably helpful or required in ImageTrend's sole judgment (e.g., appealing certain claims, etc.).

Payor means any party paying to Client any sum of money in return for services rendered by Client to patient(s), including but not limited to: monies associated with payment for services billed to all primary insurance, Federal Medigap policies, all patient-owed balances, HMOs, PPOs, managed health organizations, non-Medigap secondary insurance billings, home, vehicle or fire insurers, or any other primary or secondary, public or private entity or person that typically makes payment(s) for Claims or Fire Claims

Follow up means phone call(s) made by insurance specialist, and/or paper mailings requesting additional information, and/or payment of services rendered: Speaking with patient/representative/responsible party, and/or leaving a message, (where applicable) are considered a contact attempt to the patient.

Claim means any claim, potential claim, remitted claim, denied claim, appealed or appealable claim, or any other claim for reimbursement of costs incurred providing Client's services to patients or other medical bill.

FEES AND PAYMENT TERMS

1. **Fees.** The fees owed by Client to ImageTrend for the services herein are detailed in the Price Table Attachment below.
2. **Invoicing.** ImageTrend shall invoice the Client monthly in arrears based on Processed Claims in the month prior, net 30 days.
3. **Late Fees.** Client agrees ImageTrend may charge to Client a late fee of 1.5% per month, or the highest rate allowed under the law, whichever is lower, on any overdue amounts. Client also agrees ImageTrend may charge to Client all reasonable costs and expenses of collection, including attorneys' fees where, in ImageTrend's discretion, payments are consistently deficient or late.
4. **Sales Tax.** ImageTrend will invoice sales tax to Client if Client is non-exempt or where otherwise applicable.

FRAUD, OVERPAYMENT OR INSUFFICIENT DOCUMENTATION

ImageTrend shall under no circumstances perpetuate fraud, nor the fraud of Client, nor fraud on the behalf of Client. In ImageTrend's discretion, ImageTrend may refuse to pursue or process a claim that appears fraudulent, contains insufficient documentation or the documentation lacks adequate justification on which to make claims, appears to be unbundled services, appears to be upcoded, or otherwise appears out of order with the legal and ethical standards to which ImageTrend is held. ImageTrend shall notify Client of any such incident. Should ImageTrend receive overpayment on any submitted Claim, ImageTrend shall notify the Client of the overpayment and associated information, and it shall be Client's responsibility to resolve the overpayment. ImageTrend further reserves the right to refuse to carry out any task, that in ImageTrend's sole discretion, would be prohibited under applicable law, regulation, or payor policy (such as HIPAA/HITECH and CMS rules and guidelines, or otherwise).

LICENSE TO USE IMAGETREND BILLING BRIDGE FOR TERM

Included as part of the Services rendered to Client by ImageTrend, Client is hereby granted a non-exclusive, non-sublicensable, license to use and have access to ImageTrend Billing Bridge software for the term of this Agreement only to the extent allowed and specifically instructed by ImageTrend during the term of this Agreement. ImageTrend reserves the right to unilaterally, upgrade, modify or otherwise change the nature of this software license with a 60 (sixty) day notice. This license is intended, and Client is hereby instructed, to allow Client to view and report on the status of ImageTrend's work for Client, and not to function as a full license to use Billing Bridge nor execute Client's own billing workflow. A full, unrestricted license is available from ImageTrend for additional consideration. This license shall expire upon termination of this Agreement.

RIGHT TO AUDIT

- **Retain Books and Records.** During the Term and for a period of two years after the termination or expiration of this agreement, Client shall keep its books and records that relate to this agreement, and maintain them in a manner reasonably consistent with prior practices.
- **Inspection and Audit.** During the Term and for a period of two years after the termination or expiration of this agreement, upon reasonable notice from ImageTrend, Client shall provide ImageTrend and ImageTrend's Representatives, reasonable access to Client's Books and Records that relate to this Agreement (and allow ImageTrend to make photocopies, at ImageTrend's expense), during normal business hours.
- **Corrections.** If ImageTrend's audit reveals errors or discrepancies in Client's Books and Records, Client shall promptly correct the error or discrepancy, including refunding any over-payments or making up any under-payments.

