



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

Monday, June 15, 2015 - 6:00 p.m.

Sam D. Cobb, Mayor

Marshall R. Newman
Commissioner - District 1

Jonathan Sena
Commissioner - District 2

Crystal Mullins
Commissioner - District 3

Joseph D. Calderón
Commissioner - District 4

Garry A. Buie
Commissioner - District 5

John W. Boyd
Commissioner - District 6

A G E N D A

CALL TO ORDER AND ROLL CALL

INVOCATION AND PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

1. Minutes of the June 1, 2015, Regular Commission Meeting

PROCLAMATIONS AND AWARDS OF MERIT

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

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

2. Resolution No. 6305 - Approving the Issuance of Multifamily Housing Revenue Bonds in an Aggregate Principal Amount Not to Exceed \$6,500,000 for the Washington Place Apartments Project *(Kevin Robinson)*

3. Resolution No. 6306 - Authorizing the City Manager to Enter into a Contract with the Non-Metro Area Agency on Aging in the Amount of \$143,153.00 to Provide Meals for Senior Citizens *(Dalia Conken)*
4. Resolution No. 6307 - Authorizing the Closure of a Bank Account at Lea County State Bank Used for the Municipal Court Bond Account *(Toby Spears)*

DISCUSSION

5. Update on the Health, Wellness and Learning Center
6. Eddy-Lea Energy Alliance, LLC, Update

ACTION ITEMS (Ordinances, Resolutions, Public Hearings)

7. Consideration of Approval of RFQ/RFP No. 477-15 for Construction Manager at Risk (CMAR) Services for the Health Wellness and Learning Center (HWLC) Recreational and Aquatic Facility near Millen and SR 18 and Recommendation to Enter Into a Contract with Haydon Building Corp. *(J. J. Murphy)*
8. **PUBLICATION:** Proposed Ordinance Authorizing the Issuance and Sale of the City of Hobbs, New Mexico, Multifamily Housing Revenue Bonds in One or More Tax-Exempt or Taxable Series (Washington Place Apartments) in an Amount Not to Exceed \$6,500,000 *(Kevin Robinson)*
9. Resolution No. 6308 - Approving the Preliminary and Final Plan of Davis Acres Located Northwest of the Intersection of Lovelady Road and North Fowler Within the Extra-Territorial Platting Jurisdiction of the City of Hobbs as Submitted by Clayton Davis *(Kevin Robinson)*
10. Resolution No. 6309 - Approving an Affordable Housing Development Agreement with Tierra Realty Trust, LLC, for an Affordable Housing Complex Upon Developer-Owned Property Located Southwest of the Intersection of Yeso and Jefferson to be Named "Playa Escondida" *(Kevin Robinson)*
11. Resolution No. 6310 - Approving Funding to Crime Stoppers to Assist with Solving Discrimination Based Crimes and Hate Crimes and Establishing a No-Tolerance Policy for Discrimination Based Crimes and Hate Crimes *(J. J. Murphy)*
12. Resolution No. 6311 - Amending the City of Hobbs' 401(A) Plan for the City Manager with Nationwide Retirement Solutions *(Toby Spears)*
13. Resolution No. 6312 - Approving the Assignment of that Certain Agreement Between the City of Hobbs and Austin & Northwestern Railroad Company, Inc., to Watco Companies, LLC *(Mike Stone)*

14. Resolution No. 6313 - Approving a Proposed Collective Bargaining Agreement with the Hobbs Police Department *(J. J. Murphy)*

COMMENTS BY CITY COMMISSIONERS, CITY MANAGER

15. Next Meeting Date:

- ▶ Regular Meeting - ***Monday, July 6, 2015***, at 6:00 p.m.

ADJOURNMENT

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the above meeting, please contact the City Clerk's Office at (575) 397-9207 at least 72 hours prior to the meeting or as soon as possible.



CITY OF HOBBS

COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15, 2015

SUBJECT: Commission Meeting Minutes

DEPT. OF ORIGIN: City Clerk's Office
DATE SUBMITTED: June 10, 2015
SUBMITTED BY: Jan Fletcher, City Clerk

Summary:

The following minutes are submitted for approval:

- ▶ Regular Meeting of June 1, 2015

Fiscal Impact:

Reviewed By: _____
Finance Department

N/A

Attachments:

Minutes as referenced under "Summary".

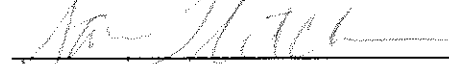
Legal Review:

Approved As To Form: _____
City Attorney

Recommendation:

Motion to approve the minutes as presented.

Approved For Submittal By:



Department Director

City Manager

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

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

Minutes of the regular meeting of the Hobbs City Commission held on Monday, June 1, 2015, in the City Commission Chamber, 200 East Broadway, 1st Floor Annex, Hobbs, New Mexico.

Call to Order and Roll Call

Mayor Cobb called the meeting to order at 6:00 p.m. and welcomed everyone in attendance to the meeting. The City Clerk called the roll and the following answered present:

Mayor Sam D. Cobb
Commissioner Marshall R. Newman
Commissioner Jonathan Sena
Commissioner Crystal Mullins
Commissioner Joseph D. Calderón
Commissioner Garry A. Buie
Commissioner John W. Boyd

Also present:

Todd Randall, Acting City Manager
Mike Stone, City Attorney
Eric Enriquez, Fire Chief
Barry Young, Deputy Fire Chief
Paul Thompson, Fire Captain
Shawn Williams, Deputy Fire Marshal
Chris McCall, Police Chief
Raymond Bonilla, Plan Examiner Coordinator
Kevin Robinson, Development Coordinator
Ronny Choate, General Services Director
Ron Roberts, Information Technology Director
Toby Spears, Finance Director
Doug McDaniel, Parks and Recreation Director
Matt Hughes, Golf Superintendent
Nikki Sweet, Human Resources Director
Nicholas Goulet, Benefits and Safety Coordinator
Sandy Farrell, Library Director
Lindsay Chism, Director of Communications
Mollie Maldonado, Deputy City Clerk
Jan Fletcher, City Clerk
33 citizens

Mayor Cobb stated tonight's meeting is being broadcast live on the City's radio station 99.3 FM.

Mayor Cobb stated Mr. J. J. Murphy, City Manager, is absent from tonight's meeting as he is attending the Government Finance Officers Association Conference in Philadelphia, Pennsylvania.

Invocation and Pledge of Allegiance

Commissioner Sena delivered the invocation and Commissioner Boyd led the Pledge of Allegiance.

Approval of Minutes

Commissioner Calderón moved that the minutes of the regular meeting held on May 19, 2015, be approved as presented. Commissioner Boyd seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Mullins yes, Calderón yes, Buie yes, Boyd yes, Cobb yes. The motion carried.

Executive Session

The City Commission convened in closed executive session on Monday, June 8, 2015, at 5:00 p.m., for discussion of limited personnel matters, specifically the City Manager's performance evaluation and contract. No action was taken during the meeting.

Proclamation Proclamations and Awards of Merit

There were no proclamations or awards of merit presented.

Public Comments

There were no public comments.

Consent Agenda

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

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

Resolution No. 6300 - Approving Funding in an Approximate Amount Not to Exceed \$6,500.00 to Purchase Encryption Equipment for Hobbs Police Department Communications.

Commissioner Newman seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Mullins yes, Calderón yes, Buie yes, Boyd yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached and made a part of these minutes.

Discussion

There were no discussion items presented.

Action Items

FINAL ADOPTION: Ordinance No. 1086 - Amending Sections 3.25 of the Hobbs Municipal Code Regarding Capping and Annual Funding of Social Service Agencies and Economic Development and Marketing Entities. Mr. Mike Stone, City Attorney, explained the ordinance and stated Section 3.25.030 of the Hobbs Municipal Code exempts several entities from the fund capping requirements of social service agencies. He stated the annual cap is set at 20 agencies and \$250,000.00. Mr. Stone stated the Economic Development Corporation of Lea County (EDC), Hobbs Chamber of Commerce, Hobbs Hispano Chamber of Commerce, Hobbs Juneteenth Committee and any Lodgers' Tax Event are currently exempt from the capping requirements. He stated Community Drug Coalition of Lea County (CDC) was exempt for three fiscal years and is no longer an exempt agency under the Code. Mr. Stone stated the proposed ordinance makes the following changes:

1. The approximate annual funding of social service agencies increases from \$250,000.00 to \$375,000.00 and is capped at \$400,000.00;
2. Economic Development and Marketing entities are exempt from the annual funding cap (3.25.010) and annual number of social service agencies (3.255.020);
3. Economic Development and Marketing entities are:
 - a. Economic Development Corporation of Lea County;
 - b. Hobbs Chamber of Commerce;
 - c. Hobbs Hispanic Chamber of Commerce; and
 - d. African American Chamber of Commerce, Hobbs.
4. Hobbs Juneteenth Committee ceases being an exempt entity; however, it will operate cooperatively through the African American Chamber for funding to promote the objectives of the Hobbs Juneteenth Committee.

Mayor Cobb stated all the agencies will still be required to conduct presentations for funding recommendations and will be held accountable for their activities.

Proper publication having been made, and there being no public comments or discussion, Commissioner Sena moved that Ordinance No. 1086 be adopted as

presented. Commissioner Mullins seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Mullins yes, Calderón yes, Buie yes, Boyd yes, Cobb yes. The motion carried. A copy of the ordinance is attached and made a part of these minutes.

Resolution No. 6301 - Approving Funding for the Community Drug Coalition (CDC) of Lea County for FY 15-16. Mr. Stone stated, in conjunction with Ordinance No. 1086, the Commission and City Manager have recommended funding the CDC in the amount of \$125,000.00 for FY15-16.

There being no discussion, Commissioner Sena moved that Resolution No. 6301 be adopted as presented. Commissioner Mullins seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Mullins yes, Calderón yes, Buie yes, Boyd yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached and made a part of these minutes.

Resolution No. 6302 - Approving Funding for Economic Development and Marketing Entities and Authorizing the Mayor to Execute Professional Service Agreements with the Hobbs Hispano Chamber of Commerce, Hobbs Chamber of Commerce, African American Chamber of Commerce and Economic Development Corporation of Lea County. Mr. Stone stated funding recommendations for the Economic Development and Marketing entities, as outlined by Ordinance No. 1086, are as follows:

African American Chamber	\$ 45,000.00
Hispano Chamber of Commerce	\$ 60,000.00
Hobbs Chamber of Commerce	\$ 75,000.00
Economic Development Corporation	\$250,000.00

There being no discussion, Commissioner Boyd moved that Resolution No. 6302 be adopted as presented. Commissioner Buie seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Mullins yes, Calderón yes, Buie yes, Boyd yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached and made a part of these minutes.

Resolution No. 6303 - Granting Final Plan Approval to Zia Crossing Subdivision, Unit 3, Phase 1, as Submitted by Black Gold Estates, LLC, Located Southeast of the Intersection of Millen Drive and Zia Crossing Parkway. Mr. Kevin Robinson, Development Coordinator, stated the City has accepted a certification letter from the Engineer of Record certifying that all infrastructure to be dedicated is in place and in compliance with the plan set and municipal standards. He stated Zia Crossing Subdivision, Unit 3, Phase 1 is a 22.9 acre subdivision located southeast of Millen

Drive and Zia Crossing Parkway which will create 88 single family lots. Mr. Robinson stated the average residential lot is 50' x 100'.

Commissioner Calderón moved that Resolution No. 6303 be adopted as presented. Commissioner Mullins seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Mullins yes, Calderón yes, Buie yes, Boyd yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached and made a part of these minutes.

Resolution No. 6304 - Granting Preliminary Plan Approval to Zia Crossing Subdivision, Unit 5, Phase 1, as Submitted by Black Gold Estates, LLC, Located Southwest of the Intersection of Millen Drive and Zia Crossing Parkway. Mr. Robinson stated the preliminary plan for Zia Crossing Subdivision, Unit 5, Phase 1 submitted by Black Gold Estates, LLC, is located southwest of the intersection of Millen Drive and Zia Crossing Parkway within the municipal boundaries which is newly annexed. He stated the proposed subdivision will contain 54 single family residential lots and the average residential lot size is 50' x 100'.

Commissioner Newman moved that Resolution No. 6304 be adopted as presented. Commissioner Boyd seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Mullins yes, Calderón yes, Buie yes, Boyd yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached and made a part of these minutes.

Mayor Cobb thanked Black Gold Estates, LLC., for its investment in the community.

Comments by City Commissioners, City Manager

Commissioner Sena stated he attended the recent Downtown Sounds concert and it was a great event.

Commissioner Mullins congratulated the 2015 Hobbs High School Graduates.

Commissioner Mullins thanked Mr. Robinson for always providing all of the information she requests. She also thanked all City staff for all the hard work they do for the community.

Commissioner Calderón expressed his love for animals and stated a new stray animal is in a need of a good home.

Commissioner Buie thanked the citizens of Hobbs for contacting Commissioners to address their concerns regarding the Toby Keith agenda resolution, whether it was for or against the concert.

Commissioner Buie recognized Ms. Amanda Newman, Commissioner Newman's daughter, in the audience.

Commissioner Newman gave kudos to Mr. Matt Hughes, Golf Superintendent, and his staff for the outstanding job at the golf course.

Commissioner Newman thanked Fire Chief Eric Enriquez for the manner in which Fire Department handles issues and how the Department presents to the community.

Commissioner Newman thanked Police Chief Chris McCall and the Police Department for all of the good things that have been published recently in the Hobbs News Sun.

Adjournment

There being no further discussion or business, Commissioner Newman moved that the meeting adjourn. Commissioner Mullins seconded the motion. The vote was recorded as follows: Newman yes, Sena yes, Mullins yes, Calderón, Buie yes, Boyd yes, Cobb yes. The motion carried. The meeting adjourned at 6:25 p.m.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



CONSENT AGENDA



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15, 2015

SUBJECT: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOBBS, APPROVING ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS (THE "BONDS") IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$6,500,000 FOR THE WASHINGTON PLACE APARTMENTS PROJECT.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: June 8, 2015
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: A request has been submitted to the City of Hobbs by representatives of Washington Place Partners, LLLP, a New Mexico limited liability limited partnership, for the City to issue Multifamily Housing Revenue Bonds for the rehabilitation of Washington Place Apartments.

Project revenue bonds are a finance tool whereby the project receives funds upfront based on the issuance and sale of the bonds and the projects future revenue stream is pledged for the repayment of the bonds. The Bonds will not constitute indebtedness, obligation or a pledge of the faith and credit of the City. Issuance of these types of bonds does not affect the Municipalities bonding capacity, because the income securitizing the bonds are and will be outside the control of the Municipality. All costs associated with this issuance will be paid by the bond proceeds recipient, including fees charged by the Municipalities Bond Counsel. Additionally, the Developer is not asking the Municipality for financial participation with this project, and the project will not be competing with NMMFA's 9% LIHTC project funds.

Fiscal Impact:

Reviewed By: [Signature]
Finance Department

Serving as a conduit for the project revenue bonds should not have an impact on the City Budget.

Attachments: Resolution.

Legal Review:

Approved As To Form: [Signature]
City Attorney

Recommendation:

Consider approval of the Resolution granting preliminary approval to the issuance of Multifamily Housing Revenue Bonds.

Approved For Submittal By:
[Signature] Department Director
[Signature] City Manager

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COMMISSION ACTION TAKEN
Resolution No.
Ordinance No.
Approved
Other
Continued To:
Referred To:
Denied
File No.

CITY OF HOBBS

RESOLUTION NO. 6305.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOBBS, APPROVING ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS (THE "BONDS") IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$6,500,000 FOR THE WASHINGTON PLACE APARTMENTS PROJECT.

WHEREAS, the City of Hobbs (the "City"), proposes to issue its multifamily housing revenue bonds (the "Bonds") in an amount not to exceed \$6,500,000 to assist in the financing of the acquisition, rehabilitation and development of a multifamily rental housing development commonly known as Washington Place Apartments located at 1405 East Marland Street, 321 East Clearfork Drive and 400 Wolfcamp Drive, Hobbs, New Mexico (the "Project"), to be leased to Washington Place Partners, LLLP, a New Mexico limited liability limited partnership (the "Lessee"); and

WHEREAS, the Bonds or a portion thereof will be "private activity bonds" for purposes of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, Section 147(f) of the Code, requires the City Commission, as the elected representative of the City, the political subdivision in which the Project is located, to approve the issuance of the Bonds after a public hearing has been held following reasonable notice; and

WHEREAS, notice of the public hearing was published in a newspaper of general circulation within the City at least 14 days before the date of such hearing; and

WHEREAS, the City Planning Board, a Division of the City Commission, has held a public hearing on Thursday, May 28, 2015, regarding the issuance of the Bonds in which interested persons were provided an opportunity to present arguments both for and against the issuance of the Bonds; and

WHEREAS, the interest on the Bonds may qualify for a federal tax exemption under Section 142(a)(7) of the Code, only if the Bonds are approved in accordance with Section 147(f) of the Code; and

WHEREAS, this City Commission is the elected legislative body of the City and is the applicable elected representative required to approve the issuance of the Bonds within the meaning of Section 147(f) of the Code; and

WHEREAS, the City Commission now desires to approve the issuance of the Bonds and the approval is intended to constitute the approval required by Section 147(f) of the Code;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOBBS, NEW MEXICO, as follows:

Section 1. Recitals. The City Commission hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Approval. The City Commission hereby approves the financing of the Project with the proceeds of the Bonds. It is the purpose and intent of the City Commission that this Resolution constitute approval of the issuance of the Bonds by the City for the purposes of Section 147(f) of the Code by the applicable elected representative of the governmental unit having jurisdiction over the area in which the Project is to be located, in accordance with said Section 147(f) of the Code.

Section 3. Execution of Documents. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents that they deem necessary or advisable to carry out, give effect to and comply with the terms and intent of this Resolution.

Section 4. Scope of Approval. Neither the City nor its staff have reviewed or considered the financial feasibility of the Project or the expected operation of the Project with regarding to any State of New Mexico statutory requirements and the adoption of this Resolution shall not obligate without further formal action on the part of the City Commission: (a) the City to provide financing to the Lessee for the acquisition, rehabilitation and equipping of the Project or to issue any obligations for the purposes of financing the same; or (b) the City, or any department of the City, to approve any applications or request for, or take any other action in connection with, any environmental, general plan, zoning or any other permit or other action necessary for the acquisition, rehabilitation, equipping or operation of the Project.

Section 5. Limited Obligation. The Bonds will not constitute an indebtedness, obligation or a pledge of the faith and credit of the City. The Bonds will be limited obligations of the City payable solely from the revenues of the Project and other assets and revenues pledged by or on behalf of the Lessee to repay the Bonds. Notwithstanding any other provision of this Resolution, neither the City Commission nor any of its officials or employees represents, warrants or guarantees that the Bonds qualify as “private activity bonds” pursuant to Section 141 or 147(f) of the Code.

Section 6. Effect. This Resolution shall take effect upon the date of its final passage.

PASSED, ADOPTED AND APPROVED this 15TH day of June, 2015.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, CITY CLERK



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15, 2015

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE NON-METRO AREA AGENCY ON AGING

DEPT. OF ORIGIN: Parks and Recreation, Senior Center
DATE SUBMITTED: **June 8, 2015**
SUBMITTED BY: Dalia Conken, Senior Affairs Coordinator

Summary:
The City of Hobbs Senior Center has submitted an Area Plan to Non-Metro Area Agency on Aging. The Non-Metro Area Agency on Aging has awarded the City of Hobbs Senior Center up to \$143,153. This resolution authorizes the City Manager to execute a contract with the Non-Metro Area Agency on Aging to receive funds to provide meal services for our senior citizens.

Fiscal Impact:

Reviewed By: 
Finance Department

There is a potential of receiving up to \$143,153 in grant money from this contract.

Attachments:

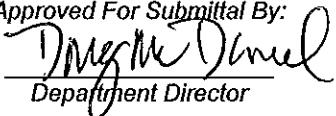
Resolution
Contract with Non-Metro Area Agency on Aging.

Legal Review:

Approved As To Form: 
City Attorney

Recommendation:

Approval of Resolution

Approved For Submittal By:

Department Director

City Manager

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

CITY OF HOBBS

RESOLUTION NO. 6306

A RESOLUTION AUTHORIZING THE CITY OF HOBBS TO ENTER INTO A CONTRACT WITH THE NON-METRO NEW MEXICO AGENCY ON AGING

WHEREAS, the City of Hobbs City Commission has determined that there is a need to provide services for senior citizens; and

WHEREAS, the City of Hobbs Senior Center has submitted an Area Plan to the Non-Metro Agency on Aging; and

WHEREAS, the Non-Metro Area Agency on Aging has awarded the City of Hobbs Senior Center up to \$143,153.00 to provide meal services for our senior citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be and hereby is, authorized and directed to execute this Resolution and any contract to provide services to senior citizens as a result of receiving a grant from the Non-Metro New Mexico Agency on Aging.