EMS CLAIMS PROCESSING RESPONSIBILITIES AND SERVICES

ImageTrend shall:

1. Enter paper Explanation of Benefit (EOB) documents and other paperwork received back from any Payor which is transmitted or otherwise made available to ImageTrend by Client for data entry;

2. Import electronic documentation in order to Process Claims from Client's ePCR Software in NEMESIS v2 or v3 (v3.4 or lesser) format. Different import formats can be developed as a custom software development project for additional consideration in a separately contracted and mutually agreeable written Statement of Work.
3. Prepare All Claims for submission to Payors in a timely manner;
4. Provide to Client access to all Standard Reports built into the Client's Billing Bridge software;
5. Adhere to all other terms and conditions in this Agreement.

Client shall:

6. Provide to ImageTrend only accurate, truthful, and non-fraudulent information;
7. Act at all times in accordance with all applicable law;
8. Continue to administer and enter data into ePCR and all other systems, as well as enter appropriate data into Client's Billing Bridge system as instructed by ImageTrend;
9. Make available to ImageTrend all materials and information ImageTrend finds necessary or helpful for ImageTrend to Prepare Claims;
10. Maintain a relationship with, and may collaborate with, a third party debt collection agency for any debt Client wishes pursued after ImageTrend has exhausted;
11. Ensure that a copy of every check or payment made to the Client is transmitted to ImageTrend, or if payment is made to a lockbox or similar service provider on behalf of Client, to ensure that the lockbox or similar service provider provides a copy of every check or payment made to Client's lockbox or similar service; or otherwise ensure that ImageTrend is made up to date on payment status resulting from Processed Claims in a timely fashion;
12. Adhere to all other terms and conditions in this Agreement.

BANK ACCOUNT AND REMITTANCE PROCESS – CLIENT DEPOSIT PAYMENTS

Client takes responsibility of depositing all non-ACH payments into a bank account held by the client. Client will ensure ImageTrend gets weekly deposit uploads for paper checks received by client and give proper user level access to clients clearinghouse (if available) for ImageTrend to remit daily for batching and posting.

ImageTrend Billing Services will setup and maintain MyEMSCare.com for online payment processing. ImageTrend uses Authorize.net as their preferred payment processor. The merchant holder will responsible for all transaction fee(s).

PROFESSIONAL CLAIMS PROCESSING FEES

The prices below are based on the quantity of Claims annually, as specified in the table below.

Contracted Services:

Description	Rate Type	Rate	SKU
EMS Revenue Services	Percentage of Net Collections	5.85%	RCM.001.002.001
Bank Account and Remittance Process - Client Deposit Payments	Not RCM	Included	RCMBAR1

Send Invoices To:

City of Hobbs
Attn: Deborah Corral
200 E. Broadway
Hobbs, NM 88240
dcorral@hobbsnm.org

Payment Terms:

1. ImageTrend will invoice Client monthly in arrears based on the actual amount of Processed Claims.
2. ImageTrend may temporarily suspend performance (e.g. cease to provide services, access, support) due to Client's breach of contract provided Client shall have 30 days to cure such breach before ImageTrend may suspend performance.
3. ImageTrend will not be responsible for third-party fees related to this Agreement unless specifically outlined by this Agreement.
4. Net Collections is defined as all monies collected by ImageTrend for EMS Billing provided by client less adjustments, write-offs, and refunds calculated in accordance with GAAP practices.

STANDARD REPORTS

The standard reports available to the Client are:

Period Activity Summary; Displays the beginning A/R, charges and transactions with the ending A/R within the time period.	Transaction Non-Adjustments – Detailed; Details of the transaction changes that have a postdate within the specified date range.
All Charges – Detailed; Details of all charge changes. Effectively giving the net changes within the date range	Transaction Non-Adjustments – Detailed (with Patient); Details of the transaction changes that have a postdate within the specified date range.
All Charges – Detailed (with Patient); Details of all charge changes. Effectively giving the net changes within the date range and patient name.	Transactions Posted – Summary; Summary of transaction changes that are not voids and that have a postdate within the specified date range.
All Charges – Summary; Summary of all charge changes. Effectively giving the net changes within the date range	Transactions Voided – Summary; Summary of transaction changes that are voids and that have a postdate within the specified date range.
Charge Adjustments; Detailed; Details of the charge changes that happened as an override after the invoice was posted.	Aging by Agency and Current Payer; Includes date ranges from 0-30 days and 180+ days
Charge Adjustments; Detailed (with Patient); Details of the charge changes that happened as an override after the invoice was posted and patient name.	Number of Invoices Posted by User by Month; Number of invoices that have been posted by user within a month
Charge Adjustments – Summary; Summary of the charge changes that happened as an override after the invoice was posted.	Number of Invoices Posted by User in Last 30 days; number of invoices posted by User in Last 30 days
Charge Non-Adjustments – Detailed; Details of the charges that were created while the invoice was in data entry and thus, are not overrides.	Days Since Last Transaction for Posted Invoices; Shows the number of days that have past since the last transaction for the invoices that have been posted.
Charge Non-Adjustments – Detailed (with Patient); Details of the charges that were created while the invoice was in data entry and thus, are not overrides and patient name.	Days Since DOS for Data Entry Invoices; Shows the number of days that have passed since the date of service for invoices that are still in data entry status
Charge Non-Adjustments – Summary; Summary of the charges that were created while the invoice was in data entry and thus, are not overrides.	Number of Invoices by Agency and Status; Number of invoices that exist by agency and for each of the Data Entry, Posted, Closed and Voided Status.
All Transactions – Detailed; Details of all the transaction changes. Essentially giving the net transactions for the date range	Number of Invoices by Month of Service; The number of invoices by agency for each month of service
All Transactions – Summary; Summary of all the transaction changes. Essentially giving the net transactions for the date range	Invoice Details by DOS; Details about the posted and closed invoices with a date of service within the specified date range.
Transaction Adjustments – Detailed; Details of the transaction changes that have a postdate before the specified date range.	Invoice Summary by DOS; Summary about the posted and closed invoices with a date of service within the specified date range.

Transaction Adjustments – Detailed (with Patient); Details of the transaction changes that have a postdate before the specified date range.	Invoice Details by DOS (with Balance); Details about the posted and closed invoices with a balance and date of service within the specified date range.
---	--

Standard Report Table - ImageTrend, in its discretion, may add Standard Reports from time to time. Custom Report creation services and other reporting services may be purchased under a separate Statement of Work at ImageTrend's standard rate of \$175/hour.

PROFESSIONAL EMS CLAIM PROCESSING SERVICE DESCRIPTION

PATIENT CARE REPORT DOCUMENTATION VERIFICATION

Patient Care Report Documentation Verification is a process used by ImageTrend Billing Services to ensure that all data submitted for reimbursement is accurate. ImageTrend Billing Services will take the information provided by the EMS Agency and verify any information that ImageTrend Billing Services feels may not be accurate. This process allows ImageTrend Billing Services to submit accurate data to insurance companies and private individuals for reimbursement of their ambulance bill. By utilizing tools such as Insurance Verification, Insurance Discovery, Receiving Facility follow up and Skip Tracing, ImageTrend Billing Services attempts to confirm accuracy of documented information, or gather additional information available for proper claim submission. By completing these steps, we can ensure a faster turn-around in your billable revenues and also ensure the patient of less hassle in the payment of their bill. This process decreases the resubmission of claims due to errors in the data provided to insurance companies for reimbursement.

PRIMARY BILLING

Patient receives initial billing for services that were provided. In addition, patients' primary insurance company is billed. With patients who are participating in a Medicare/Medicaid Program, Medicare/Medicaid will be billed directly. If a Medicare/Medicaid patient has primary commercial insurance coverage, that company will be billed first and Medicare/Medicaid will act as a secondary carrier. States with Medicaid and Medicaid HMO applicable law requiring waivers for billing, will not receive a bill until appropriate waivers are obtained and signed by the patient.

The patient will typically be billed within two business days upon receipt of all necessary billing documentation and information. For the convenience of the patient transported by your service, the patient will receive, with their bill, a return envelope for sending payment directly to your billing service or specified collection process.

Included in ImageTrend's clearinghouse services, has the ability for ImageTrend to receive daily claim status checks. This will ensure that the ImageTrend Billing Services is kept abreast of the latest changes to all electronically submitted claims. This information is also available to our clients through the use of our Billing Bridge™ solution.

SECONDARY BILLING

The patient will receive a second invoice normally within thirty (30) days after the first bill was sent. ImageTrend Billing Services utilizes a scheduling procedure that places bills, depending on their payor type, into specific cycles, which will ensure the submission of regularly scheduled billings.