PASSED, ADOPTED AND APPROVED this 15th day of June, 2015.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

**Certification Regarding Debarment, Suspension,
and Other Responsibility Matters**

Certification for Contracts, Grants, Loans,
And Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

<hr/> <u>City of Hobbs Senior Center</u>	<u>New Mexico</u>
Organization	State

	<u>City Manager</u>	
Authorized Signature	Title	Date

J.J. Murphy

Printed Name of Authorized Signatory

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, And Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief that:

- 1) No Federal appropriated funds have been aid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

City of Hobbs Senior Center	New Mexico	
Organization	State	
City Manager		
Authorized Signature	Title	Date

Assurances

Listing of Area Plan Assurances and Required Activities Older Americans Act, As Amended in 2006

GENERAL ASSURANCES

Contractors, will comply with the Older Americans Act of 1965, as amended, and its implementing regulations. The area agency on aging, and its contractors, will comply with the US Department of Health and Human Services Grants Administration Regulations.

Contractors, in accordance with Title VI of the Civil Rights Act of 1965, will not discriminate against individuals because of age, race, color, creed, ethnic origin, gender or sexual preference in administering programs or providing services.

Contractors, will in compliance with Section 504 of the rehabilitation Act of 1973, as amended, ensure that facilities and services are made accessible to individuals with disabilities.

Contractors, will comply with all applicable state and local laws, rules and regulations.

Contractors, will assure that the personal information of individuals served will be maintained in a confidential manner, its access restricted to authorized individuals. Contractors, will maintain current affirmative action plans. In implementing personnel hiring procedures, older individuals will be given preference and elders will be actively recruited for all available positions.

The Contractor will assure that voluntary contributions from individuals served will be accepted and that procedures for documenting and safeguarding the collection and handling of such contributions have been established and are maintained. Contributions are not a requirement for participation in programs or receipt of services.

The Contractor will assure that amounts received under each part of the Older Americans Act will be expended in accordance with such part. The contractor will assure that funds received under Title-III will be used only to pay costs incurred by the contractor to implement Title-III.

The Contractor will assure that it will list its telephone number in each telephone directory that is published locally for residents in the geographical area where services will be provided.

The Contractor providing nutrition services will offer meals, on the same basis as meals provided to elders, to individuals providing volunteer services during meal hours and to individuals with disabilities who reside with and accompany older individuals who are eligible for meals.

The Contractor providing nutrition services, will reasonably accommodate special dietary needs, where feasible and appropriate, including those arising from health requirements, religious requirements, or ethnic backgrounds of eligible individuals.

The Contractor will assure that providing services will promote the following rights of each older individual who receives such services:

- the right to be fully informed about each service provided and about any change in service that may affect his/her wellbeing;
- the right to participate in planning or providing input regarding services provided;

- the right to voice a grievance with respect to any service that is, or fails to be, provided, without discrimination or reprisal as a result of voicing such grievance;
- the right to confidentiality of records relating to services provided.

ORGANIZATION

The contractor will, through a comprehensive and coordinated system, provide for supportive services, nutrition services and the establishment, construction and maintenance of senior centers.

The contractor will assure that planning efforts and service delivery will address the needs of older individuals with greatest economic need and with greatest social need, with particular attention to low-income minority individuals, individuals with limited English proficiency, older individuals residing in rural areas, Native American Indian elders and individuals at risk of institutional placement

The contractor will serve as an advocate and focal point for older individuals within their communities, in cooperation with other agencies, organizations and individuals, by monitoring, evaluating and commenting upon policies, programs and actions which affect older individuals.

The contractors will facilitate area-wide development and implementation of a comprehensive, coordinated system for providing long-term care in home and community-based settings, in a manner responsive to the needs and preferences of older individuals and their family caregivers, consistent with self-directed care, by:

- Collaborating, coordinating and consulting with local public and private agencies and organizations responsible for administering programs, benefits and services related to providing long-term care.
- Conducting analyses and making recommendations regarding strategies for modifying the local system(s) of care to be responsive to local needs and preferences, facilitating service provision and targeting services to older individuals at risk of institutional placement to enable them to remain in their own homes and communities.
- Implementing, evidence-based programs to assist older individuals and family caregivers in learning about and making behavioral changes intended to reduce the risk of injury, disease and/or disability.
- Providing for the availability and distribution of information about the need to plan for long-term care, resources available (both public and private), and options for long-term care.

The contractor will make use of trained volunteers in providing direct services to older individuals and individuals with disabilities and will work in coordination with organizations that have experience in providing training, placement and stipends for volunteers/participants (such as organizations sanctioned by the Corporation for National and Community Service).

The contractor will establish effective and efficient procedures for coordination with other Older Americans Act-funded entities, conducting other federal programs for older individuals and with the state-designated mental health authority.

The contractor will work in coordination with the NM Behavioral Health Collaborative to increase awareness of mental health disorders, remove barriers to mental health diagnosis and treatment and coordinate mental health services provided in the community.

The contractor will coordinate activities and develop long-range emergency preparedness plans in collaboration with local and state governments and other entities that have responsibility for disaster relief service delivery.

The contractors will establish an advisory body consisting of older individuals (including minority individuals and individuals residing in rural areas) who are participants, or eligible to participate in, area agency or contract provider programs; family caregivers of such individuals; service providers; members of the business community; local elected officials; providers of veterans' health care (if applicable); and the general public.

The contractor will make recommendations to government officials in the planning and service area(s) administered, and collaborate with such officials to build capacity in order to meet the following needs of older individuals, including, but not limited to:

- health & human services;
- transportation;
- housing;
- land use;
- workforce & economic development;
- civic engagement;
- education;
- recreation;
- public safety;
- emergency preparedness.

The contractor will demonstrate the ability to develop an area plan and to administer programs and services within the plan.

The contractor will assure that no officer, employee, or other representative of the agency is subject to a conflict of interest prohibited under the Older Americans Act; and that mechanisms are in place to identify and remove conflicts of interest should they so occur.

AREA PLAN

The contractor will assure that it will develop an area plan that meets the requirements of the Older Americans Act.

The contractor will assure that it will set specific objectives for providing services to older individuals with greatest economic need and older individuals with greatest social need, including specific objectives for providing services to low-income minority individuals, individuals with limited English proficiency, older individuals residing in rural areas, and individuals at risk of institutional placement; and will include proposed methods of achieving these objectives in the area plan.

The contractor will assure that it will coordinate planning, assessment of needs, and provision of services for older individuals with disabilities, with particular attention to individuals with severe disabilities and individuals at risk of institutional placement, with organizations that develop or provide services for individuals with disabilities.

The contractor will assure that it will maintain the integrity and public purpose of services provided and service providers, in all contractual and commercial relationships.

The contractor will:

- specify how the provider intends to satisfy the service needs of low-income minority individuals, individuals with limited English proficiency and older individuals residing in rural areas, in the area served by the provider;
- to the maximum extent feasible, provide services to low-income minority individuals, individuals with limited English proficiency and older individuals residing in rural areas in accordance with their need for such services; and
- meet specific objectives established by the area agency on aging, for providing services to low-income minority individuals, individuals with limited English proficiency and older individuals residing in rural areas within the service area(s).

The contractor will:

- identify the number of low-income minority older individuals and older individuals residing in rural areas in the service area(s);
- describe the methods used to satisfy the service needs of such older individuals; and
- provide information on the extent to which the area agency on aging met the objectives it established for providing services to low-income minority individuals and older individuals residing in rural areas within the service area(s).

The contractor will assure that it will use outreach efforts to identify individuals eligible for assistance under this Act, with special emphasis on:

- older individuals residing in rural areas;
- older individuals with greatest economic need (with particular attention to low-income minority individuals and older individuals residing in rural areas);
- older individuals with greatest social need (with particular attention to low-income minority individuals and older individuals residing in rural areas);
- older individuals with severe disabilities;
- older individuals with limited English proficiency;
- older individuals with Alzheimer's disease, related disorders, and/or neurological/organic brain dysfunction (and the caregivers of such individuals); and
- older individuals at risk for institutional placement;

and inform the older individuals referred to in the preceding bullets, and the caregivers of such individuals, of the availability of such assistance.

The contractor will assure that it will provide information concerning services to Native American Indian elders, including:

- Where there is a significant population of Native American Indian elders in the service area, assure that the contractor will pursue activities, including outreach, to increase access for those Native American Indian elders to programs and benefits provided under Title-III.
- Assure that the contractor will, to the maximum extent practicable, coordinate the services the agency provides under Title-III with services provided under Title-VI.
- Assure that the contractor will make services available to Native American Indian elders to the same extent as such services are available to other older individuals within the service area.

The contractor will assure that it will, at the request of the Non –Metro Area Agency on Aging, for the purpose of monitoring compliance (including conducting an audit), disclose all sources and expenditures of funds the contractor receives or expends to provide services to older individuals.

The contractor will assure that if case management services are offered, the contractor will comply with all requirements specified in the Older Americans Act.

The contractor will assure that, if a substantial number of the older individuals residing in its service area(s) are of limited English proficiency, then the contractor will:

- Utilize in the delivery of outreach services, workers who are fluent in the language(s) spoken by the individuals who are of limited English proficiency.
- Designate an individual employed by the area agency, or available to the area agency, whose responsibilities include:
 - taking such action as may be appropriate to assure that counseling assistance is made available to older individuals with limited English proficiency in order to assist them in participating in programs and receiving assistance; and
 - providing guidance to individuals engaged in the delivery of supportive services to enable such individuals to be aware of and sensitive to linguistic and cultural diversity.

ADDITIONAL REQUIREMENTS

The contractor will assure that it will hold public hearings, and use other means, to obtain the views of service recipients and other older individuals, service providers, caregivers, and other interested persons and entities in regard to policy development and the delivery of services and programs.

The contractor will assure that it will:

- afford an opportunity for a public hearing upon request, in accordance with published procedures, to any provider of, or applicant to provide, services;
- establish grievance procedures required by the Older Americans Act for individuals who are dissatisfied with or denied services; and,
- afford an opportunity for a hearing, upon request, by a provider of (or applicant to provide) services, or by any recipient of services regarding any waiver request.

The contractor will assure that it will prepare and submit reports, in such form, and containing such information, as then Non - Metro Area Agency on Aging may require, and comply with such requirements as the Area Agency on Aging may impose to insure the correctness of such reports.

Signature and Title of Authorized Official

Date

Non-Metro AAA FY 2015-16

Program/ Contractor Name	City of Hobbs Senior Center
Executive Director	Dalia Conken
Mailing address	200 E. Park St.
City, County, Zip	Hobbs, Lea, 88240
Physical address	200 E. Park St.
City, County, Zip	Hobbs, Lea, 88240
Phone #	575-397-9301
Fax #	575-397-9411
E-mail address	dconken@hobbsnm.org
Director	
Mailing address	
City, County, Zip	
Physical address	
City, County, Zip	
Phone #	
Fax #	
E-mail address	
Finance Contact	Toby Spears
Mailing address	200 E. Broadway St.
City, County, Zip	Hobbs, Lea, 88240
Physical address	200 E. Broadway St.
City, County, Zip	Hobbs, Lea, 88240
Phone #	575-397-9235
Fax #	575-397-9450
E-mail address	tspears@hobbsnm.org
Nutrition Services Contact	Angela Courter
Mailing address	200 E. Park St.
City, County, Zip	Hobbs, Lea, 88240
Physical address	200 E. Park St.
City, County, Zip	Hobbs, Lea, 88240
Phone #	575-397-9301
Fax #	575-397-9411
E-mail address	acourter@hobbsnm.org

Non-Metro AAA FY 2015-16

Program/ Contractor Name	
Senior Employment Contact	
Mailing address	
City, County, Zip	
Physical address	
City, County, Zip	
Phone #	
Fax #	
E-mail address	
SAMS Data Entry Contact	Dalia Conken , Angela Courter , Shirley Davis
Mailing address	200 E. Park St.
City, County, Zip	Hobbs, Lea, 88240
Physical address	200 E. Park St.
City, County, Zip	Hobbs, Lea, 88240
Phone #	575-397-9301
Fax #	575-397-9411
E-mail address	dconken@hobbsnm.org, acourter@hobbsnm.org, sdavis@hobbsnm.org
Site Manager	
Mailing address	
City, County, Zip	
Physical address	
City, County, Zip	
Phone #	
Fax #	
E-mail address	
Site Manager	
Mailing address	
City, County, Zip	
Physical address	
City, County, Zip	
Phone #	
Fax #	
E-mail address	

(attach additional pages if necessary)

Non-Metro AAA FY 2015-16

Program/ Contractor Name	City of Hobbs Senior Center
Mayor/ Board President	Sam Cobb
Mailing address	200 E. Broadway St.
City, County, Zip	Hobbs, Lea, 88240
Physical address	200 E. Broadway St.
City, County, Zip	Hobbs, Lea, 88240
Phone #	575-391-7890
Fax #	575-397-0379
E-mail address	scobb@hobbsnm.org
City/ County Manager	J.J. Murphy
Mailing address	200 E. Broadway St.
City, County, Zip	Hobbs, Lea, 88240
Physical address	200 E. Broadwat St.
City, County, Zip	Hobbs, Lea, 88240
Phone #	575-397-9207
Fax #	575-397-9334
E-mail address	jjmurphy@hobbsnm.org
City/ County Clerk	Jan Fletcher
Mailing address	200 E. Broadway St.
City, County, Zip	Hobbs, Lea, 88240
Physical address	200 E. Broadway St.
City, County, Zip	Hobbs, Lea, 88240
Phone #	575-397-9207
Fax #	575-397-9334
E-mail address	jfletcher@hobbsnm.org
City/ County Treasurer	
Mailing address	
City, County, Zip	
Physical address	
City, County, Zip	
Phone #	
Fax #	
E-mail address	

**North Central New Mexico Economic Development District
Non-Metro Area Agency on Aging**

**DIRECT PURCHASE OF SERVICES
VENDOR AGREEMENT**

City of Hobbs, hereinafter referred to as Vendor, and the North Central New Mexico Economic Development District's (NCNMEDD) Non-Metro Area Agency on Aging (Non-Metro AAA), hereinafter referred to as Agency, enter this Agreement effective July 1, 2015, in accordance with the Older Americans Act of 1965 (OAA), as amended, as provided by the State of New Mexico Aging and Long Term Services Department, and the Agency's Direct Purchase of Services program.

The Agency's Direct Purchase of Services program is designed to promote the development of a comprehensive and coordinated service delivery system to meet the needs of older individuals (age 60 and older). This agreement provides a mechanism for the creation of an individualized network of community resources on a client-by-client basis through the Older Americans Act, as amended, the State of New Mexico Aging and Long Term Services Department and the Agency.

1. SCOPE OF SERVICES.

A. Services. The Vendor agrees to provide service(s) to eligible clients as identified in accordance with the Direct Purchase of Service vendor application or Service Delivery Plan, all required assurances, licenses, certifications and rate setting documents, as applicable.

Service:

Congregate Meals
Home Delivered Meals
Homemaker/Housekeeping
Adult Day Care
Respite
Transportation
Assisted Transportation
IIID Evidenced-Based
 EB-EnhanceFitness
 EB- Manage Your Chronic Disease (My CD)
 EB-A Matter of Balance
Chore Services
Case Management
Other Health Promotion Activities (Non IIID)
 Health Education/Training
 Health Screening
 Health Physical Fitness/Exercise
IIIE Family Caregiver Support Program

Service Definitions:

Congregate Meals – A hot or other appropriate meal, served to an eligible person, which meets one-third (1/3) of the dietary reference intakes (DRI) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences and complies with the most recent Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture, and which is served in a congregate setting five (5) or more days per week. There are two types of congregate meals:

- Standard meal – A regular meal from the standard menu that is served to the majority of the participants.
- Therapeutic meal or liquid supplement – A special meal or liquid supplement that has been prescribed by a physician and is planned specifically for the participant by a dietician (e.g., diabetic diet, renal diet, tube feeding).

Home Delivered Meals – Hot, cold, frozen, dried, canned or supplemental food (with a satisfactory storage life) which provides a minimum of one-third (1/3) of the dietary reference intakes (DRI) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences and complies with the Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture, and is delivered to an eligible person in the place of residence. The objective is to assist the recipient to sustain independent living in a safe and healthful environment five (5) or more days per week. Home delivered meals may be served as breakfast, lunch, dinner or weekend meals.

Homemaker/Housekeeping – Assistance with meal preparation, shopping, managing money, making telephone calls, light housework, doing errands and/or providing occasional transportation.

Adult Day Care – A supervised, protective, congregate setting in which social services, recreational activities, meals, personal care, rehabilitative therapies and/or nursing care are provided to dependent adults. Facility must be licensed by the State of New Mexico.

Respite – Temporary, substitute supports or living arrangements for care recipients, which provide a brief period of relief or rest for caregivers. This may be provided in the client's home environment, a congregate or residential setting (e.g., hospital, nursing home, and adult day center) to dependent older adults who need supervision.

Transportation – Taking an older person from one location to another. This does not include any other activity. Demand/Response – transportation designed to carry older persons from specific origin to specific destination upon request.

Assisted Transportation – Providing assistance and transportation, including escort, to an older individual who has difficulties (physical or cognitive) using regular vehicular transportation. The “trip” includes the following: assisting the older individual from preparation for the trip, to assisting the older individual from their place of residence into the vehicle providing transportation, assisting the older individual from the transporting vehicle to the destination, such as the doctor’s office staying with the older individual at the point of destination; and the reverse for a return trip.

Other Health Promotion Activities (Non IID)– This includes health fairs, physical fitness activities conducted by an exercise professional, (i.e. Aerobics’ Instructor), medication management that is inclusive of monitoring, screening and education to prevent incorrect medication usage and adverse drug reaction. Home safety/accident prevention that involves a home assessment, assistive devices, accident prevention training, assistance with modifications to prevent accidents/facilitate mobility, and/or follow-up services to determine effectiveness of modifications/assistive devices.

Health Education/Training – Formal or informal opportunities for individuals to acquire knowledge or experience, increase awareness, promote personal or community enrichment and/or increase or gain skills.

Health Screening – Pre-nursing home admission screening and/or routine health screening.

Physical Fitness/Exercise – Individual or group exercise activities (with or without equipment), such as walking, running, swimming, sports and/or Senior Olympics physical conditioning/training.

Title IID Evidence Based – US Congressional Authorizing Legislation: Section 361 of the Older Americans Act (OAA) of 1965, as amended, now requires that Title IID funds will only be able to be used on health promotion programs that meet the highest level criteria.

Highest-level Criteria – 1) Meets minimal and intermediate criteria; 2) Undergone experimental or quasi-experimental design; 3) Full translation has occurred in community site; and 4) Dissemination products have been developed and are available to the public.

Or

Existing evidence-based programs currently offered in New Mexico include:

EnhanceFitness- a low-cost, evidence based group exercise program, helps older adults at all levels of fitness become more active, energized, and empowered to sustain independent lives.

A Matter of Balance- View falls as controllable, set goals for increasing activity, make changes to reduce fall risk at home, exercise to increase strength

Manage Your Chronic Disease (My CD)- Designed to help people gain self-confidence in their ability to manage the symptoms of their chronic disease and how it affects their lives.

Tomando Control de su Salud (Spanish-language Manage Your Chronic Disease)

Chore – Assistance with heavy housework, yard work or sidewalk maintenance at a person's place of residence.

Case Management - Assistance either in the form of access or care coordination in circumstances where the older person is experiencing diminished functioning capacities, personal conditions or other characteristics which require the provision of services by formal service providers or family caregivers. Activities of case management include such practices as assessing needs, developing care plans, authorizing and coordinating services among providers, and providing follow-up and reassessment, as required. Note: This is an ongoing process including assessing needs of a client and effectively planning, arranging, coordinating and follow-up services which most appropriately meet the identified needs as mutually defined by the client, staff, and where appropriate, a family member(s) or other caregiver(s).

III E Family Caregiver Support Program - Services for family caregivers and grandparent caregivers. The following are the allowable service categories:

Information Services - Information about available services (e.g. public education, participation at health fairs, etc);

Access Assistance - Assistance to caregivers in gaining access to services which is considered one-on-one contact (e.g., information and assistance, care coordination, case management);

Counseling - Individual counseling, organization of support groups, and caregiver training to assist the caregivers in making decisions and solving problems relating to their responsibilities (e.g. advice, guidance, and instruction to caregivers on an individual or group basis);

Respite Care - Enable caregivers to be temporarily relieved from their caregiving responsibilities. See above for complete definition.

Supplemental Services – Services provided on a limited basis, to compliment the care provided by caregivers. No more than 20 percent of the federal funding can be dedicated to supplemental services. Examples of supplemental services include: home safety audits, home modification, assistive technologies, emergency alarm response systems, home delivered meals, medical transportation and incontinent and other caregiving supplies. Services must be on a temporary basis.