In a scenario where no insurance information is available, one Follow up call attempt will be placed to the patient within thirty (30) days of Self Pay aging. If patient does not answer and no option to leave a voice message is available, the invoice will be held for seven (7) days before another follow up call is made.

In the event that the patients' phone number and insurance information is not documented or the patients' phone number is disconnected, ImageTrend will reach out to the documented receiving facility in an attempt to obtain updated contact and/or insurance information for patient.

Once the patients' primary insurance has paid, any secondary insurances will be automatically posted for consideration of any unpaid balances. If the patients primary insurance payer does not respond to a submitted claim forty five (45) days after claim submission, our insurance specialist will contact primary insurance payer to request a status update.

TERTIARY BILLING

Normally at this point Medicare, Medicaid, and private insurance companies will have paid the maximum amounts that the patient would be eligible for.

This invoice is sent normally within sixty (60) days after the initial billing has been forwarded. In addition to the invoice and return envelope received by the patient, a note is also applied to the patients bill that reminds the patient of their responsibilities for payment of this ambulance service.

FINAL BILLING

This bill is sent normally within ninety (90) days after the initial billing. The largest percentage of claims have been paid at this point; however, in addition to the invoice and return envelope, the patient receives a stronger note than the previous month's billing that re-emphasizes the importance of paying his/her bill in a timely manner. This is considered the patients final notice before patient is referred to collections.

****Note:** At any point in time, any necessary resubmissions, due to lack of information or incorrect information, will be resubmitted upon receiving notification of changes. All delinquent billings will be reflected in the Billing Bridge™ reporting system. This will ensure an accurate reporting of delinquent versus non-delinquent accounts in the month end reporting you receive from ImageTrend Billing Services.

RETURN MAIL PROCESS

When return mail is received due to an invalid address for the patient, an attempt to call the patient will be made as well as a call to the hospital for updated address information. If the hospital does not have updated information and call attempts are unsuccessful, the invoice will be sent to your service through the collection process regardless of the aging of the invoice.

PAYMENT PROCESS

ImageTrend Billing Services assists in the enrollment of EFT with as many participating payors as possible. ImageTrend also utilizes Wells Fargo Lockbox services (additional charges may apply) to provide efficient and streamlined payment acceptance when needed. ImageTrend will ensure that the

lockbox provides an image of every check or payment made to Client's lockbox. ImageTrend Billing Services will work with our clients to ensure that a copy of every check or payment made to the Client (i.e. walk-in payment) is transmitted to ImageTrend. We want to make sure that all payments made are accounted for (using GAAP) within Billing Bridge™. ImageTrend Billing Services works with the Client to ensure that their credit card processing (if applicable) is discussed and documented. In some scenario's there may be an additional charge for credit card processing, if applicable. ImageTrend's Sales Team will review any applicable charges throughout the sales process.

WRITE-OFF POLICY

In the scenario where a patient's transport by our clients reach a time, where dictated by our clients, need to have a balance written off. There are various different reasons why this policy exists, primarily due to patient hardship requests. ImageTrend Billing Services understands our clients need to treat their patients with the utmost respect and consideration when dealing with financial hardships. ImageTrend has the ability to identify patients that meet our client's requirements for financial hardship and our Account Manager will provide our recommendations as to whether or not a particular patient meets the criteria of their financial hardship program. Ultimately our clients make the final decision, as to whether or not a patient should be granted their financial hardship request.

As will all ImageTrend Billing Services policies and procedures, our objective is to collect funds for services rendered in as efficient and cost effective manner as possible and yet, not place undue hardship on the patients that are served by your company.

Once account write-offs have been determined, the Client will form a resolution to be considered by the City of Hobbs Commission which will determine how to proceed with the write-offs and collections.

COLLECTION PROCESS

In the scenario where ImageTrend Billing Services identifies an invoice that meets our clients collection requirements, ImageTrend will work with our clients to provide reasonable account information in order to assist with their collection vendor's needs.

RESPONSIBILITIES OF CLIENT

1. EVERY PATIENT that has Insurance/Medicare must have an Authorization form, signed at the hospital by the patient or patient's representative.
2. EVERY Medicare of Medicaid patient that is transported from hospital to hospital and hospital to nursing home/residence must have a Physician Certification Statement for transport completed by a doctor BEFORE the transport unless there is an acute emergency.
3. ImageTrend Billing Services does not bill for WAITING TIME for Medicare patients. Rather, the patient is billed for two separate runs.
4. On Run Forms (when applicable/available):
 - The patients name, address, phone number and Social Security number need to be documented on the proper form
 - Record location of patient pick-up and transport destination.
 - Record all appropriate dispatch information. (i.e. Nature of call)
 - Record all patient past history related to this emergency/non-emergency
 - Record all patient complaints related to this emergency/non-emergency
 - Complete a detailed narrative indicating the medical necessity for transport
 - Record the patient's date of birth

- Record admitting/receiving doctors name (first & last)
- Obtain a copy of the hospital top/face sheet from the Emergency Department admit.
- Obtain all available insurance information, including complete hospital admit form (copies of insurance cards are very helpful)
- Record the responsible party for all patients
- Record all times accurately
- Record odometer readings for loaded mileage
- Record crew names, crew license levels and any specialty areas of expertise that are relevant to the patient care being provided
- Have all crewmembers review the form for accuracy and completeness before leaving receiving facility. Crewmember signatures are required for all billable claims.
- Record reasons why transport by other means was contraindicated
- Record reasons why the level of service was required (i.e. ALS assessment)
- Record patient condition at the time of transport including Chief Complaint and Provider Primary Impression
- Record zip code at point of pickup
- Obtain necessary Medicare and Medicaid waivers where appropriate, signed by patient or other appropriate person. *PCS and/or ABN

BUSINESS ASSOCIATE AGREEMENT ATTACHMENT

This Business Associate Agreement (“Agreement”) dated 07/05/2021 (the “Effective Date”), is entered into by and between **Hobbs Fire Department** located at 301 E. White Street, Hobbs, NM 88240 (the “Covered Entity”) and ImageTrend, Inc. a Minnesota corporation (the “Business Associate”).

WHEREAS, Covered Entity (also referred to as “Client”) and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the “Business Arrangements”) pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create and use health information that is protected by state and/or federal law; and

WHEREAS, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the U.S. Department of Health & Human Services (“HHS”) promulgated the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Standards”), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (each a “Covered Entity”, or collectively, “Covered Entities”) to protect the privacy of certain individually identifiable health information (“Protected Health Information”, or “PHI”); and

WHEREAS, pursuant to HIPAA, HHS has issued the Security Standards (the “Security Standards”), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information (“EPHI”); and

WHEREAS, in order to protect the privacy and security of PHI, including EPHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a “business associate agreement” with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or EPHI; and

WHEREAS, on February 17, 2009, the federal Health Information Technology for Economic and Clinical Health Act was signed into law (the “HITECH Act”), and the HITECH Act imposes certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

WHEREAS, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of PHI and EPHI, including extending certain HIPAA and HITECH Act requirements directly to business associates; and

WHEREAS, Business Associate and Covered Entity desire to enter into this Business Associate Agreement;

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

- **Business Associate Obligations.** Business Associate may receive from Covered Entity, or create or receive on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not

otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable (collectively referred to hereinafter as the "Confidentiality Requirements"). All references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Confidentiality Requirements if the PHI were used or disclosed by Covered Entity in the same manner.

- **Use of PHI.** Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein.
- **Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Additionally, Business Associate shall ensure that all disclosures of PHI by Business Associate and the third party comply with the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed; provided further, Business Associate shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure (if applicable) of Limited Data Sets. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within three (3) business days of the Business Associate becoming aware of such use or disclosure. In addition to Business Associate's obligations under Section 9, Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing or as directed by or as a result of a request by Covered Entity to disclose to Recipients, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.
- **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity,

an individual who is the subject of the PHI under conditions and limitations required under 45 CFR §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) days of such request and shall make any amendment requested by Covered Entity within ten (10) days of such request. Any information requested under this Section 4 shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

- **Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Covered Entity such information necessary to provide an accounting within thirty (30) days of Covered Entity's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.
- **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.
- **Records and Audit.** Business Associate shall make available to the U.S. Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or any other health oversight agency, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests

by or on behalf of any and all federal, state and local government authorities served upon Business Associate for PHI.