Unit Measurements

Congregate Meal:	One Meal
Home Delivered Meal:	One Meal

Homemaker/Housekeeping	One Hour
Adult Day Care	One Hour
Respite Care (Includes III E)	One Hour
Transportation	One, One-Way Trip
Assisted Transportation	One, One-Way Trip
III D Evidence Based	
Enhance Fitness	participant hour
My CD	participant hour
A Matter of Balance	participant hour
Health Promotion (Non-III D)	
Health Education/Training	One Hour
Health Screening	One Hour
Physical Fitness/Exercise	One Session per Participant
Chore	One Hour
Case Management	One Hour
III E Access Assistance	One Contact
III E Counseling	One Session per Participant
III E Information Services	One Activity
III E Supplemental Services	One Distribution Event

Service Area: **City of Hobbs**

Targeting: Services are designed to identify eligible clients, with an emphasis on high risk clients and serving older individuals with the greatest economic and social need, low income minorities and those residing in rural areas, as identified in the Older Americans Act.

B. Payment for Services. For the services determined by the Agency to be satisfactorily provided by Vendor hereunder, the Agency shall pay the vendor, during the term, an aggregate amount, including gross receipts tax, not to exceed \$115,375. Said aggregate amount is to be derived from the following sources, when performance levels/units are met.

1. \$0 from Title III-B of the OAA;
2. \$41,020 from Title III-C1 of the OAA;
3. \$17,928 from Title III-C2 of the OAA;
4. \$0 from Title III-D of the OAA;
5. \$0 from Title III-E of the OAA; and
6. \$56,427 from the NMGAA-State/HB-2.

C. Services and Reimbursement Methodology:

Service	Total Unit Cost (III,State,PI,Local)	Federal Title III & State Negotiated Unit Costs	Units of Service	Persons
Congregate Meals	\$ 16.81268	\$ 3.26864	19800	182
Home Delivered Meals	\$ 10.92385	\$ 2.59774	19500	110
Transportation	\$	\$		
Assisted Transportation	\$	\$		
Case Management	\$	\$		
Adult Day Care	\$	\$		
Respite	\$	\$		
Chore Services	\$	\$		
Homemaker/Housekeeping	\$	\$		
Health Education/Training	\$	\$		
Physical Fitness/Exercise	\$	\$		
Health Screening	\$	\$		
Home Safety	\$	\$		
Medication Management	\$	\$		
EB-EnhanceFitness	\$	\$		
EB-My CD	\$	\$		
EB-A Matter of Balance	\$	\$		
NFCSP – Family Caregivers: Elderly				
CG - Counseling	\$	\$		
CG – Respite Care	\$	\$		
CG - Supplemental	\$	\$		
CG - Assistance	\$	\$		
CG - Information	\$	\$		
NFCSP – Family Caregivers: Grandchildren				
CG - Supplemental	\$	\$		
CG – Respite Care	\$	\$		
CG - Assistance	\$	\$		

D. Payment for services shall be consistent with all applicable federal and state laws and regulations.

E. Payments to the Vendor will be made subsequent to receipt of funds by the Agency from the Aging and Long Term Services Department. Any expenditure made prior to the receipt of funds or pending the Agency's approval shall be made at the Vendor's own risk, and the Agency shall not be liable for such expenditures.

F. Payments to the Vendor may be withheld or denied by the Agency for expenditures which are not authorized by, or are in excess of, the regulations, terms and conditions contained in this Agreement or for expenditures which are not properly documented or substantiated by the Vendor. The Vendor agrees to hold the Agency harmless against all audit exceptions arising from the Vendor's violation and shall make restitution to the Agency of such amounts of money due to the Vendor's non-compliance.

G. The total payments for services rendered by the Agency under the terms and conditions of this Agreement shall not exceed those listed in this Agreement.

H. Payments to the vendor will be made electronically through the Automated Clearing House (ACH) Network.

2. **TERMS OF AGREEMENT.**

In addition to the other provisions contained in this Agreement, the parties agree to the following:

A. The Vendor shall:

1. Provide services in accordance with current or revised Agency and State of New Mexico Aging and Long Term Services Department policies and the OAA.
2. Target services to older individuals with greatest economic and social need, including low-income individuals, older individuals residing in rural and frontier areas, individuals with disabilities, and individuals with a limited English proficiency, in accordance with the OAA as applicable.
3. Submit timely and accurate consumer/client tracking service documentation (rosters and transmittals) as required by the Agency by the close of business on the second (2nd) day of each month following the last day of the month in which services were provided. If the second (2nd) day falls on a weekend or Agency holiday, the information shall be delivered by the close of business on the next business day.
4. Submit timely, complete, detailed and accurate consumer/client assessment and reassessment documentation (including transmittals) on the day conducted.

5. Encourage client contributions (program income) on a voluntary and confidential basis. Such contributions shall be properly safeguarded and accurately accounted for as receipts and expenditures on the vendors financial reports, if they are not required to be forwarded to the Agency. Client contributions (program income) will be reported fully, as required, to the Agency. Vendor agrees to expend all program income to expand or enhance the program/service under which it is earned.
6. Provide Letter(s) of Commitment from local City or County governments to the Agency committing local funds to senior programs. Any changes in local funds (increases or decreases) will be provided in writing to the Agency. An automatic charge of 1/12 of budgeted local income will be applied monthly. The Letter of Commitment of local funds shall be submitted with the signed contract.
7. Maintain communication and correspondence concerning clients' status with the Agency.
8. At a minimum, attend two (2) training events per year (may include attendance at Non-Metro AAA Advisory Council meetings).
9. Submit timely and accurate information necessary for reimbursement.
 - a. All SAMS data should be verified and reconciled by the Vendor prior to submitting the SAMS Verification Statement and the Agency Summary Report (ASR) to the Non-Metro AAA Santa Fe office by the 7th working day. The signed Agency Summary Report (ASR) is the official document used to initiate reimbursement of services provided by the Vendor.
 - b. Quarterly financial reports with year-to-date to include approved budget, year-to-date expenses and year-to-date revenue, to be submitted by the 15th working day of the month following the end of the quarter.
 - c. All services shall be budgeted for separately on financials (i.e. congregate, home delivered, transportation, homemaker, etc.)
 - d. All revenues shall be separated on financial reports per individual service(s).
 - e. Vendor shall ensure that adequate resources are available and managing of budget and units is a priority to ensure stability of the vendor's operations.
10. This agreement does not guarantee a total level of reimbursement other than for individual units/services authorized, contingent upon availability of Federal and State funds.
11. Employees shall not solicit nor accept gifts or favors of monetary value by or on behalf of clients as a gift, reward or payment.

12. Encourage the purchase and use of locally sourced farm fresh food products that meet the nutritional standards of the Agency. Vendors must ensure that the farm food products meet the state EID requirements.
13. Submit an action plan to address unforeseen circumstances when service delivery is threatened. This is due no later than the end of the first quarter.
14. Inform NCNMEDD, Non Metro AAA Santa Fe Office of substantial decrease/increase in services as soon as possible.

B. Through Direct Purchase of Service, the Agency agrees to:

1. Review client intake and assessment forms completed by the Vendor, as applicable, to determine client eligibility
2. Maintain communication and correspondence concerning clients' status.
3. Provide timely consultation and technical assistance to the Vendor as requested and as available.
4. Conduct quality-assurance procedures, which may include on-site visits, to ensure quality services are being provided.
5. Provide written policy, procedures and standard documents concerning client authorization to release information (both a general and medical/health related release), ability to contribute to the cost of services provided, complaints/grievances and appeals to all clients.
6. Provide start-up funds if applicable.
7. Consider re-negotiation of cost of services at the discretion of NCNMEDD, Non – Metro AAA. Programs MUST manage their budgets and on-going re-negotiations will not be considered. NCNMEDD, Non –Metro AAA will make necessary amendments to budgets at the end of the second quarter.
8. Employ a full-time manager and financial individual to oversee funds contracted through NCNMEDD Non-Metro AAA.

3. **ASSURANCES.**

A. *Americans with Disabilities Act of 1990 –*

The Vendor shall comply with the requirements, established under the Americans with Disabilities Act, in meeting statutory deadlines under the Act as they pertain to operation for employment, public accommodations, transportation, state and local government operations and telecommunications.

B. *Section 504 of the Rehabilitation Act of 1973 –*

The Vendor shall provide that each program activity, when viewed in its entirety, is readily accessible to and usable by persons with disabilities in keeping with 45 CFR, Part 84.11, etc. Seq., and as provided for in Section 504 of the Rehabilitation Act of 1974, as amended. When structural changes are required, these changes shall be in keeping with 45 CFR, Part 74. The Vendor shall ensure that benefits and services, available under the agreement, are provided in a non-discriminatory manner as required by the Title VI of the Civil Rights Act of 1964, as amended.

C. *Age Discrimination in Employment Act of 1967 --*

The Vendor shall comply with Age Discrimination in Employment Act of 1967 (29 USC 621, etc. Seq.).

D. *Drug Free Workplace*

The Vendor shall comply with the Drug-Free Workplace Act of 1988.

E. *Certification Regarding Debarment*

The Vendor shall certify annually that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency.

F. *Independent Audit*

The Vendor will provide a financial and compliance audit report to the Agency covering the period of July 1, 2015 through June 30, 2016. The audit report provided to the Agency must include a copy of the Auditor's management letter. This audit shall be conducted in accordance with generally accepted auditing standards and shall encompass the following provisions:

1. The Vendor, expending equal to \$750,000 but less than or equal to \$25,000,000 more in combined federal funds, shall have an audit conducted in accordance with Revised OmniCircular 200.518(b)(1), which streamlines eight different grants into one set. A fair allocation of the audit costs may be charged to both federal and state funds under this Agreement. A copy of the complete report package as required to be submitted by A-133 to the designated clearinghouse shall also be provided to the Agency. The audit report shall include a schedule of administrative and program expenses for each separate federal title or program (Title IIIB, Title IIIC-I, Title IIIC-II, Title IIID, Title IIIE, etc.), which facilitates a reconciliation of audited costs to the final report. The Agency further requires the inclusion of the final units of services provided and final number of persons served. This information may be included within the supplementary section of the audit report.
2. Governmental-type vendors expending less than \$500,000 in combined federal awards shall continue to follow the guidance of

the New Mexico State Auditor. Since a full scope audit will continue to be required by the State Auditor, only a fair allocation of state funds within this Agreement may be expended for such audit costs. The audit report shall include a schedule of administrative and program expenses for each separate federal title or program (Title IIIB, Title IIIC-I, Title IIIC-II, Title IIID, Title IIIE, etc.) which facilitates a reconciliation of these audited costs to the final report. The Agency further requires the inclusion of the final units of services provided and final number of persons served by this Agreement. This information may be included within the supplementary section of the audit report.

3. Non-governmental vendors expending between \$25,000 in federal and state funds combined and less than \$500,000 in federal funds, shall have an audit conducted in accordance with the GAO Government Auditing Standards. A fair allocation of the audit costs may be charged to the state funds awarded under the Agreement. Federal funds shall not be charged for audit costs under this section. The audit report shall include a schedule of administrative and program expenses for each separate title or program (Title IIIB, Title IIIC-I, Title IIIC-II, Title IIID, Title IIIE, etc.), which facilitates a reconciliation of these audited costs to the final report. The Agency further requires the inclusion of the final units of services provided and final number of persons served by this agreement. This information may be included within the supplementary section of the audit report.
4. For those vendors that expend less than \$15,000 in federal and state dollars, no audit is required. The close out of this grant will be based on information required by the Agency, such as financial reports (trial balances, general ledgers, etc.), monitoring efforts and final numbers of services provided and final number of individuals served.
5. Submittal of the audit report for government entities shall be within ten (10) working days after release by the New Mexico State Auditor's Office. For non-governmental entities, the audit report is due four (4) months after the end of the entity's fiscal year.
6. The vendor's independent auditor shall be made aware of Office of Management and Budget Circular (OMB) A-87, Cost Principles for State, Local and Indian Tribal Governments, and OMB Circular A-122, Cost Principles of Nonprofit Organizations in determining the allowability of costs. (A-87 and A-122 have been reclassified under the CFR as 2 CFR Part 225, and 2 CFR Part 230, respectively.)

G. *Equal Opportunity Compliance.*

The Vendor agrees to abide by all federal and state laws, rules, regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such

laws of the State of New Mexico, the Vendor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Vendor is found not to be in compliance with these requirements during the life of this Agreement, Vendor agrees to take appropriate steps to correct these deficiencies.

H. *Compliance with Aging and Long-Term Services Department Functions.*
The Vendor shall perform in accordance with the OAA and directives of the U.S. Administration on Aging: rules, regulations, policies and procedures established by the Aging and Long-Term Services Department, for the provision of services, and administration of programs funded under the OAA and the New Mexico State Legislature, the approved Area Plan, the approved Service Plan, and the terms and conditions of this Agreement.

I. *Non-Discrimination Service Delivery.*
The Vendor, in determining (a) the services or other benefits provided under this Agreement, (b) the class of individuals to whom, or situation in which such services or other benefits will be provided under this program, or (c) the class of individuals to be afforded an opportunity to participate in the program, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program in respect to individuals of a particular race, religion, color, national origin, ancestry, sex, sexual preferences, age or handicap.

4. **TERM.**

This Agreement shall begin on July 1, 2015 and terminate on June 30, 2016, unless terminated pursuant to Paragraph 5, below. In accordance with NMSA 1978, § 13-1-150, no contract term, including extensions and renewals, shall exceed four (4) years, except as set forth in NMSA 1978, § 13-1-150.

5. **TERMINATION.**

A. This Agreement may be terminated by the Agency without cause upon written notice delivered to the Vendor at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. This Agreement may be terminated immediately, upon written notice to the Vendor, if the Vendor becomes unable to perform the services contracted for, as determined by the Agency, or if, during the term of this Agreement, the Vendor or any of its officers, employees or agents is

indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein, or if the Vendor fails to comply with any of the terms contained herein or is in breach of this Agreement as set forth in Paragraph 6, below. This provision is not exclusive and does not waive the Agency's other legal rights and remedies caused by the Vendor's default or breach of this Agreement. This Agreement may also be terminated by the Vendor upon thirty (30) days written notice to the Agency.

B. Termination Management. Immediately upon receipt of notice of termination of this Agreement by either the Agency or the Vendor, the Vendor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and client records generated under this Agreement and any non-expendable personal property or equipment purchased by the Vendor with contract funds shall become property of the Agency upon termination. On the date the notice of termination is received, the Vendor shall furnish to the Agency a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Agency agreements with the Vendor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Vendor under the paragraph of this Agreement regarding financial records.

6. BREACH OF AGREEMENT BY VENDOR.

A. In addition to the breach of any term, provision, covenant, agreement, or obligation of Vendor contained in this Agreement, the following constitute a breach of Vendor's obligations and duties hereunder:

1. The Vendor's failure to provide proof of insurance coverage sufficient to meet the requirements of this Agreement or any applicable federal, state or local laws, rules or regulations.
2. The Vendor's failure to adequately safeguard its assets in such a manner that would adversely impact the interests of the intended recipients of the services to be performed, hereunder, and jeopardize their receipt of such services.
3. Unless otherwise duly authorized in writing by the Agency, the Vendor's failure to meet line-item budgetary ceilings set forth in its approved budget for delivering the services contemplated hereunder.

B. Upon a determination by the Agency that the Vendor shall be in breach of this Agreement, the Agency shall provide written notice to the Vendor specifying the facts and circumstances constituting the breach(es) and advising the Vendor that such breach(es) must be cured to the Agency's satisfaction within thirty (30) days from the date of such

written notice. If such cure is not timely made, then the Agency may elect to implement one or more of the following intermediate sanctions:

1. The Agency may install a program monitor for a specified time period to closely observe the Vendor's efforts to comply with obligations remaining under this Agreement. Unless otherwise deemed confidential under applicable law, such monitor shall have authority to review any or all of the Vendor's records, policies, procedures, and financial records germane to the Vendor's delivery of the services contemplated by this Agreement. Such monitor may also serve as a consultant to the Vendor to advise in the correction of the determined deficiencies. All costs associated with the Agency's selection and installation of such monitor shall be paid from the state and federal funds paid to the Vendor hereunder.
2. The Agency may appoint a temporary manager who shall have primary responsibility to oversee the operation of the Vendor's services contemplated by this Agreement. All costs associated with the Agency's selection and installation of such a temporary manager shall be paid from the compensation paid to Vendor.
3. The Agency may deem the Vendor ineligible for the receipt of any additional funds to be paid to Vendor hereunder.
4. The Agency may cancel, terminate, or suspend this Agreement in whole or in part.
5. In addition to other remedies available to the Agency hereunder, the Agency may, at its discretion, establish a period of probation with specific objectives to be accomplished by the Vendor hereunder, or to be in compliance with applicable policies, procedures, laws, and regulations.
6. The Agency may pursue any other remedy as may be provided under applicable law.

7. APPROPRIATIONS.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and utilized by the Agency for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Vendor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Vendor shall have the option to terminate the Agreement or agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

8. STATUS OF VENDOR.

The Vendor, its agents, and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The Vendor, its agents and employees shall not accrue leave, retirement, insurance, bonding, use of Agency vehicles, or any other benefits afforded to employees of the Agency as a result of this Agreement. The Vendor acknowledges that all sums received hereunder are reportable for tax purposes.

9. ASSIGNMENT.

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

10. SUBCONTRACTING.

The Vendor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

11. RELEASE.

The Vendor acceptance of final payment of the amount due under this Agreement shall operate as a release of the Agency, its officers and employees from all liabilities, claims and obligations, whatsoever, arising from or under this Agreement. The Vendor agrees not to purport to bind the Agency unless the Vendor has express written authority to do so from the Agency, and then only within the strict limits of that authority.

12. CONFIDENTIALITY.

Any information provided to or developed by the Vendor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization, by the Vendor without the prior written approval of the Agency. Disclosure of confidential information shall only be made in accordance with the Inspection of Public Records Act or the applicable state or federal laws or regulations. Vendor shall establish a method to guarantee the confidentiality of all information relating to clients in accordance with applicable federal, state and local laws, rules and regulations, as well as the terms of this Agreement. However, this provision shall not be construed as limiting the rights of the Agency or any other federal or state authorized representative to access client case records or other information relating to clients served under this Agreement.

13. PRODUCT OF SERVICE – COPYRIGHT.

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

14. CONFLICT OF INTEREST.

The Vendor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree, with the performance or services required under the Agreement. The Vendor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

15. AMENDMENT.

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

16. MERGER.

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

17. PENALTIES.

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

18. APPLICABLE LAW.

The laws of the State of New Mexico shall govern this Agreement.

19. WORKERS COMPENSATION.

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

20. RECORDS AND FINANCIAL AUDIT.

The Vendor shall maintain detailed time and expenditure records, including, but not limited to, client records, books, supporting documents pertaining to services provided, that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments. If, pursuant to this Agreement, the Vendor receives federal funds subject to the Single Audit Act, the Vendor shall submit to the Agency an audit conducted by a certified public accountant in compliance with the Single Audit Act.

21. INDEMNIFICATION.

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

22. INTERNAL DISPUTE MEDIATION.

The Vendor shall attempt to resolve all disputes with participants by negotiation in good faith and with such mediators as may be acceptable to the parties involved. The Vendor shall implement an internal grievance policy with procedures in place to effectively and fairly negotiate and resolve disputes with participants. The Vendor must provide all participants with notice, at the commencement of the contract year, that disputes may be resolved in this manner. If negotiation and mediation through the grievance procedure fail, any party may submit the dispute to the ALTSD in accordance with the following provisions:

1. In any dispute submitted, the Agency and the Vendor hereby agree and consent to the ALTSD mediation of the dispute.
2. Mediation may only be instituted by written request, which request shall include a statement of the matter in controversy.
3. Initial contacts and negotiation shall be conducted by the appropriate Agency staff.
4. Any resolution of the matter shall be binding and final on the Vendor and the Vendor hereby agrees to be bound by said resolution.
5. Failure of the Vendor to resolve any dispute pursuant to the procedures set forth herein or to comply with a resolution ordered by the ALTSD shall amount to a material breach of Agreement.
6. Internal Dispute Mediation does not supersede the appeal hearing policies and procedures.

23. PARTICIPANT GRIEVANCE.

The Vendor will establish a system through which applicants for, and recipients of services, may present grievances about the operation of the service program. The Vendor will advise applicants and recipients of their right to appeal denial of service and their right to a fair hearing of these respects. The Vendor shall notify the Agency of termination of services, to a client, as part of a monthly service report, on any services funded by this Agreement. The Agency reserves the right to perform follow-up investigations with the client to determine adequate performance and adherence to due process.

24. KEY PERSONNEL.

The Agency shall be notified of changes in, and must concur with the selection process for, Key Personnel. The Agency considers the following positions as Key Personnel:

1. Full Time Program Director
2. Full Time Financial Manager

The Vendor will maintain full-time Key Personnel throughout the term of this agreement.

25. INVALID TERM OR CONDITION.

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

26. ENFORCEMENT OF AGREEMENT.

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

27. NOTICES.

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

AGENCY:
NCNMEDD
Attn: Jenny Martinez
3900 Paseo del Sol
Santa Fe, NM 87507

VENDOR:
City of Hobbs

200 E. Broadway St.

Hobbs, NM 88240

28. INSURANCE.

The Vendor shall secure and maintain, during the term of this Agreement, at its own expense, comprehensive and general public liability insurance and/or other types of insurance as the Agency may require. The Vendor shall secure and maintain, during the term of this Agreement, at its own expense, workers' compensation insurance in the amounts required by the applicable laws of the State of New Mexico covering the Vendor's employees. All policies of liability insurance that Vendor is obligated to maintain, according to this Agreement, except for any policy of workers' compensation insurance, shall name Agency as an additional insured. The Vendor shall furnish to the Agency, directly from its insurance carrier, a memorandum or certification of all insurance carried, before the payment of any monies as consideration for the services rendered hereunder shall be made. Upon such certificates and/or memoranda being furnished to the Agency, the same shall be annexed to this Agreement and by reference made a part hereof.

29. AUTHORITY.

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

30. SIGNATURES.

For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective July 1, 2015.

City of Hobbs

Legal Name of Vendor

Signature

J.J. Murphy, City Manager

Printed/Typed Name of Signatory

Date

NCNMEDD

Non-Metro Area Agency on Aging

Name of Area Agency on Aging



Signature

Tim Armer, Executive Director

Printed/Typed Name of Signatory

5/21/15

Date

NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT
 NON-METRO AREA AGENCY ON AGING
 NOTIFICATION OF GRANT AWARD (NGA)

GRANTEE: City of Hobbs ADDRESS:		APPROVED BUDGET PERIOD FROM: 7/1/2015 TO: 6/30/2016				Grant/Action		NGA DATE
						New/Cont:	X	
PHONE:						Revision:		
						BAR:		
						Other:		
DESCRIPTION		FEDERAL	STATE	LOCAL	Fundraising-Foundations	PROJ. INC.	TOTAL	
Title IIIB 93.044	Access	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	In-Home	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Community All Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Sub Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Title IIIC1 93.045	Meal Costs	\$ 41,020	\$ 23,699	\$ 239,672	\$ -	\$ 28,500	\$ 332,891	
	Sub Total	\$ 41,020	\$ 23,699	\$ 239,672	\$ -	\$ 28,500	\$ 332,891	
Title IIIC2 93.045	Meal Costs	\$ 17,928	\$ 32,728	\$ 141,859	\$ -	\$ 20,500	\$ 213,015	
	SubTotal	\$ 17,928	\$ 32,728	\$ 141,859	\$ -	\$ 20,500	\$ 213,015	
Title IIID 93.043	Evidence Based	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Sub Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Title IIIE 93.052	Care Giver Support	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Sub Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
DEMONSTRATION GRANT								
ALZHEIMER	Respite Care	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Sub Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
ALL STATE OTHER		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Sub Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
SUB TOTALS	Title IIIB 93.044	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Title IIIC1 93.045	\$ 41,020	\$ 23,699	\$ 239,672	\$ -	\$ 28,500	\$ 332,891	
	Title IIIC2 93.045	\$ 17,928	\$ 32,728	\$ 141,859	\$ -	\$ 20,500	\$ 213,015	
	Title IIID 93.043	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Title IIIE 93.052	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Alzheimer Respite Care	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	All State Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
GRAND TOTAL		\$ 58,948	\$ 56,427	\$ 381,531	\$ -	\$ 49,000	\$ 545,906	
COMPUTATION OF GRANT		8. Federal/State Shares will be comprised of:						
1. Estimated Total Cost.....	\$ 545,906	a. Federal/State		FY 20 __	Federal	State		
2. LESS Anticipated Proj. Inc.	\$ 49,000	grant unearned						
3. Estimated Net Cost.....	\$ 496,906	in previous project year(s)						
4. Non-federal and Non-state Share of Net Cost.....		b. Carry Over		FY 20 __	Federal	State		
5. Proj. Inc. (Used as Match).....	\$ 49,000							
6. Federal Share of Net Cost.....	\$ 58,948							
7. State Share of Net Cost....	\$ 56,427	c. New Obligational Authority Herein Awarded		FY-	Federal	State	\$ 58,948	
							\$ 56,427	

NOTIFICATION OF GRANT AWARD

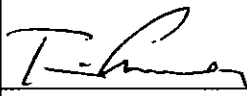
REMARKS: In addition to the conditions contained in the agreement on the application form, the conditions below apply to this grant:

- 1. Unless revised, the amount of lines 6 and 7 (Computation of Grant) will constitute a ceiling for federal and/or state participation in the approved cost.
- 2. The federal and/or state share of the project cost is earned only when the cost is accrued and the non-federal and/or non- state share of the cost has been contributed. Receipt of federal and/or state funds (either through advance or reimbursement) does not constitute earning of these funds.
- 3. If the actual net cost is less than the amount on line 3 (Computation of Grant) the non-federal and/or non-state share, the federal share and the state share will meet the percentages indicated on Page 1 of the NGA.
- 4. As shown in the Computation of Grant (assuming satisfactory progress, adequate justification and the availability of funds), the federal and state shares shall meet the amounts shown on lines 6 and 7 of the estimated net project cost shown on line 3.
- 5. Funds herein awarded will remain available during the length of the project period; however, state and/or federal funds are dependent upon availability.
- 6. Programs must meet the units of services projected to be reimbursed or submit an amended plan detailing reasons why approved units are not being met which must be approved by the NCNMEDD Area Agency on Aging.

THE GRANTEE ORGANIZATION IS RESPONSIBLE FOR RETAINING RECORDS OF ALL FEDERAL AND/OR STATE ACCOUNTS AS FOLLOWS:

All accounting records are to be kept in accordance with federal and state policy and readily available for examination by Area Agency personnel or other federal and/or state officials authorized to examine any or all financial and programmatic records. Such records shall be retained in accordance with the following:

- 1. Keep adequate and complete financial records, and to report promptly and fully to the Area Agency.
- 2. If a federal and/or state audit has not been made within three (3) years after project termination, project records may then be destroyed, on approval of the Agency.
- 3. In all cases, an over-riding requirement exists to retain records until resolution of any audit questions relating to individual grants.
- 4. Non-federal resources must be contributed equally to the percentage of the non-federal share of actual net costs for a project year. If a Grantee reports federal and/or state cash received but unearned on the final project report for a project year, the Grantee then owes the Area Agency this amount. This amount may constitute a cash advance on any funds awarded to the Grantee by the Area Agency for the following project year.
- 5. The disposition of unearned portions of federal and/or state funds at the end of the project year shall be made in accordance with current state policies.
- 6. Unearned federal and/or state cash at the time the project is terminated shall be returned in full to the Area Agency.
- 7. All obligations will be liquidated within 30 days after the end of the project year and before final program and financial reports are submitted.
- 8. Inventory of project equipment will be maintained and submitted as requested.
- 9. Project records will preserved and kept available to federal and state auditors at the primary offices of the Grantee.

Signature of NCNMEDD Non-Metro Area Agency on Aging Authorizing Official:	We, the undersigned officers of the Grantee organization, certify that we are in agreement with the terms and conditions of this award.
	Date:
Tim Armer	Date:
Executive Director	Date: 5/21/15

North Central New Mexico Economic Development District
Non-Metro Area Agency on Aging

NUTRITION SERVICE INCENTIVE PROGRAM (NSIP)
AGREEMENT

This Agreement is made and entered into this 1st day of July 2015, by and between the North Central New Mexico Economic Development District(NCNMEDD) Non-Metro Area Agency on Aging (Non-Metro AAA), hereinafter referred to as the "Agency" and City of Hobbs, hereinafter referred to as the "Contractor."

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work

The Contractor will:

- A. Establish procedures to insure that such cash payments are used solely for the purchase of United States agricultural commodities and other foods produced in the United States for use in their feeding operations. No imported foods may be purchased with these funds, e.g. coffee, tea, cocoa, and bananas.
- B. Ensure that meals furnished under contractual arrangement with food service management companies, caterers, restaurants, or institutions, contain United States produced commodities or foods at least equal in value to the per meal cash payment.
- C. Encourage the purchase and use of locally sourced farm fresh food products that meet the nutritional standards of the Agency. Contractors must ensure that the farm food products meet the state EID requirements.
- D. Ensure that meals meet Title III-C standards for nutritional adequacy and sanitation.
- E. Maintain accounting records for NSIP separate and apart from other accounting records maintained for other nutrition funding sources (i.e., Title III-C1 and C2 and other cash used for raw food).
- F. Report on a monthly basis to the Agency on forms provided by the Agency and submit such other reports as deemed necessary by the Agency.
- G. Maintain and retain for three years from close of the federal year to which they pertain, complete and accurate records of all amounts received and disbursed under this Agreement.
- H. Allow the Agency to monitor periodically the Contractor's fiscal accountability of NSIP.
- I. Abide by and comply with the conditions and requirements set forth in Title 45, Part 74 dated August 2, 1978 (Grant Administration); Implementation of OMB Circular No. A110; Uniform Policies). Moreover, the Contractor will abide by Volume 38, No. 181 dated September 19, 1973 (Part II-Administration of Grants) as well as other applicable federal regulations that are currently in effect or will come into effect during the term of this contract.
- J. Ensure eligible participants are assessed and registered in SAMS.
- K. Ensure meals served meet the following:

Congregate Meals – A hot or other appropriate meal served to an eligible person which meets one-third (1/3) of the dietary reference intakes (DRI) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences and complies with the most recent Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture, and which is served in a congregate setting 5 or more days per week. There are two types of congregate meals:

- Standard meal – A regular meal from the standard menu that is served to the majority of the participants.
- Therapeutic meal or liquid supplement – A special meal or liquid supplement that has been prescribed by a physician and is planned specifically for the participant by a dietician (e.g., diabetic diet, renal diet, tube feeding).

Home Delivered Meals – Hot, cold, frozen, dried, canned or supplemental food (with a satisfactory storage life) which provides a minimum of one-third (1/3) of the dietary reference intakes (DRI) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences and complies with the Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture, and is delivered to an eligible person in the place of residence. The objective is to assist the recipient sustain independent living in a safe and healthful environment 5 or more days per week. Home delivered meals may be served as breakfast, lunch, dinner or weekend meals.

L. As recommended by the Agency, these funds be expended prior to Title III-C funds and/or state funds.

2. **Compensation**

- A. The total amount payable to the Contractor under this Agreement shall not exceed \$27,778 for eligible meals served during the period July 1, 2015 through June 30, 2016 regardless of funding sources, to eligible participants and their spouses.
- B. All subsequent payments will be disbursed upon receipt of actual service delivery data from the Contractor.

3. **Gross Receipts Tax**

Not applicable. Tax exempt.

4. **Term**

No terms of this Agreement shall become effective until approved by the Department of Finance and Administration and shall terminate on June 30, 2016, unless terminated pursuant to paragraph 5, infra.

5. **Termination**

A. This Agreement may be terminated by the Agency without cause upon written notice delivered to the Contractor at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred

for performance or failure to perform prior to the date of termination. This Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency, or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents, is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein, or if the Contractor fails to comply with any of the terms contained herein or is in breach of this Agreement. This provision is not exclusive and does not waive the Agency's other legal rights and remedies caused by the Contractor's default or breach of this Agreement. This Agreement also may be terminated by the Contractor upon thirty (30) days written notice to the Agency.

B. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and client records generated under this Agreement and any non-expendable personal property or equipment purchased by the Contractor with contract funds shall become property of the Agency upon termination. On the date the notice of termination is received, the Contractor shall furnish to the Agency a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Agency agreements with the Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Contractor under the paragraph of this Agreement regarding financial records.

6. Status of Contractor

The Contractor, his agents and employees, are independent contractors performing services for the Agency and are not employees of the Agency. The Contractor, his agents and employees, shall not accrue leave, retirement, insurance, bonding, or any other benefit afforded to employees of the Agency as a result of this Agreement.

7. Assignment

The Contractor shall not assign any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

8. Subcontracting

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

9. Records and Audit

A. The Contractor shall maintain detailed records which indicate the date, time, and nature of services rendered. These records shall be subject to inspection by the Agency, Aging & Long Term Services Department (ALTSD), the Department of Finance and Administration, the State Auditor, the U.S. Department of Agriculture, and the U.S. General Accounting Office. The Agency shall have the right to audit billings both before

and after payment; payment under this Agreement shall not foreclose the right of the Agency to recover excessive, improper, or illegal payments.

B. The Contractor will provide a financial and compliance audit report to the Agency covering the period July 1, 2015 to June 30, 2016. The audit reports provided to the Agency must include a copy of the Auditor's management letter. This audit shall be conducted in accordance with generally accepted auditing standards and shall encompass the following provisions.

20. The Vendor, expending equal to \$750,000 but less than or equal to \$25,000,000 more in combined federal funds, shall have an audit conducted in accordance with Revised OmniCircular 200.518(b)(1), which streamlines eight different grant circulars into one set. A fair allocation of the audit costs may be charged to both federal and state funds under this Agreement. A copy of the complete report package as required to be submitted by A-133 to the designated clearinghouse shall also be provided to the Agency. The audit report shall include a schedule of administrative and program expenses for each separate federal title or program (Title IIIB, Title IIIC-I, Title IIIC-II, Title IIID, Title IIIE, NSIP, etc.), which facilitates a reconciliation of audited costs to the final report. The NCNMEDD Non-Metro AAA further requires the inclusion of the final units of services provided and final number of persons served. This information may be included within the supplementary section of the audit report.
97. Governmental type vendors/contractors expending less than \$500,000 in combined federal awards shall be continue to follow the guidance of the New Mexico State Auditor. Since a full scope audit will continue to be required by the State Auditor, only a fair allocation of state funds within this Agreement may be expended for such audit costs. The audit report shall include a schedule of administrative and program expenses for each separate federal title or program (Title IIIB, Title IIIC-I, Title IIIC-II, Title IIID, Title IIIE, NSIP, etc.) which facilitates a reconciliation of these audited costs to the final report. The NCNMEDD Non-Metro AAA further requires the inclusion of the final units of services provided and final number of persons served by this Agreement. This information may be included within the supplementary section of the audit report.
98. Non-governmental vendors/contractors expending between \$25,000 in federal and state funds combined less than \$500,000 in federal funds, shall have an audit conducted in accordance with the GAO Government Auditing Standards. A fair allocation of the audit costs may be charged to the state funds awarded under the Agreement. Federal funds shall not be charged for audit costs under this section. The audit report shall include a schedule of administrative and program expenses for each separate title or program (Title IIIB, Title IIIC-I, Title IIIC-II, Title IIID, Title IIIE, NSIP, etc.), which facilitates a reconciliation of these audited costs to the final report. The NCNMEDD Non-Metro AAA further requires the inclusion of the final units of services provided and final number of persons served by this agreement.

This information may be included within the supplementary section of the audit report.

99. For those contractors/vendors that expend less than \$15,000 in federal and state dollars, no audit is required. The close out of this grant will be based on information required by the Non-Metro AAA such as financial reports (trial balances, general ledgers, etc.), monitoring efforts and final numbers of services provided and final number of individuals served.
100. Submittal of the audit report for government entities shall be within ten (10) working days after releases by the New Mexico State Auditor's Office. For non-governmental entities, the audit report is due four (4) months after the end of the entity's fiscal year.
101. The contractor's/vendor's independent auditor shall be made aware of Office of Management and Budget Circular (OMB) A-87, Cost Principles for State, Local and Indian Tribal Governments, and OMB Circular A-122, Cost Principles of Nonprofit Organizations in determining the allowability of costs. (A-87 and A-122 have been reclassified under the CFR as 2 CFR Part 225, and 2 CFR Part 230, respectively.)

10. Appropriations

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the U.S. Congress for the performance of this Agreement. If sufficient appropriations and authorizations are not made, the Agreement shall terminate upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

11. Release

The Contractor, upon final payment of the amount due under this Agreement, releases The Agency, its officers and employees, the ALTSD and the State of New Mexico from all liabilities, claims, and obligations arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed herein unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. Product of Service; Copyright

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

13. Conflict of Interest

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the

performance of service required under this Agreement.

14. Equal Opportunity Compliance

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

15. Non-Discriminating Service Delivery

The Contractor will not, on the ground of race, religion, color, ancestry, sex, sexual preference, national origin, age or handicap:

1. Deny any individual receiving services under this Agreement any service or other benefits provided under the program;
2. Provide any services or other benefits to an individual which is different, than those funded under this Agreement;
3. Subject any individual to segregation or separate treatment in any manner related to his receipt of any services or other benefits provided under the funding for this program;
4. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any services or other benefits provided under this program;
5. Treat an individual differently from others in determining whether he satisfies any eligibility or other requirements or condition which individuals must meet in order to receive any aid, care, services, or other benefits provided under the funding for this program;
6. Deny any individual an opportunity to participate in the program through the provision of services or otherwise afford him/her an opportunity to do so which is different from that afforded others under the program.
7. The Contractor, in determining (1) the types of services or other benefits to be provided under the program, (2) the class of individuals to whom, or the situation in which such services or other benefits will be provided under this program, or (3) the class of individuals to be afforded an opportunity to participate in the program, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, sex, sexual preference, national origin, or handicap, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program in respect to individuals of a particular race, color, sex, sexual preference, national origin, or handicap.

16. **Confidentiality**

The use or disclosure of any information concerning a recipient of assistance or service for any purpose not connected with the administration of the Agency's or the Contractor's responsibilities with respect to services hereunder, is prohibited, except on written consent of recipient, his attorney, or his responsible parent or guardian.

17. **Amendment**

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

18. **Penalties for Violation of Law**

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

19. **Scope of Agreement**

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

20. **Applicable Laws**

This Agreement shall be governed by the laws and regulations of the (a) State of New Mexico, (b) the Older Americans Act of 1965, as amended, (c) the Agricultural Act of 1949, as amended; and (d) any other applicable laws and regulations of the federal government.

21. **Internal Dispute Mediation**

The Contractor shall attempt to resolve all disputes with participants by negotiation in good faith and with such mediators as may be acceptable to the parties involved. The Contractor shall implement an internal grievance policy with procedures in place to effectively and fairly negotiate and resolve disputes with participants. The Contractor must provide all participants with notice, at the commencement of the contract year, that disputes may be resolved in this manner. If negotiation and mediation through the grievance procedure fail, any party may submit the dispute to the ALTSD in accordance with the following provisions:

1. In any dispute submitted, the Agency and the Contractor hereby agree to and consent to the ALTSD mediation of the dispute.
2. Mediation may only be instituted by written request, which request shall include a statement of the matter in controversy.
3. Initial contacts and negotiation shall be conducted by the appropriate Agency staff.
4. Any resolution of the matter shall be binding and final on the Contractor and the Contractor hereby agrees to be bound by said resolution.
5. Failure of the Contractor to resolve any dispute pursuant to the procedures set

forth herein or to comply with a resolution ordered by the ALTSD shall amount to a material breach of Agreement.

6. Internal Dispute Mediation does not supersede the appeal hearing policies and procedures.

22. **Invalid Term or Condition**

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

23. **Enforcement of Agreement**

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

24. **Notices**

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

Agency:

NCNMEDD
Attn: Jenny Martinez
3900 Paseo del Sol
Santa Fe, NM 87507

Contractor:

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

25. **Other Provisions**

Compliance with Grant conditions. The Contractor shall abide by all grant conditions set out in the Notification of Grant Award (NGA) attached hereto and hereby incorporated by reference.

26. **Indemnification**

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

27. **Authority**

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

28. Signatures

For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective July 1, 2015.

City of Hobbs
Legal Name of Vendor/Contractor

Signature

J.J. Murphy, City Manager
Printed/Typed Name of Signatory

Date

NCNMEDD
Non-Metro Area Agency on Aging
Name of Area Agency on Aging



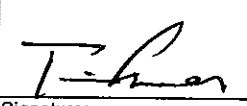
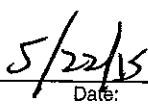
Signature

Tim Armer, Executive Director
Printed/Typed Name of Signatory

5/22/15

Date

NON-METRO AREA AGENCY ON AGING
 NOTIFICATION OF GRANT AWARD (NGA)
 SPECIAL PROJECTS - NUTRITION SERVICE INCENTIVE PROGRAM (NSIP)

GRANTEE: Hobbs, City of ADDRESS:		APPROVED BUDGET FOR THE PERIOD			Type of Grant or Action		NGA DATE
		FROM: 07/01/2015 TO: 06/30/2016			New/Cont: X Revision: Other:		
PHONE:		Fund: 210 Title of Project: NSIP			CFDA # 93.053		
Indirect Cost % of \$							
DESCRIPTION		FEDERAL	STATE	LOCAL CASH	LOCAL IN-KIND	PROJECT INCOME	TOTAL
Personnel Services		\$0.00	\$0.00				\$0.00
Fringe Benefits		0.00	0.00				0.00
Travel		0.00	0.00				0.00
Maintenance & Repair		0.00	0.00				0.00
Supplies (Raw Food)		27,778.00	0.00				27,778.00
Contractual Services		0.00	0.00				0.00
Other Operating Costs		0.00	0.00				0.00
Capital Outlay		0.00	0.00				0.00
Subtotal		\$27,778.00	\$0.00				\$27,778.00
PERCENT OF TOTAL COST		100%	0%	0%	0%	0%	100%
COMPUTATION OF GRANT				8. Federal/State Shares will be Comprised of:			
1. Estimated Total Cost		\$27,778.00			a. Federal/State grant		
2. LESS Anticipated Project Income		\$0.00			unearned in previous	FY Federal:	0.00
3. Estimated Net Cost		\$27,778.00			project year(s)	FY State:	0.00
4. Non-federal and Non-state Share of Net Cost		\$0.00			b. Carry Over		0.00
5. Project Income (Used as Match)		\$0.00					0.00
6. Federal Share of Net Cost		\$27,778.00			c. New Obligational		
7. State Share of Net Cost		\$0.00			Authority Herein	FY Federal:	\$27,778.00
					Awarded		
<p><input checked="" type="checkbox"/> Unless revised, the amount of lines 6 and 7 (Computation of Grant) will constitute a ceiling for federal and/or state participation in the approved cost.</p> <p><input checked="" type="checkbox"/> The federal and/or state share of the project cost is earned only when the cost is accrued and the non-federal and/or non-state share of the cost has been contributed. Receipt of federal and/or state funds (either through advance or reimbursement) does not constitute earning of these funds.</p> <p><input checked="" type="checkbox"/> If the actual net cost is less than the amount on line 3 (Computation of Grant) the non-federal and/or non-state share, the federal share, and the state share will meet the percentages indicated on Page 1 of the NGA.</p> <p><input checked="" type="checkbox"/> As shown in the Computation of Grant (assuming satisfactory progress, adequate justification and the availability of funds), the federal and state shares shall meet the amounts shown on lines 6 and 7 of the estimated net project cost shown on line 3.</p> <p><input checked="" type="checkbox"/> Funds herein awarded will remain available during the length of the project period, however, state and/or federal funds are dependent upon availability.</p> <p><input checked="" type="checkbox"/> In accepting the grant awarded for support of the expanded portion of an existing program, the grantee agrees to maintain expenditures for the existing program in the amount of Line 6 during the approved project period.</p>							
<p>All accounting records are to be kept in accordance with federal and state policy and readily available for examination by Area Agency personnel or other federal and/or state officials authorized to examine any or all financial and programmatic records. Such records shall be retained in accordance with the following:</p> <ol style="list-style-type: none"> 1. Keep adequate and complete financial records, and to report promptly and fully to the Area Agency. 2. If a federal and/or state audit has not been made within three (3) years after project termination, project records may then be destroyed, on approval of the Agency. 3. In all cases, an over-riding requirement exists to retain records until resolution of any audit questions relating to individual grants. 4. Non-federal resources must be contributed equally to the percentage of the non-federal share of actual net costs for a project year. If a Grantee reports federal and/or state cash received but unearned on the final project report for a project year, the Grantee then owes the Area Agency this amount. This amount may constitute a cash advance on any funds awarded to the Grantee by the Area Agency for the following project year. 5. The disposition of unearned portions of federal and/or state funds at the end of the project year shall be made in accordance with current state policies. 6. Unearned federal and/or state cash at the time the project is terminated shall be returned in full to the Area Agency. 7. All obligations will be liquidated within 30 days after the end of the project year and before final program and financial reports are submitted. 8. Inventory of project equipment will be maintained and submitted as requested. 9. Project records will be preserved and kept available to federal and state auditors at the primary offices of the Grantee. 							
Signature of Area Agency on Aging Authorizing Official: Tim Armer, Executive Director				We, the undersigned officers of the Grantee organization, certify that we are in agreement with the terms and conditions of this award.			
 Signature:				Date:			
				Date:			
 Date:							



CITY OF HOBBS

COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15, 2015

SUBJECT: Opening and Closing a bank account for Evidence Trust Fund
DEPT. OF ORIGIN: Finance Department
DATE SUBMITTED: June 08, 2015
SUBMITTED BY: Deborah Corral, Assistant Finance Director

Summary:

The City would like to close the Municipal Court Bond Account at Lea County State Bank and transfer the funds in that account to the City of Hobbs Operating account at Lea County State Bank.

The Municipal Court Bond Account was used in the past as a separate cash account. It was used by the Municipal Court to issue checks for bond refunds at the Municipal Court. Since 2011 (with the adoption of InCode Software) the City of Hobbs Finance Department has been issuing bond refunds through the Finance Department with checks issued on the City of Hobbs Operating Account. The Municipal Court Bond Account has had no activity since 2011. The balance in the account will be transferred to the City of Hobbs Operating Account.

Fiscal Impact:

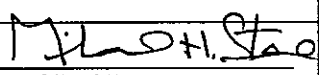
No fiscal impact

Reviewed By: 
Finance Department

Attachments:

Resolution

Legal Review:

Approved As To Form: 
City Attorney

Recommendation:

Motion to approve the resolution.

Approved For Submittal By:


Department Director


City Manager

CITY CLERK=S USE ONLY
COMMISSION ACTION TAKEN

Resolution No. _____

Ordinance No. _____

Approved _____

Other _____

Continued To: _____

Referred To: _____

File No. _____

Denied

CITY OF HOBBS

RESOLUTION NO. 6307

A RESOLUTION AUTHORIZING THE CLOSING
OF A BANK ACCOUNT USED FOR THE MUNICIPAL COURT BOND ACCOUNT

WHEREAS, the City of Hobbs has an unused and unneeded account at Lea County State Bank to house funds for Municipal Court Bond Account, and

WHEREAS, the City of Hobbs wishes to close the account at Lea County State Bank as current activity is housed in the City of Hobbs Operating Account,


BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the City Commission hereby approves the closing of the Municipal Court Bond Account at Lea County State Bank.

PASSED, ADOPTED AND APPROVED THIS 15th day of June, 2015.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



ACTION ITEMS



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15th, 2015

SUBJECT: CONSIDER THE APPROVAL FOR RFQ/RFP No. 477-15 to HAYDON FOR CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES for the Health Wellness & Learning Center (HWLC) Recreational / Aquatic Facility near Millen and SR 18
DEPT. OF ORIGIN: Office of the City Manager / Parks and Recreation / Engineering / General Services
DATE SUBMITTED: June 8th, 2015
SUBMITTED BY: JJ Murphy – City Manager

Summary:

The City of Hobbs adopted a procurement ordinance, which CMAR method of construction and requires a three step process for the selection of the Construction Manager at Risk (CMAR). **Step 1** – Request for Statement of Qualifications (SOQ), **Step 2** – Request for Proposals (RFP), **Step 3** – Interviews. This process started with the RFQ and advertised on March 1, 2015. Eight (8) firms submitted SOQ's and all all deemed qualified in order to move forward with Step 2, which was a request to submit cost proposals. Firms were initially ranked based on the SOQ's prior to opening the cost proposals. After adding allocated points based on costs and New Mexico resident preference, the Selection Committee recommended five (5) of the eight (8) firms for the interview process. Haydon Building Corporation out of Phoenix, Arizona ranked highest based on a total point basis and ranking basis.

Haydon Building Corporation is well experienced in CMAR projects and has extensive experience with recreational and aquatic facilities. **The Selection Committee recommends awarding the CMAR contract to Haydon Building Corporation.** Attached is a Summary Ranking Sheet of the Selection Committee.

Pre-Construction Services: This initial contract award is for the pre-construction services to be provided to the City of Hobbs, Partners and BRS during the design process. The attached contract defines the Pre-Construction Service fees (capped at \$250,000), the %CMAR Fee and costs for General Conditions (Note: Construction Services will be a separate City Commission Action and only the Pre-Construction Services will be encumbered with this approval). Currently, the City of Hobbs has engaged BRS for Schematic Design, which has been completed and Design Development authorized April 20th of 2015. With this award, Haydon will provide additional review of the Schematic Design and independent construction estimates. In addition, Haydon will become part of the Design Team, while providing pre-construction services during the Design Development Phase and Construction Document Phase for both construction costs estimates and constructability to ensure cost, quality and construction time are consistent with the City of Hobbs and Partners expectations. **Pre-Construction Services** are defined in the contract at \$250,000 (not including GRT) and paid out based on the hourly rates provided in Haydon's RFP (cost proposal).

Construction Services: At this time, design of the HWLC will continue for most of 2015 and based on the attached timeline, construction is not anticipated until the second quarter of 2016 (see attached Project Timeline for additional information). Construction of the HWLC will require additional action by the City Commission in order to encumber the entire construction of the project, which may include an amendment to the GMP (Guaranteed Maximum Price). Currently the GMP is estimated at \$45M, although does not include furnishings, equipment, off-site improvement and on-site improvement out-side of the building shell. As the design progresses these other construction items will be more defined and provide opportunities to include or procure separately.

Design Status Update: The Design process on the facility is halted until the CMAR contract is awarded in order to provide input and independent construction estimates on the Schematic Design provided to date.

Suerte Development Agreement: The drainage pond which was constructed by the Suerte Group is 90% complete. The Suerte Group is providing a subdivision plat for the HWLC property (13+ acres) and Drainage Pond (12+ acres), which will to be deeded and dedicated to the City of Hobbs. In addition, design continues on the utility, roadway and drainage improvements to be built in conjunction with the HWLC facility. The Suerte Group will reimburse the City of Hobbs up to \$1M on a pro-rata basis as development occurs adjacent to the new roadway.

Fiscal Impact:

Reviewed By: _____

Finance Department

The award of the CMAR contract to Haydon will encumber the Pre-Construction services for the design process. Subsequent action by the Commission will be required for actual construction of the facility. Pre-Construction Services are defined in the contract, which is capped at **\$250,000 (plus GRT) – In order to encumber this contract in FY15 there will be budget transfer within the General Fund. To date there is \$2.4M encumbered for the BRS design services.**

- **Budget Line Item:**
 - (FUND 01 - PROJ No. 200) HWLC Facility (DESIGN): \$2M (Does not reflect fund transfer)
 - (FUND 44 – PROJ No. 200) HWLC (INFR/UTIL) \$2M
 - **TOTAL FY 15 BUDGETED FUNDS:** \$4M
- **SUERTE AGREEMENT (9-2-14 Comm. Meeting):**
 - Roadway / Utilities & RR Crossing: \$2,000,000
 - Drainage Improvements: \$2,000,000
- **ASSOCIATED REVENUE AND FUTURE COST SHARE:**
 - Developer Fair Share assessment: \$1,000,000
 - Drainage Pond Construction: \$250,000 (Est. Value)
 - RR License Agreement (Payment to COH) \$300,000
 - 25+ Acres Deeded or dedicated to COH (12+ acre drainage pond & 13 acres HWLC site)
- **HW&LC FACILITY (Final Programming TBD):**
 - 13+ Acre Site
 - Est. Facility Size: 150,000+ sq. ft.
 - Est. Cost of HWLC Facility: \$63M to \$68M (based on SD's & Contingencies)
 - Est. Off-Site Improvement (Noted above) \$4M
 - Est. Revenue (Annual) TBD *
 - Est. Expenditures (Annual) TBD **
 - Est. Net Reoccurring Costs \$1.4M / yr ***

* An estimated \$1.7M in revenue is from the May 9, 2014 City of Hobbs Community Recreation Center Feasibility Study by Ballard*King, which is based on 180,000+ sq.ft. Facility. Part of the programming re-alignment will determine new estimated revenue

** An estimated \$3.5M in expenditures is from the May 9, 2014 City of Hobbs Community Recreation Center Feasibility Study by Ballard*King, which is based on 180,000+ sq.ft. Facility, which included an ice rink. NOTE: The proposed Fee Schedule with BRS does not include an ice rink

***No more than \$1.4M in net reoccurring costs is a goal for this project, which would be shared costs with City of Hobbs, NMJC, Lea County and Hobbs Schools. Final programming and fee schedules for the proposed uses will determine final estimated revenue and expenditure.

Attachments: Selection Committee Ranking Sheet / RFP Score Sheet/ Haydon SOQ & Cost Proposal / Project Timeline

Legal Review:

Approved As To Form:

M. H. Stone
City Attorney

Recommendation:

Commission consideration for the approval of a contract with the Haydon for CMAR Services

Approved For Submittal By:

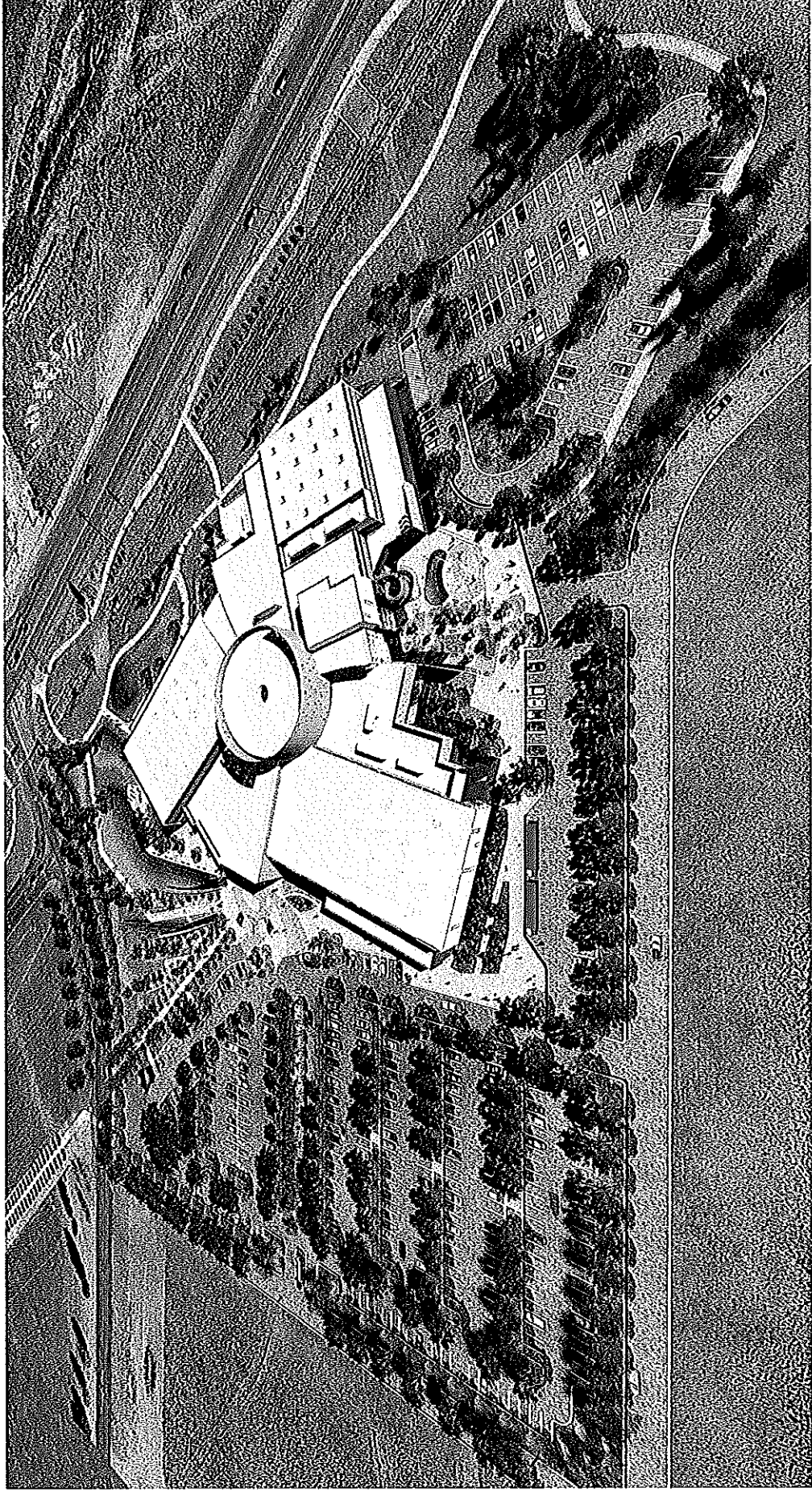
Department Director

City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

HWLC - Aerial View



Health Wellness and Learning Center

Next Steps - Timeline

Programming/Schematic Design Phase: Sept '14 – Feb '15

Design Development Phase: May '15 – Oct '15

Construction Documents Phase: Oct '15 – Feb '16

City Commission shall consider authorization for additional design services to BRS for Construction Doc Phase

Project Bidding: Mar '16 – Apr '16

Construction: May '16 – Fall 2017

City Commission shall consider approval of any GMP amendments to CMAR contract and authorize Notice to Proceed prior to construction

Grand Opening: Fall 2017

RFP EVALUATION SCORESHEET

DISTRICT							
PROJECT	Health Wellness Learning Center		PROJECT #	RFP # 477-15		DATE:	
Weighting:	Technical - 50	Price - 15	Interview - 35	Total (w/o Int) - 65			
CHAR (Interview Req'd)	Select	77%	23%	Total (w/Int) - 100			

Offerors: 8

Resident Preference Type (Hover to View Key)

	BRADBURY	FLINTCO	HAYDON	JAYNES	HB	LEE LEWIS	LYNESS	MCCARTHY
Joint Venture								
Percentage of Joint Venture Performed by Resident	0%	0%	0%	0%	0%	0%	0%	0%
Percentage of Joint Venture Performed by Resident Veteran <\$1M	0%	0%	0%	0%	0%	0%	0%	0%
Percentage of Joint Venture Performed by Resident Veteran <\$5M	0%	0%	0%	0%	0%	0%	0%	0%
Percentage of Joint Venture Performed by Resident Veteran >\$5M	0%	0%	0%	0%	0%	0%	0%	0%
Percentage of Joint Venture Performed by Non-Resident	0%	0%	0%	0%	0%	0%	0%	0%
Preference Factor For Technical + Price	3.25	3.25	0.00	3.25	3.25	0.00	0.00	3.25
Preference Factor For Interview	1.75	1.75	0.00	1.75	1.75	0.00	0.00	1.75

Raters: 7

Summary of Technical and Price Evaluations:

Overall Rank:	2.00	4.00	3.00	5.00	7.00	6.00	8.00	1.00
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(this ranking is used to determine the slate of firms to be interviewed.)

SELECTED FOR INTERVIEW (Yes if Checked)	<input checked="" type="checkbox"/> YES	<input checked="" type="checkbox"/> YES	<input checked="" type="checkbox"/> YES	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> YES	<input type="checkbox"/> YES	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> YES
Chance of being selected:	Good	Good	Good	Good	Poor	Fair	Poor	Excellent

NOT USED FOR FINAL SELECTION - For Comparison Purposes Only

Total Score	372.03	369.02	370.53	367.95	308.82	338.00	125.57	400.83
Rank based on Score	2.00	4.00	3.00	5.00	7.00	6.00	8.00	1.00
Avg Score	53.15	52.72	52.93	52.56	44.12	48.29	17.94	57.26
Rank based on Avg Score	2.00	4.00	3.00	5.00	7.00	6.00	8.00	1.00

INTERVIEWS:

Raters: 7

Summary of Interviews:

Total:	26.00	33.00	9.00	24.50				12.50
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Overall Interview Rank:	4.00	5.00	1.00	3.00				2.00
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Total Score	156.25	130.25	235.00	171.25	0.00	0.00	0.00	201.25
Rank based on Score	4.00	5.00	1.00	3.00	6.00	6.00	6.00	2.00
Avg Score	22.32	18.61	33.57	24.46	0.00	0.00	0.00	28.75
Rank based on Avg Score	4.00	5.00	1.00	3.00	6.00	6.00	6.00	2.00

Total Score	528.28	499.27	605.53	539.20	308.82	338.00	125.57	602.08
Rank based on Score	4.00	5.00	1.00	3.00	7.00	6.00	8.00	2.00
Avg Score	75.47	71.32	86.50	77.03	44.12	48.29	17.94	86.01
Rank based on Avg Score	4.00	5.00	1.00	3.00	7.00	6.00	8.00	2.00

Final Selection Based on Combined Scores from Technical Proposal, Price and Interview

Total:	25.00	33.00	10.00	26.00				11.00
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Overall Final Rank:	3.00	5.00	1.00	4.00				2.00
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BRADBURY	FLINTCO	HAYDON	JAYNES	HB	LEE LEWIS	LYNESS	MCCARTHY
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RFP SCORE SHEET (COST PORTION)

	BRADBURY	FLINTCO	HAYDON	JAYNES	HB	LEE LEWIS	LYNESS	MCCARTHY
TOTAL CMAR FEE	\$ 900,000.00	\$ 1,003,500.00	\$ 1,305,000.00	\$ 1,350,000.00	\$ 1,687,500.00	\$ 1,237,500.00	\$ 2,700,000.00	\$ 1,800,000.00
% CMAR FEE	2.0%	2.2%	2.9%	3.0%	3.8%	2.8%	6.0%	4.0%
GEN CONDITIONS	\$ 2,041,000.00	\$ 1,393,471.00	\$ 1,954,384.00	\$ 2,281,531.00	\$ 2,471,097.00	\$ 983,000.00	\$ 2,100,000.00	\$ 1,575,000.00
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ 2,941,000.02	\$ 2,396,971.02	\$ 3,259,384.03	\$ 3,631,531.03	\$ 4,158,597.04	\$ 2,220,500.03	\$ 4,800,000.06	\$ 3,375,000.04



Construction Manager at Risk Services
Health and Wellness Learning Center



RFQ 477-15
Due Date: March 26, 2015 at 5PM

HAYDON BUILDING CORP | 4640 E Cotton Gin Loop | Phoenix, AZ 85040
602.296.1496 tel | 602.297.6972 fax | www.haydonbc.com

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March 26, 2015

Toby Spears, Finance Director
City of Hobbs
Purchasing Department - Room 224
200 E. Broadway
Hobbs, NM 88240



HAYDON

RE: RFQ 477-15, Health and Wellness Learning Center, CMAR Services

Dear Members of the Selection Committee:

On behalf of Haydon Building Corp, I would like to thank you for the opportunity to submit our Statement of Qualifications for your new Health and Wellness Learning Center. This is an excellent fit with Haydon's project experience, and we look forward to building a relationship with the City/Partners on this important and exciting project.

Firm Experience and Experience Working as a Team: Haydon is pleased to offer the Hobbs community a team with not only extensive experience working in the CMAR project delivery method, but also an established practice in delivering successful recreation/community centers and aquatics facilities. Haydon has had the opportunity to build 142 CMAR & Alternative Delivery projects, including 14 community recreation centers (four of which have been with BRS, including the South Mountain Ray & Joan Kroc Corps Community Center, the Morenci Community Center, the Flagstaff Aquatics Center, and the ongoing Montrose Recreation District Community Center). Haydon has also built 12 aquatics facilities, 11 athletic fields, and 6 indoor aquatics facilities. Through this experience, our Haydon team has developed the synergy and expertise that would make us an outstanding partner for the City/Partners and BRS, providing valuable experience in planning and constructing these challenging, complex facilities.

Important Considerations: We understand the unique significance of this project for the City/Partners and people of Hobbs, as it will create a striking, exciting gathering place to invigorate your community. Our team offers solid experience in meeting the needs of a wide variety of stakeholders, focusing on dynamic teamwork, communication, and focus from the start. We have a responsibility to keep as much money as possible within Hobbs and the surrounding community through the use of local subcontractors, suppliers, equipment providers, and laborers, and we will maximize their utilization by helping them meet pre-qualification and insurance requirements. Lastly, we will utilize our deep technical knowledge and familiar relationship with BRS to effectively deploy their iconic vision.

Below please find additional requested information to demonstrate our relevant qualifications:

- 1) Our organization name is Haydon Building Corp.
- 2-4) Fritz Behrhorst, LEED AP, Vice President; fbehrhorst@haydonbc.com; (602) 296-1496
Fritz Behrhorst is authorized by Haydon Building Corp to contractually obligate our organization, and is also authorized to negotiate the contract on behalf of Haydon Building Corp. Fritz can be contacted for clarification questions regarding our statement of qualifications.
- 5) Haydon Building Corp's proposal is not being submitted by an agent, thus no Power of Attorney is required.
- 6) Haydon Building Corp hereby acknowledges and agrees to be bound by the General Requirements contained in Exhibit A of RFQ 477-15, in addition to the City/Partners Standard Terms and Conditions and the conditions governing the procurement section. In clarifying item 15 (Licensing Requirement) on page 19 of the RFQ, we have independently confirmed with the City Clerk's office for the City of Hobbs that a city business license will not be issued/required unless we are awarded a contract by the City/Partners.
- 7) We acknowledge receipt of Addenda 1 (March 19, 2015) and Addenda 2 (March 20, 2015) for RFQ 477-15.
- 8) Federal ID Number: 86-0782387
New Mexico Contractor's License Number: 52406 (Classification: GB98 & GA01)
New Mexico Gross Receipts Tax Number: 02-238113-00-9 (Issue Date: 5-26-2010)

HAYDON BUILDING CORP
4640 E. Cotton Gin Loop
Phoenix, Arizona 85040

Tel 602.296.1496
Fax 602.296.1495

LIC# A ROC108937, B-01 ROC108085



9) Haydon Building Corp does not intend to submit any bids to complete work with our own forces.

10) Fritz Behrhorst, LEED AP, Vice President, whose signature can be found at the end of this transmittal letter, is authorized to contractually obligate Haydon Building Corp.

Our diverse experience and solid background provide the basis for the exceptional service that we offer. A testament to our commitment to meeting our clients' needs is our stellar record of repeat business with our alternative delivery clients. Our service is based on this cornerstone principle: Work collaboratively with the owner and design team during pre-construction to provide the client with a finished project that will meet their aesthetic, functional, budget, and schedule requirements.

We acknowledge and agree to meet the insurance, bonding, and other special conditions laid out in the RFQ. To support these requirements, we have included a Certificate of Liability Insurance and a bonding letter/surety declaration in the attached appendix. The Certificate of Liability Insurance demonstrates general liability, product liability, and property damage insurance that is sufficient to meet New Mexico Tort Claims Act limits. In the event that Haydon Building Corp is selected to submit a proposal for CMAR Fee and Specified General Conditions, we shall furnish an RFP Bond in the amount of 5% of the total proposal, as required by New Mexico procurement code. We also agree to submit Payment and Performance Bonds satisfying the requirements of Article 11.5 of the General Conditions of the Contract for Construction Manager at Risk as a condition precedent to establishing a GMP for the Contract for CMAR.

We appreciate your time and consideration. For further information about this Statement of Qualifications, please contact me at (602) 296-1496 or fbehrhorst@haydonbc.com.

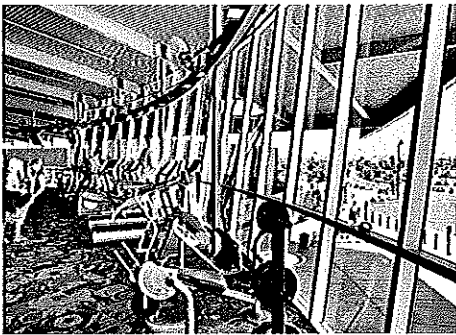
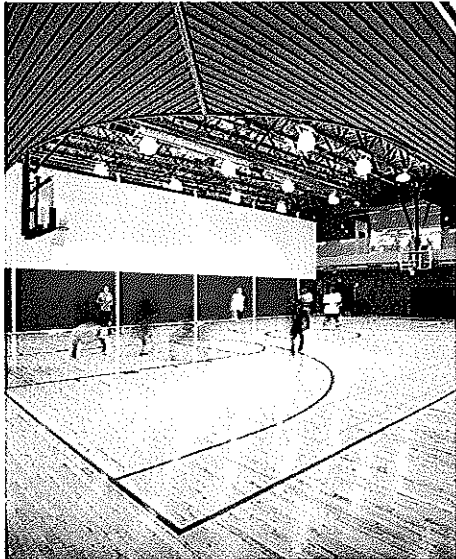
Sincerely,

Fritz Behrhorst, LEED AP
Vice President of Pre-Construction (Authority to Bind)
HAYDON BUILDING CORP

PAST PERFORMANCE

CMAR/GMP EXPERIENCE

Haydon has provided pre-construction and construction services for **142 CMAR and Design/Build projects**. We perform 80% of our work using these delivery methods and have guided many clients through their first process. Our value engineering and frequently-updated schedules result in projects completed under budget and often ahead of schedule without sacrificing quality. This ability is why we have been selected as the contractor to guide 21 different clients through their very first CMAR or Design/Build project. As a result of our extensive CMAR experience, we have a proven track record of successfully developing GMPs. Just as important as this record is the fact that **we have never exceeded a GMP.**



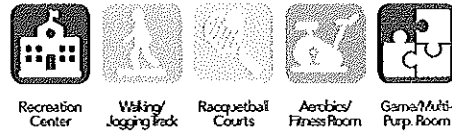
Rio Vista Recreation Center D/B with GMP Delivery

Owner: City of Peoria

Project Description: Award-winning 52,000 SF, multi-storied, multi-generational center that includes a gymnasium, complete fitness center, elevated 2nd-story running track, racquetball courts, cafeteria, dance/aerobics space, and sport courts.

Duration of Construction:
10/2005 - 09/2007
(Completed on Schedule)

Final Cost: \$10.9 M
(Completed on Budget)



Reference: Ed Striffler,
Design & Construction Manager,
City of Peoria Engineering
Department, (623) 773-7721

Same Team Members:
Cub Carter (Project Director),
Fritz Behrhorst (Pre-Construction
Director)

“The City is excited to accept this facility into its facilities portfolio knowing that many of the operations and maintenance challenges inherent in new construction have been addressed proactively during the design and construction phases of the project. Many construction professionals would benefit from using this project as a case study for how to construct a high design, low first and operating cost facility without conflict or claim.”

Walt Begley, Facilities Manager
City of Peoria, Rio Vista Recreation Center

Pecos Park, Recreation Center, & Aquatics Center CMAR

Owner: City of Phoenix

Project Description: 40,000 SF recreation center with a gymnasium and fitness center, an aquatics center with a dive and play pool, and a park with 15 lighted play fields and sport courts.

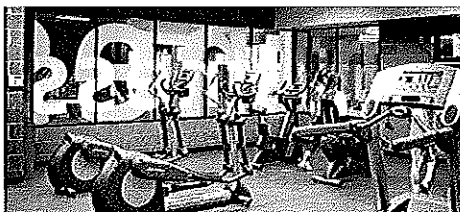
Duration of Construction:
04/2005 - 01/2007
(Completed on Schedule)

Final Cost: \$18.0 M
(Completed on Budget)

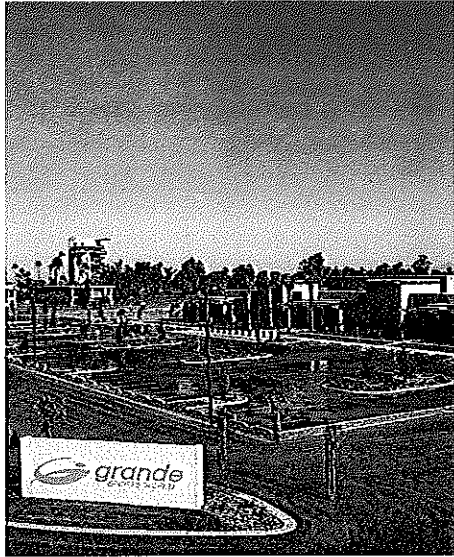


Reference: Holly Bosch,
Procurement Manager,
City of Phoenix,
(602) 262-4937

Same Team Members:
Cub Carter (Project Director),
Fritz Behrhorst (Pre-Construction
Director)



PAST PERFORMANCE



Grande Sports World CMAR

Owner: City of Casa Grande

Project Description: State-of-the-art, 59,694 SF performance center that includes eight professional-quality multi-use fields for football and soccer, hot and cold plunge pools, and a multi-use area with high performance strength and conditioning equipment.

Duration of Construction:
04/2009 - 09/2009
(Completed on Schedule)

Final Cost: \$16.4 M
(Completed on Budget)



CMAR



Recreation Center



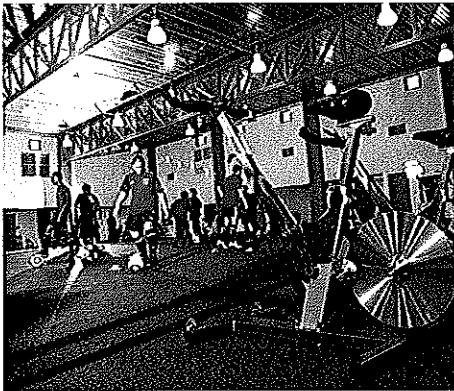
Therapy Pool



Aerobics/Fitness Room

Reference: Larry Rains, Deputy City Manager, City of Casa Grande, (520) 251-0418

Same Team Members:
Matt Greer (Project Manager), Fritz Behrhorst (Pre-Construction Director)



“The City hired Haydon Building Corp to construct the facility because of their expertise in the construction of these facilities and their reputation for always meeting tough deadlines. Because of their ability to manage and perform the civil and building components of this project under the Haydon Building Corp umbrella, they are on schedule to complete an 18 month project in less than 5 months. The City of Casa Grande definitely made the right choice in hiring Haydon Building Corp on this monumental project for the City.”

Larry Rains, Deputy City Manager
City of Casa Grande

Phoenix Country Day School Aquatics Center CMAR

Owner: Phoenix Country Day School

Project Description: New 50-meter competitive pool addition, as well as a 25-meter athletic pool, dive tank, bath house, locker facilities and four new tennis courts on an existing school campus.

Duration of Construction:
12/2013 - 09/2014
(Completed on Schedule)

Final Cost: \$7.4 M
(Completed on Budget)

Reference: Kathy Peters, Chief Financial Officer, Phoenix Country Day School, (602) 381-4542

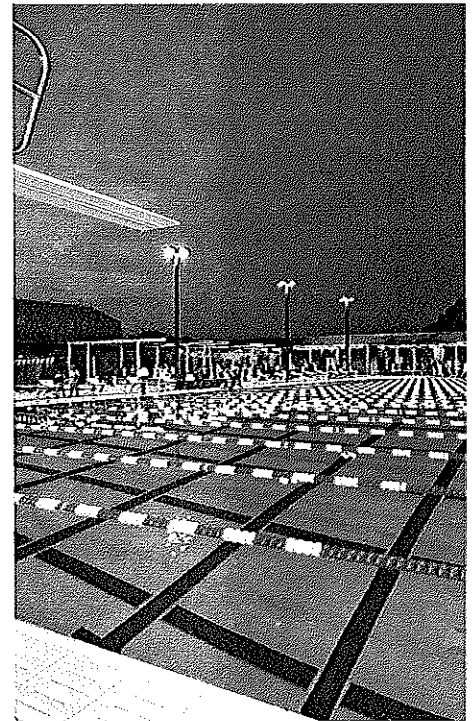
Same Team Members:
Cub Carter (Project Director), Fritz Behrhorst (Pre-Construction Director), David Mettler (BIM Manager)



CMAR



Competition Lap Pool



PAST PERFORMANCE

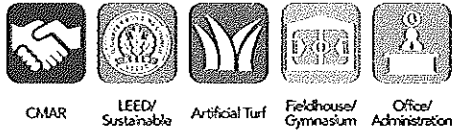


Xavier College Preparatory Academy Athletic Complex & Founders Hall CMAR

Owner: Xavier College Preparatory Academy / Diocese of Phoenix

Project Description: 93,000 SF artificial turf fields for soccer, lacrosse, softball, and physical education classes, including bleachers for up to 850 spectators, and cutting edge environmental technology. Scope also included a 77,130 SF student services building constructed within the heart of the operational campus.

Duration of Construction:
11/2010 - 06/2012
(Completed on Schedule)



Final Cost: \$15.3 M
(Completed on Budget)

Reference: Patrick Hintze, Assistant Construction Director, Diocese of Phoenix, (602) 354-2162

Same Team Members:
Fritz Behrhorst (Pre-Construction Director), David Mettler (BIM Manager)

Client Accolades

“Haydon Building Corp has completed a variety of large and complex projects and continues to win repeat business with the City of Chandler due to their superior customer service and consistent determined performance. We have yet to encounter anyone who delivers as much value or expertise during pre-construction services on CM at Risk projects.”

Bill Fay, City of Chandler, AZ

“Please accept our appreciation for Haydon’s efforts during the pre-construction phase of this project. This effort was challenging due to all the different stakeholders and varying interests involved. Haydon was instrumental in moving this project forward into construction. The CM at Risk process worked as it was intended: a team effort between the contractor and agencies. Please thank everyone involved for their efforts.”

Kelly Jensen, PE
Assistant City Engineer
City of Mesa, AZ

“Because of Haydon’s ability to adapt quickly to changing circumstances, provide problem solving insight, and work cohesively with the other team members, they were able to complete the infrastructure required for the project in a time frame that many thought was impossible. Their skills and dedication contributed greatly to the huge success of the project, and I would recommend consideration of them for other critical, high profile projects.”

Brian Dalke
Deputy City Manager
City of Goodyear, AZ

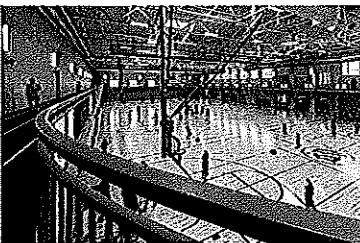
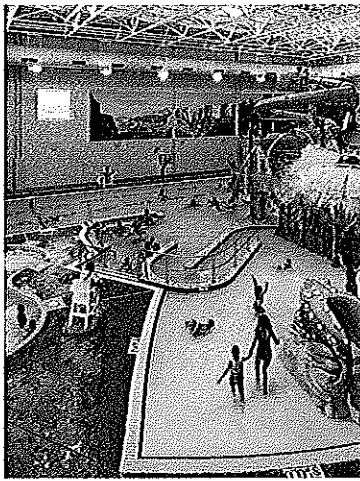
“As with most projects, budget and schedule were of major concern to me. Haydon pushed to keep all phases on target and on time and never let me down. I was particularly impressed with their ability to coordinate the activities of everyone on this project to keep all parties moving toward our final goal. The true testament to Haydon’s strengths is that final budget and schedule are always met without any cost to the overall quality....I’m glad that our recreation center was in Haydon’s hands.”

William Johns, RA
Senior Project Manager
Arizona State University

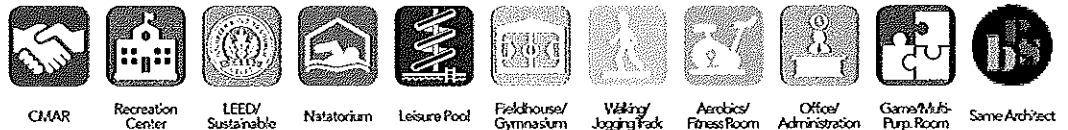
PAST PERFORMANCE

SIMILAR PROJECT EXPERIENCE

Haydon is a leader in municipal recreation center construction. To date, Haydon has completed **14 community recreation centers** for a variety of public and private clients, and are currently under construction on two additional community recreation centers. Another significant element of Haydon's similar experience is our outstanding track record working with BRS, having successfully delivered three community center projects together, including the **South Mountain Ray & Joan Kroc Corps Community Center**, the **Morenci Community Center and Aquatics Facility**, and the **Flagstaff Aquatics Center**. We are currently in pre-construction on our fourth project together, the **Montrose Recreation District Community Center**.



South Mountain Ray & Joan Kroc Corps Community Center CMAR



Owner: The Salvation Army

Project Description: LEED Gold certified, 139,000 SF community and indoor aquatics center consisting of an athletic pool, recreation pool, lazy river, plunge pool, fun water, elements, water slide and spa pool, three NBA-sized court gymnasium, outdoor play fields, and an elevated walking/jogging track.

Duration of Construction:
03/2010 - 05/2012
(Completed on Schedule)

Final Cost: \$31.6 M
(Completed Under Budget)

Pre-Construction Services: Estimating, Constructability Reviews, Value Engineering, Team Meetings, Sub Meetings, Safety Plan, Scheduling, Sequencing, ASI, CCD & Proposal Requests, Submittal Review & Processing, RFI Validation, Updates, QC

Reference: Dan Hinkson, President/Owner's Representative, Sigma Contracting, (602) 788-7800

Same Team Members: Cub Carter (Project Director), Fritz Behrhorst (Pre-Construction Director), Tim Sergent (Project Supt.), Kevin Oxford (Aquatics Supt.), Michael Rohrer (Mechanical Coordinator), David Mettler (BIM Manager)

Morenci Community Center & Aquatics Facility CMAR



Owner: Freeport-McMoran

Project Description: 55,200 SF community center featuring an indoor/outdoor aquatics center with an athletic pool, recreation pool, lazy river, fun water elements, water slide, spa pool, and an exterior recreation and dive pool. Recreation features include a two-court gymnasium, jogging track, two fitness areas, and a racquetball court.

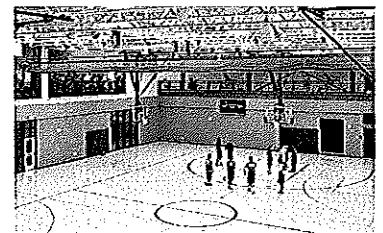
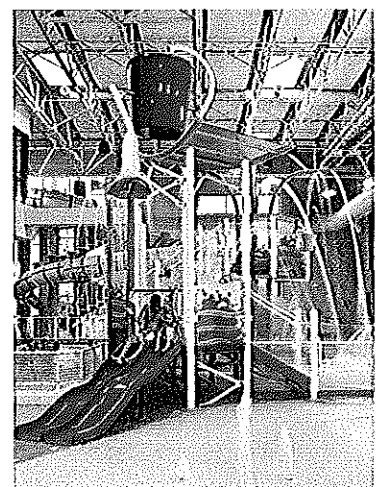
Duration of Construction:
11/2012 - 02/2014 (Completed on Schedule)

Final Cost: \$15.0 M
(Completed on Budget)

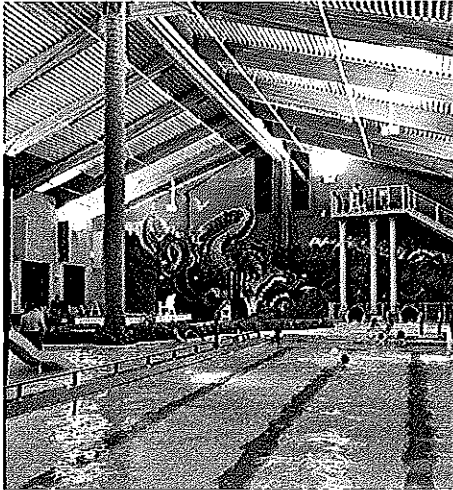
Pre-Construction Services: Estimating, Constructability Reviews, Value Engineering, Team Meetings, Sub Meetings, Safety Plan, Scheduling, Sequencing, ASI, CCD & Proposal Requests, Submittal Review & Processing, RFI Validation, Updates, QC

Reference: Jim Plyler, Sr. Engineer/Supervisor, Freeport-McMoran, (928) 865-6351

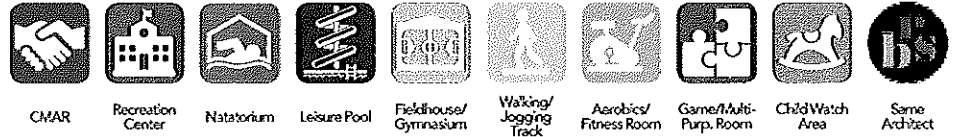
Same Team Members: Cub Carter (Project Director), Fritz Behrhorst (Pre-Construction Director), Kevin Oxford (Aquatics Superintendent), Mike Rohrer (Mechanical Coordinator), David Mettler (BIM Manager)



PAST PERFORMANCE



Flagstaff Aquatics Center CMAR



Owner: City of Flagstaff

Project Description: 50,000 SF new community center with a full-service gymnasium, multi-purpose room, climbing wall, complete fitness center, an elevated running track, and an indoor aquatics center with an athletic pool, recreation pool, plunge pool, and fun water elements.

Duration of Construction:
04/2007 - 07/2008
(Completed on Schedule)

Final Cost: \$13.6 M
(Completed Under Budget)

Pre-Construction Services:

Estimating, Constructability Reviews, Value Engineering, Team Meetings, Sub Meetings, Safety Plan, Scheduling, Sequencing, ASI, CCD & Proposal Requests, Submittal Review & Processing, RFI Validation, Updates, QC

Reference: Kathleen Viskocil, Project Manager, Northern Arizona University (formerly with the City of Flagstaff), (928) 523-6477

Same Team Members: Cub Carter (Project Director), Fritz Behrhorst (Pre-Construction Director), Mike Rohrer (Mechanical Coordinator)

West Campus Sun Devil Fitness Complex CMAR



Owner: Arizona State University

Project Description: 60,000 SF, LEED Silver certified recreation facility centrally located within an active 9,000 student campus, featuring an outdoor athletic/recreational pool, 3-court gymnasium with basketball courts, an outdoor aquatics facility, jogging track, and a multi-use athletic field complex featuring outdoor soccer fields.

Duration of Construction:
10/2011 - 01/2013
(Completed on Schedule)

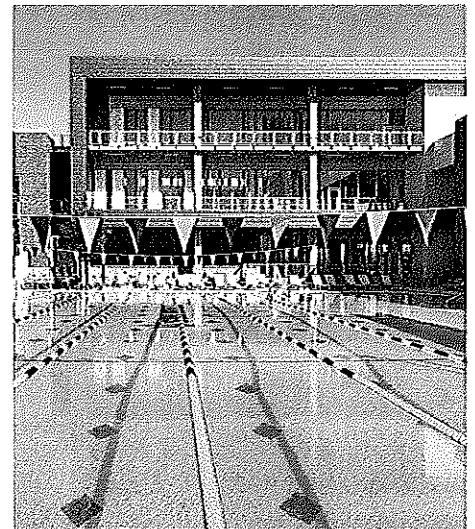
Final Cost: \$20.8 M
(Completed on Budget)

Pre-Construction Services:

Estimating, Constructability Reviews, Value Engineering, Team Meetings, Sub Meetings, Safety Plan, Scheduling, Sequencing, ASI, CCD & Proposal Requests, Submittal Review & Processing, RFI Validation, Updates, QC

Reference: Bill Johns, Project Director, Arizona State University, (480) 965-1379

Same Team Members: Cub Carter (Project Director), Matt Greer (Project Manager), Fritz Behrhorst (Pre-Construction Director), David Mettler (BIM Manager), Mike Rohrer (Mechanical Coordinator)



PAST PERFORMANCE



Tumbleweed Recreation Center



Recreation Center



Fieldhouse/
Gymnasium



Walking/
Jogging Track



Aerobics/Fitness
Room



Office/
Administration



Child Watch
Area

Owner: City of Chandler

Project Description: 62,000 SF recreational center featuring a gymnasium, fitness center, sport courts, and an indoor track.

Duration of Construction: 07/2006 - 12/2007
(Completed on Schedule)

Final Cost: \$13.6 M
(Completed on Budget)

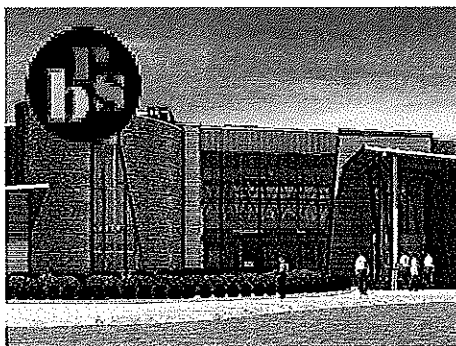
Pre-Construction Services: Estimating, Constructability Reviews, Value Engineering, Team Meetings, Sub Meetings, Safety Plan, Scheduling, Sequencing, ASI, CCD & Proposal Requests, Submittal Review & Processing, RFI Validation, Updates, QC

Reference: Joe Salvatore, Principal, Architekton, (480) 894-4637

Same Team Members: Fritz Behrhorst (Pre-Construction Director), Kenneth Shepherd (Project Engineer)



SPOTLIGHT: PROJECTS IN PROGRESS



Montrose Recreation District Community Center

Scope for this new \$25.5 million, 60,000 SF CMAR community and aquatics center project includes the renovation and conversion of the pre-existing aquatics center into an indoor artificial turf field house. The new community center will include a gymnasium, an elevated walking/jogging track, a weight/fitness room, community room, two racquetball courts, games room, an eight-lane lap pool with bulkhead, a medium leisure pool, therapy pool, multi-purpose classrooms/party rooms, and sustainable options that include solar hot water heating.

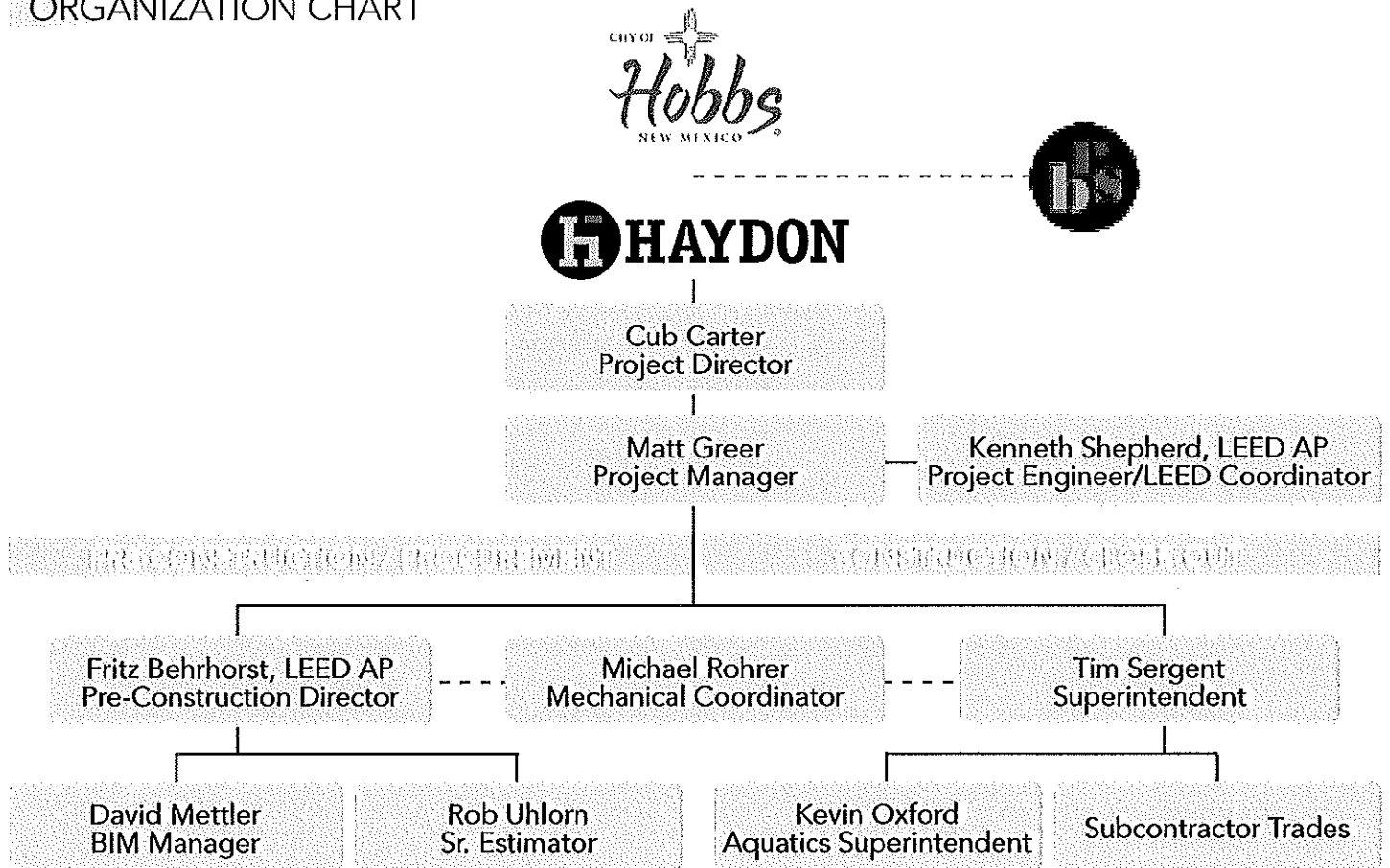
Northern Arizona University Center for Aquatics & Tennis

This new \$36.7 million, 123,165 SF CMAR indoor NCAA sports competitive aquatics and tennis center features a 50-meter by 25-yard competitive pool, a separate dive tank, and a warm-up spa for swimmers and divers. The tennis center supports five indoor practice and one exhibition court as well as six outdoor courts. The site development includes a multi-purpose athletic field.



PRESENTATION OF THE PROJECT TEAM

ORGANIZATION CHART



QUALIFICATIONS, EXPERIENCE, & HOURLY RATES



Cub Carter, Project Director
Hourly Pre-Construction Rate: \$122.00
CMAR Projects: 37 Total
Experience: 22 with Haydon, 33 total years

From project inception, Cub will lead Haydon's project efforts. He will act as Haydon's team leader, owner's liaison, and your primary point of contact. His management of Haydon's entire program will ensure the integration of the pre-construction and construction efforts.

Select project qualifications/experience includes:

- South Mountain Ray & Joan Kroc Corps Community Center CMAR
- Morenci Community Center & Aquatics Facility CMAR
- Flagstaff Aquatics Center CMAR
 - Rio Vista Recreation Center D/B with GMP Delivery
 - Pecos Park, Recreation Center, & Aquatics Center CMAR
 - Phoenix Country Day School Aquatics Center CMAR
 - ASU West Campus Sun Devil Fitness Complex CMAR



Matt Greer, Project Manager
Hourly Pre-Construction Rate: \$105.00
CMAR Projects: 13 Total
Experience: 9 with Haydon, 20 total years

Matt will be responsible for day-to-day onsite management, project documentation, directing, and coordinating onsite construction activities. He will work directly with the City/Partners and BRS to ensure work is completed on schedule and in accordance with all requirements.

Select project qualifications/experience includes:

- Grande Sports World CMAR
- ASU West Campus Sun Devil Fitness Complex CMAR
- Mesa Spring Training Multi-Use Facility CMAR
- ASU Chandler Innovation Center CMAR

PRESENTATION OF THE PROJECT TEAM



Fritz Behrhorst, LEED AP
Pre-Construction Director
Hourly Pre-Construction Rate: \$138.00
CMAR Projects: 107 Total
Experience: 22 with Haydon, 32 total years

Fritz will lead Haydon's pre-construction efforts in the areas of budgeting, value engineering, technical review, and sustainable design.

Select project qualifications/experience includes:

- ⑩ South Mountain Ray & Joan Kroc Corps Community Center **CMAR**
- ⑩ Morenci Community Center & Aquatics Facility **CMAR**
- ⑩ Flagstaff Aquatics Center **CMAR**
 - Montrose Recreation District Community Center **CMAR**
 - Rio Vista Recreation Center **D/B with GMP Delivery**
 - Pecos Park, Recreation Center, & Aquatics Center **CMAR**
 - Phoenix Country Day School Aquatics Center **CMAR**
 - Xavier College Athletic Complex **CMAR**



Michael Rohrer, Mechanical Coordinator
Hourly Pre-Construction Rate: \$105.00
CMAR Projects: 40 Total
Experience: 12 with Haydon, 31 total years

Mike will be responsible for managing, directing, and coordinating special systems and MEP activities. He will ensure MEP work is completed on schedule and in accordance with all requirements.

Select project qualifications/experience includes:

- ⑩ South Mountain Ray & Joan Kroc Corps Community Center **CMAR**
- ⑩ Morenci Community Center & Aquatics Facility **CMAR**



Kenneth Shepherd, LEED AP
Project Engineer/LEED Coordinator
Hourly Pre-Construction Rate: \$73.00
CMAR Projects: 10 Total
Experience: 8 with Haydon, 9 total years

Kenneth will assist Project Manager Matt Greer in the project's on-site day-to-day management functions. As a LEED Accredited Professional, Kenneth will assist in establishing sustainable objectives and developing concepts/strategies to achieve desired sustainable goals.

Select project qualifications/experience includes:

- Tumbleweed Recreation Center **D/B/B**
- City of Mesa Spring Training Multi-Use Facility **CMAR**
- City of Mesa Riverview Park Improvements **CMAR**



Tim Sergent, Superintendent
Hourly Pre-Construction Rate: \$97.00
CMAR Projects: 8 Total
Experience: 4 with Haydon, 28 total years

Tim will run daily onsite operations, manage all trades, manage quality control, and will assist our Safety Director in developing and maintaining a site and project-specific safety plan.

Select project qualifications/experience includes:

- ⑩ South Mountain Ray & Joan Kroc Corps Community Center **CMAR**
 - NAU School of Communication & Infrastructure **CMAR**
 - Westin-Kierland Resort and Spa **CMAR**



Kevin Oxford
Aquatics Superintendent
Hourly Pre-Construction Rate: \$97.00
CMAR Projects: 3 Total
Experience: 3 with Haydon, 31 total years

Kevin will run daily onsite operations and manage all trades for pool construction.

Select project experience includes:

- ⑩ South Mountain Ray & Joan Kroc Corps Community Center **CMAR**
- ⑩ Morenci Community Center & Aquatics Facility **CMAR**
 - NAU Center for Aquatics & Tennis **CMAR**



Rob Uhlorn, Sr. Estimator
Hourly Pre-Construction Rate: \$105.00
CMAR Projects: 30 Total
Experience: 2 with Haydon, 20 total years

Rob will assist Pre-Construction Director Fritz Behrhorst. He will also attend all design team meetings and provide up-to-date cost/schedule information to make decisions based on real impact factors and best value methods.

Select project qualifications/experience includes:

- Foundation for Blind Children Campus Expansion
- City of Mesa Riverview Park Improvements **CMAR**
- City of Mesa Desert Arroyo Park **CMAR**



David Mettler, BIM Manager
Hourly Pre-Construction Rate: \$105.00
CMAR Projects: 22 Total
Experience: 4 with Haydon, 19 total years

David will be responsible for utilizing the BIM models to create comprehensive as-builts for the building, and provide them to the City/Partners at project completion.

Select project qualifications/experience includes:

- ⑩ South Mountain Ray & Joan Kroc Corps Community Center **CMAR**
- ⑩ Morenci Community Center & Aquatics Facility **CMAR**

CONCEPT OF THE PROPOSAL

PROJECT APPROACH/CHALLENGES

Based on Haydon’s extensive experience in planning and constructing community, recreation, and aquatics centers, we have evaluated your proposed project and developed several critical issues for preliminary discussion.

Those issues are:

- ① Site Access and Construction Staging
- ① Safety of Site Patrons
- ① Facilitating Great Architecture
- ① Planning and Construction of Aquatics Components
- ① Natatorium Planning and Construction
- ① Gymnasium Planning and Construction
- ① Indoor Artificial Turf Field Construction

ⓘ Site Access and Construction Staging

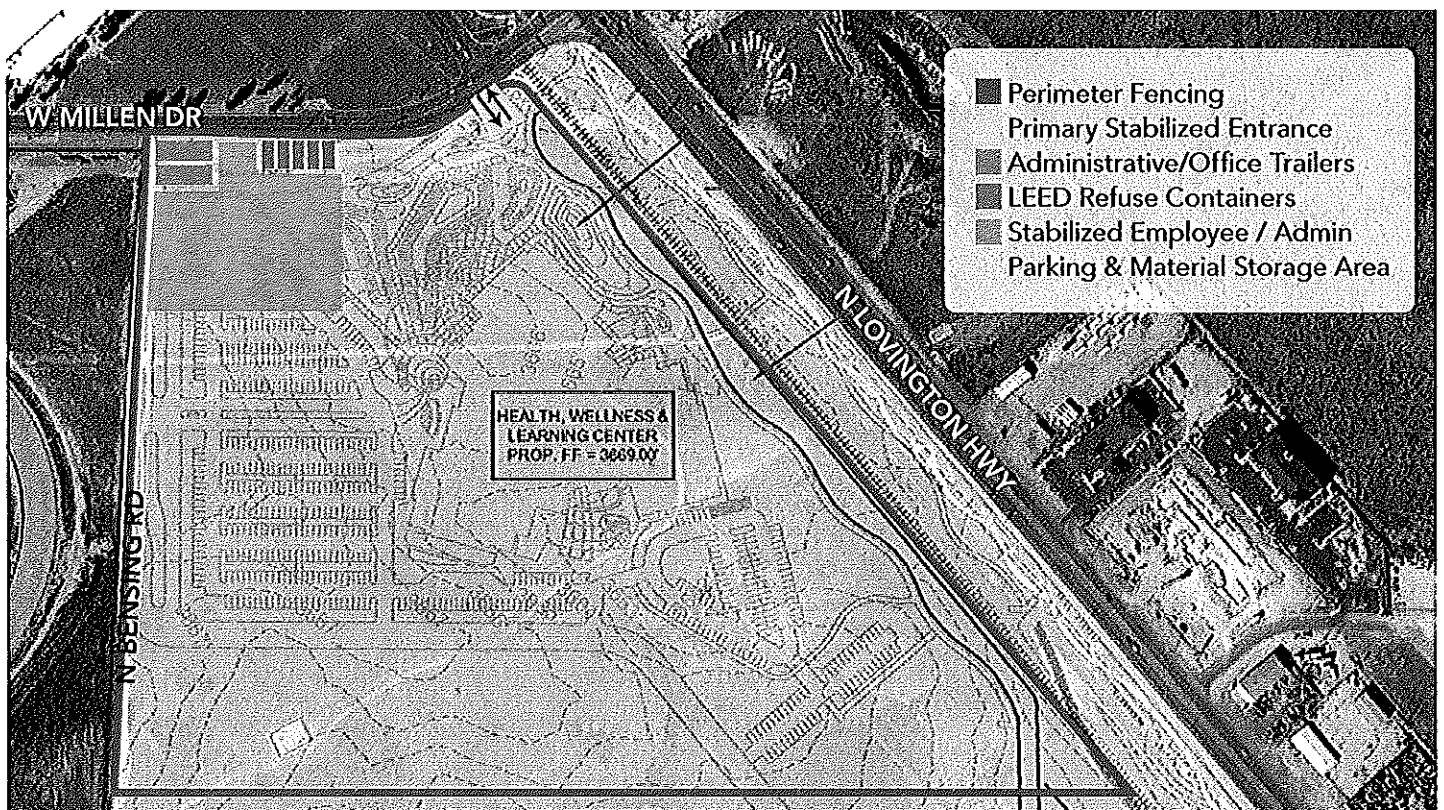
The site for your new Health and Wellness Learning Center will present the construction team with the challenge of building directly adjacent to a busy, occupied academic campus and event center. It will be crucial to provide proper timing and coordination of material deliveries, as well as staging of operations, to ensure a safe and efficiently-run jobsite. Additional considerations include manpower access and materials, public safety, construction staging, trash removal, and parking.

Techniques we will employ to ensure a safe and orderly workflow with minimal disruptions include the following:

- Developing a formal traffic and site access plan;
- Involving Haydon’s corporate Safety Director in project planning;
- Defining a parking plan for workers;
- Strictly regulating site staging; and
- Coordinating delivery and trash pick-up schedules.

We have developed a proposed access and staging plan (figure A below) that addresses some of the concerns identified. Specifically, we have outlined perimeter fencing to ensure public safety, and access entrances for construction operations. Additional detail regarding our logistics plan can be found on page 14.

Figure A. Access / Staging Plan



CONCEPT OF THE PROPOSAL



Safety of Site Patrons

Construction can be a fascinating and exciting experience for the public, but it can also prove dangerous if someone wanders on to the site. It will be our role during planning and construction to execute this project in such a way that the patrons of adjacent facilities can observe the building's progress from a safe distance. It is also our duty to be particularly vigilant to the potential of a curious public. **Our work plan will be sensitive to these issues and address them in a way that allows the community to follow the work, but also ensure their safety.**



Facilitating Great Architecture

Your new Health and Wellness Center will be one of the most important facilities that the City/Partners will construct in the near future. **As a building in a highly visible location that seeks to draw in the public, an appropriate architectural statement should be a priority.** The City/Partner's combined goal of unique architecture with high-quality construction and durable materials, creates an exciting challenge for the project team.

It will be important for your CMAR firm to be sensitive to the City/Partner's desire to create a striking building, and to the design team's vision to realize that goal. It will also be important for your CMAR firm to maintain design integrity while meeting the project budget. **Haydon has worked successfully with many of the top recreational designers in the United States, including BRS, to create exciting public buildings that are both beautiful and affordable.** Examples of our BRS projects include the Morenci Community Center & Aquatics Facility, the Salvation Army South Mountain Ray & Joan Kroc Corps Community Center, and the Flagstaff Aquatics Center, all of which were projects completed with BRS. The Haydon team is focused on approaching each of its projects with an open mind and a willingness to innovate, in order to achieve great design and deliver projects on budget.



Planning and Construction of Aquatics Components

Designing your new Health and Wellness Center affords an exciting opportunity to employ the latest in aquatics design and technology, creating the facility your patrons need. Many important decisions - ranging from the most fundamental to very technical - must be made that will affect functionality and operability, as well as your operating and construction costs.

Important Aquatics Facility Choices include:

- What competition levels and activities will your pool support?
- What configuration and water depth should the pool have?
- Should the competition, recreation, and dive pools be separate or combined bodies of water?
- Should we construct the pool using cast-in-place concrete, shotcrete, Myrtha technology, or a combination?
- Where should the mechanical equipment be located?
- What type of gutter return system should be employed in your pool?
- Should we use regenerative filters or sand filters?
- Should we incorporate ultraviolet sanitation?
- What configuration of pumping systems should be employed?

There is no one formula to derive the facility that works best for the City/Partners. Each of these components, as well as a myriad of other considerations, must be examined to arrive at the right combination for your facility. The solution will be to draw on the expertise of experienced aquatics designers and facility operators, and to rely on the advice of a seasoned aquatics center builder regarding best practices for execution, constructability, and cost. As one of the leading aquatics center builders in the Southwest, Haydon will bring the necessary knowledge and experience to help the City/Partners navigate all of the possibilities and make the best decisions for your project.

Great design is just the beginning; successful aquatics construction requires close attention to the details. **Important considerations include proper excavation, reinforcement, and pool shell construction.** A competitive pool requires exacting dimensional control as well as gutter elevation control to assure certification and construction of a fast pool. Coordination and proper installation of circulation, control, and electrical systems are critical for proper function. Integrating any deck or play features and their particular equipment requirements into the pool construction is also important. Finally, quality control must be carefully maintained during tile installation, plastering, lining, and deck system installation to guarantee a long-lasting pool that is free of flaws. Your CMAR must be equipped and ready to meet these challenges and to design/construct fast, certifiable, properly functioning, long-lasting, fun, and affordable pools.

CONCEPT OF THE PROPOSAL

Natatorium Planning and Construction

The design and construction of your Health and Wellness Center must face the many challenges of the natatorium space and the specialized use of the facility.

Important Natatorium Considerations include:

- Natatorium location and orientation.
- Location of access and control points, lockers, support, and anteroom areas.
- High structural clear height.
- Acoustics, sun, and lighting control.
- Moisture, heat, and humidity from the pool and their impact on finishes, structure, and the building envelope.
- Water from bathers and equipment impacts finishes, equipment, furnishings, and adjacent areas.
- HVAC systems to accommodate the heat, humidity, and natatorium ventilation requirements.
- Physical and mechanical separation of aquatics and non-aquatics spaces.
- Structural systems for long spans that are resistant to the indoor environment.
- Pool equipment area placement in the context of structural requirements and pool location.
- Mechanical and chemical areas must accommodate the damp and harsh environment of the pool.
- Health department and ADA considerations have significant impact on the systems and configuration of the pool.
- Pool construction, building shell sequencing, and construction coordination.

City of Flagstaff Indoor Aquatics Center completed with Barker Rinker Seacat



Our team will provide support in designing and constructing the natatorium space, including the choice of natatorium materials – from the structural approach to the pool deck, the drainage system to the wet locker facilities. These decisions will significantly affect not only the initial cost, but also the facility's life span and operational cost.

Some of the successful techniques we have employed on other similar projects include:

- Collaborating with the design team on building layout and orientation, balancing building functionality and the most cost-efficient configuration.
- Carefully selecting building systems and materials, as well as detailed constructability reviews, to ensure that the natatorium and the rest of the building will accommodate the aquatics environment.
- Planning the location of the pools, mechanical space, and supporting spaces in the context of the building envelope and structure to assure proper clearances for the pool shell, pool mechanicals, and HVAC systems in the natatorium space.
- Adopting innovative HVAC approaches, including utilizing duct socks, side wall supply and return, energy recovery units, and pre-conditioning of makeup air to ensure superior HVAC performance while limiting energy usage.

The presence of the pools within the building dramatically affects the construction approach for the natatorium space. We know that careful timing and sequencing of the pool and overhead work is a must in order to ensure safe, orderly construction, as well as avoiding damage to the pool shell and mechanical systems. **The process begins with the fundamental question: to start the pool first or the building shell first?** This critical decision is driven by schedule, design, weather, structure, pool type, and mechanical configuration, and is made on a case-by-case basis.

CONCEPT OF THE PROPOSAL

Another critical aspect of coordination is the underground utilities that are internal to the facility. The areas around the pool and between the building walls and the pool will be used as corridors for the installation of circulation system piping, deck drainage systems, and conduit for pool internal lighting and control circuitry. If not properly planned and sequenced, the installation of these services could affect the performance of the pools, impact the building shell construction, and delay the project.

Finally, controlling the movement of moisture out of the natatorium is another important and often overlooked aspect of construction. Our team will pay careful attention to the materials employed and the interaction of those materials, particularly at the perimeter of the conditioned space, to avoid problems caused by unanticipated vapor transmission.

Gymnasium Planning and Construction

The planned facility will include a two-court gymnasium and an indoor artificial turf training area. The planning and construction of the building around these major spaces will have a significant impact on its configuration and construction. A great gymnasium is the result of the successful execution of careful design and construction planning. **Some of the important design considerations include: location and orientation in the facility, access and anteroom areas, structural clear height, best method to span long distances, acoustics/sound control, lighting, sun control, play surface type, and ventilation/air distribution approach.**

Some of the successful techniques we have employed on other projects include:

- Thoughtful building layout to facilitate operation and to mitigate the impact of large volume spaces.
- Employing pre-engineered steel structures or steel girders for long spans required at the gymnasium.
- Considering placement of windows and the use of shade devices and exterior scrims to minimize the effect of sun on the gymnasium floor.
- Planning multi-use gymnasiums with cushioned wood, plywood base wood or synthetic floor surfaces.
- Innovative HVAC approaches including utilizing duct socks, heat exchanging units and pre-cooling of makeup air to assure superior HVAC performance while limiting energy usage.

As a key component to the success of these facilities, proper design and installation of the wood floor is critical (see **Figure B** below). Improper planning and installation can result in gapping, warping, cupping, buckling or soft spots in the floor. Mitigation of these factors must start in the design stage with considerations given to the control of vapor emissions from the concrete slab. This can be addressed in several ways including sub slab vapor barriers, topically applied vapor control coatings or actively ventilated wood flooring systems. **Another key to a high quality wood floor is appropriate conditioning of the building and wood flooring prior to installation.** As outlined above, the ability to isolate and regulate the temperature and humidity in the gym during construction is crucial to success of the floor installation. It is vitally important that the building be sealed and air conditioned and that the wood be allowed to adjust to the environmental conditions in which it will be used.

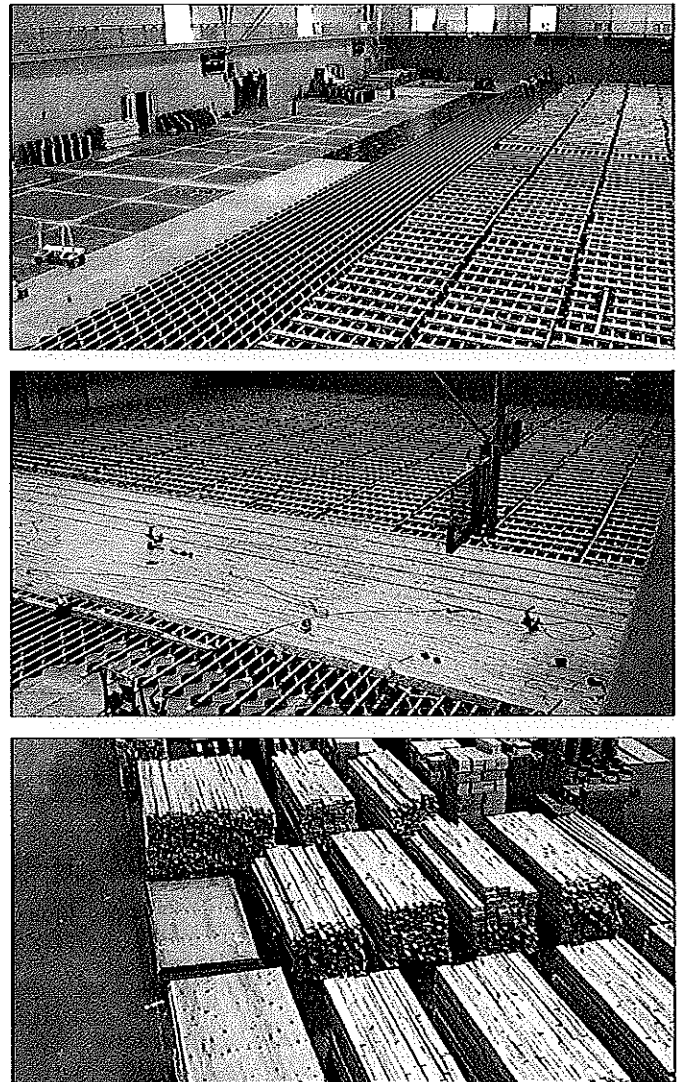


Figure B. Gym floor sequencing and installation at the South Mountain Ray & Joan Kroc Corps Community Center

CONCEPT OF THE PROPOSAL

! Indoor Artificial Turf Field Construction

Successfully completing a synthetic turf field requires a complex and professional process, often misunderstood by those with no experience in synthetic turf selection and installation. Many options exist, and selecting the best system will require careful planning. The City/Partners will need to understand which technological features ensure a professional, quality synthetic turf throughout its entire life cycle.

Our team understands the technological features that will ensure a top quality synthetic turf, and we will proactively assist the City/Partners in evaluating and selecting the necessary turf components. Each of these various synthetic turf system elements, along with the system requirements determined during design, will be included within the project selection criteria and incorporated into construction as the synthetic turf surface system is installed.

Synthetic Turf Component Considerations:

- Type of Fiber: Slit Film vs Monofilament
- Amount of Fiber: Face Weight
- Fiber Spacing: ISO Grid vs Corn Rows
- Primary Backings: Number of layers and Properties
- Secondary Backing: Type and Amount
- Infill: Type and Amount
- Seaming Method: Style and Method
- Lines and Marking Systems: Style and Method



Synthetic turf field at Xavier College Preparatory Academy Athletic Complex

CONCEPT OF THE PROPOSAL

1. PRE-CONSTRUCTION SERVICES

Estimating

Control of the project budget is as important as delivering a stunning facility. We view budget control as an integral part of the entire design and construction process. **Haydon will develop and implement a completely open book cost control system for your project.** Our system will provide each member of the team full access to all information comprising the budget at any time during the project. To facilitate review, all in-house estimates will contain detailed information broken down by scope to include units of labor, materials, equipment and other associated costs. At the outset of pre-construction, Project Director Cub Carter and Pre-Construction Director Fritz Behrhorst will work closely with the City/Partners and BRS, drawing on our team's experience to establish a parametric baseline budget based on the facility program.

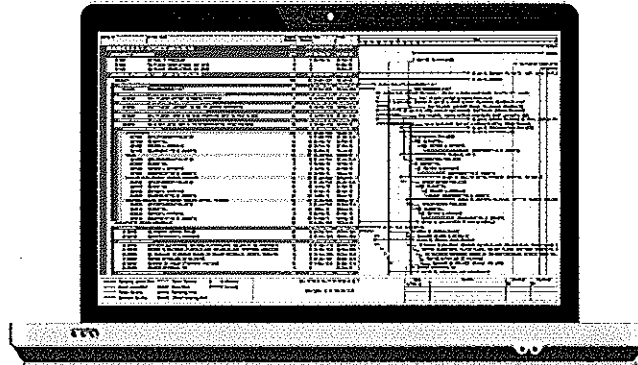
As the project develops during design, subsequent estimates will be prepared based upon current design information. These updates are summarized in the same format as the baseline budget and will be tracked side by side against the baseline budget and the last budget revision. This straightforward process allows the project team to visualize and understand the significance of a system or material design change and its direct cost impact to the project budget. Haydon's system is easily understood and completely open to the entire team.

There are no surprises and no secrets in Haydon's pre-construction cost control system.

Scheduling

The CMAR process enables the project team to be creative in project planning, developing the schedule, establishing construction phasing, and identifying areas where construction can begin early. Haydon will utilize Primavera P6, a computerized Critical Path Method (CPM) scheduling system, to guide and monitor the project. Through the collaborative efforts of all team members, we will produce a master schedule encompassing programming, design, construction, and project completion. Inherent in this schedule will be the identification of long lead times for materials or equipment. Through the research of this project's work items, we will develop a procurement schedule that is integrated into the overall project schedule and is also tracked to assure timely delivery of key equipment and materials.

During the design phase, Cub Carter (Project Director) will work together with the rest of the Haydon team and subcontractors to develop a cost-loaded schedule in the form of a CPM schedule, which will be updated weekly. This will include complete analysis of project phasing, utility coordination, and sequence planning for trades to provide maximum quality without rework.



Utilizing Primavera P6®, we can track anything and everything that can affect the schedule.

As the project moves into the construction phase, Cub will provide **Three-Week Look-Ahead Schedules** weekly for the team, work crews, and subcontractors. Haydon also holds **Pre-Activity Construction Meetings** with the team and Haydon's supervisors or subcontractors prior to the start of a new type of work. We discuss the plans, specifications, details, survey needs, testing, safety issues, and schedule at these pre-activity meetings. These meetings ensure everyone is clear on their responsibilities and expectations and mitigates costly re-work and delays to the project.

Logistics Planning

Haydon has constructed many of our community recreation center projects in and around operating facilities and clearly understands the importance of a safe, secure jobsite, as well as the importance of no interruptions to adjacent facility operations. Our proposed site set-up and access/staging plan (**Figure A on page 9**) defines locations for site security perimeter fencing, stabilized entrances, administrative/office trailers, LEED refuse containers, storage areas, and employee/administrative parking. Prior to construction, our team will work with adjacent facilities to develop a site-specific safety plan in conjunction with the work hours that best suit ongoing operations. In order to minimize disruptions during construction, Haydon will develop a formal traffic and site access plan, isolate the construction area, strictly regulate site staging, schedule deliveries and trash pickup, establish a defined parking plan for workers, and strictly monitor traffic control.

CONCEPT OF THE PROPOSAL

Constructability Review

One of our primary responsibilities is to review project development as it proceeds from concept to construction documents. The goal of this review is two-fold: to aid in the process of a complete and fully coordinated set of contract documents and to provide guidance as to the constructability of the project. Our comments will be presented on our internal review form, analyzed by BRS and discussed as a team to determine how each constructability comment will be addressed. Our constructability review process will occur at each stage of the plans and will be performed by our Project Manager, Superintendent, Aquatics Superintendent, Foremen, Estimators, and key subcontractors.

Building Information Modeling (BIM) is a tool Haydon uses to control the budget and minimize changes during construction. At the Design Development stage of the project, Haydon's in-house BIM Department begins the process of incorporating the mechanical, electrical, and plumbing (MEP) drawings to create virtual models of the new buildings.

As the project progresses to design completion, Haydon utilizes **Navisworks® software** to integrate the 3D models that were created of the buildings. This software allows the teams to identify any conflicts between the building systems and correct those conflicts during the design stage, avoiding costly changes in the construction phase at the completion of the project, the BIM models will be used the as-builts for the building, with all additions and changes fully incorporated.

Value Engineering

Our pre-construction team will work collaboratively with the City/Partners and BRS in the important give and take process of budget control during the design phase. We understand that throughout design development, decisions are dependent on the quality of information available to the team.

Our role in **Value Engineering (VE)** and Analysis is to add several dimensions of information quality to the decision-making process. We feel the value of a particular approach is brought about through a balance in using space and allotted time, achieving the lowest construction cost, realizing a low life cycle cost, and creating the desired aesthetic effect.

Our contribution to the VE / Analysis process is to suggest approaches to systems and solutions to challenges, to provide timely and accurate information, and to evaluate all the possibilities in terms of cost and time benefits.



*BIM model of the South Mountain Ray & Joan Kroc
Corps Community Center*

2. PROCUREMENT MANAGEMENT

Developing Subcontractor Interest

Our team will host a local Subcontractor and Vendor Fair in the City of Hobbs to promote interest, discuss our company, processes and subcontractor requirements, and introduce our **Local Subcontractor Liaison, Trevor Brown**, who will serve as a guide throughout the qualification and bidding process. We will also advertise the project by use of direct solicitations to area contractors, local newspapers, local chambers of commerce, and via industry resources such as AGC and ABA chapters.

Additionally, we will solicit select vendors to bid for materials or subcontracted work via fax, e-mail, and personal phone inquiry. We provide them with a bid package, including all relevant information required to ensure a complete understanding of their responsibility. Specifically, this package includes detailed, trade-specific scope definitions, a sample subcontract agreement, project schedule, insurance and bonding requirements, and overall project goals. Each bid package also includes trade-specific bid forms, which all bidders are required to submit in accordance with the established requirements. This procedure has proven successful in receiving complete and accurate bids, and in maintaining superior working relationships with the most competent subcontractors.

CONCEPT OF THE PROPOSAL

Below is our **Subcontractor Selection Process**, highlighting procedures for conducting pre-bid and pre-proposal meetings, pre-qualifying subcontractors and suppliers, receiving and evaluating bids and proposals, and entering into contracts. Additional information regarding our knowledge of local subcontractors and suppliers can be found on page 19.

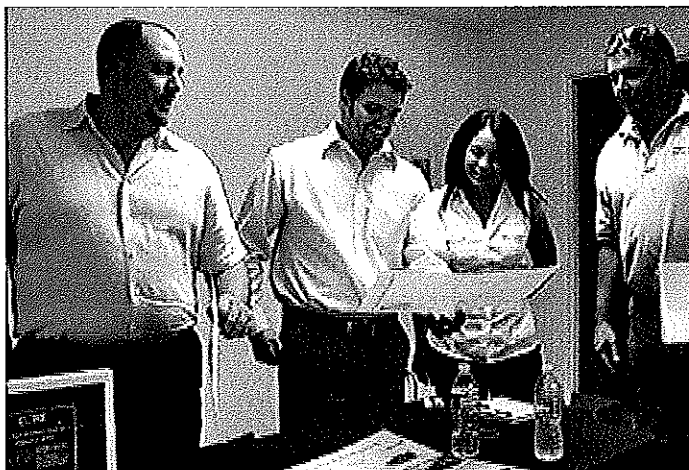
HAYDON'S SUBCONTRACTOR SELECTION PROCESS

- STEP 1** >> The process begins with identifying local contractors and suppliers who have an interest in the project and a capability to execute the work. Some of the qualifications the team will review include: safety record, financial data, bond rate, current workload, manpower, team commitments, pending litigation, backlog, revenue, and cash flow.
- STEP 2** >