- **Implementation of Security Standards; Notice of Security Incidents.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314, and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act. Furthermore, **to the extent feasible, Business Associate will use commercially reasonable efforts to** ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology (“NIST”) concerning the protection of identifiable data such as PHI. Business Associate acknowledges and agrees that the HIPAA Omnibus Rule finalized January 25, 2013 at 78 Fed. Reg. 5566 requires Business Associate to comply with new and modified obligations imposed by that rule under 45 C.F.R. §164.306, 45 C.F.R. § 164.308, 45 C.F.R. § 163.310, 45 C.F.R. § 164.312, 45 C.F.R. § 164.316, 45 C.F.R. § 164.502, 45 C.F.R. § 164.504. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate’s response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known. Business Associate and Covered Entity shall take reasonable measures to ensure the availability of all affirmative defenses under the HITECH Act, HIPAA, and other state and federal laws and regulations governing PHI and EPHI.

- **Data Breach Notification and Mitigation.**
 - **HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any “breach” of “unsecured PHI” as those terms are defined by 45 C.F.R. §164.402 (hereinafter a “HIPAA Breach”). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section 9.1, governs the determination of the date of a HIPAA Breach. In the event of any conflict between this Section 9.1 and the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity immediately and in no event later than three (3) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known,

- to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than seven (7) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et seq.* Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions or learn additional information concerning the HIPAA Breach. Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described in items (i) through (v), above.
- Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Section 9.1, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as “Individually Identifiable Information”) that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under one or more State data breach notification laws (each a “State Breach”) to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Business Associate shall promptly: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iii) comply with Covered Entity’s determinations regarding Covered Entity’s and Business Associate’s obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach.
 - Breach Indemnification. Business Associate shall indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys’ fees actually incurred) (collectively, “Information Disclosure Claims”) arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Business Associate in violation of the terms of this Agreement or applicable law, and (ii)

whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Business Associate. If Business Associate assumes the defense of an Information Disclosure Claim, Covered Entity shall have the right, at its expense and without indemnification notwithstanding the previous sentence, to participate in the defense of such Information Disclosure Claim. Business Associate shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Covered Entity. Covered Entity likewise shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Business Associate. To the extent permitted by law and except when caused by an act of Covered Entity or resulting from a disclosure to a Recipient required or directed by Covered Entity to receive the information, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate's own acts, failures or omissions.

- **If Client is a Governmental Entity the following clause does not apply:** Covered Entity shall indemnify, defend and hold Business Associate and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Covered Entity, its subcontractors, agents, or employees in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Covered Entity, its subcontractors, agents, or employees.
 - Covered Entity and Business Associate shall seek to keep costs or expenses that the other may be liable for under this Section 9, including Information Disclosure Claims, to the minimum reasonably required to comply with the HITECH Act and HIPAA. Covered Entity and Business Associate shall timely raise all applicable affirmative defenses in the event a violation of this Agreement, or a use or disclosure of PHI or EPHI in violation of the terms of this Agreement or applicable law occurs.
- **Term and Termination.**
 - This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 10, provided, however, that termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.
 - Covered Entity shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.
 - Covered Entity, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate if any of the following events shall have occurred and be continuing:
 - Business Associate fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been

- given to the Business Associate by Covered Entity; or
 - A violation by the Business Associate of any provision of the Confidentiality Requirements or other applicable federal or state privacy law relating to the obligations of the Business Associate under this Agreement.
- Termination of this Agreement for either of the two reasons set forth in Section 10.c above shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.
- Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.
- Upon termination of this Agreement for any reason, Business Associate agrees at the client's option to either return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to "return or destroy," Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.
- **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
- **Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.
- **Miscellaneous.**
 - **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

If to Covered Entity:

ATTN: Barry Young
301 E. White Street
Hobbs, NM 88240

If to Business Associate:

ImageTrend, Inc.
Attn: Michael J. McBrady
20855 Kensington Blvd.
Lakeville, MN 55044

- **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- **Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.
- **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
- **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party

beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

- **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Mexico in which Business Associate is located, excluding its conflicts of laws provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in the county in which Business Associate is located.
- **Equitable Relief.** The parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause the other irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the injured party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the injured party shall deem appropriate. Such right is to be in addition to the remedies otherwise available to the parties at law or in equity. Each party expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond.
- **Nature of Agreement; Independent Contractor.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.
- **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF: the undersigned parties, each having authority to bind their respective organizations, hereby agree

Client _____

ImageTrend _____

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title:

Title:

Date:

Date: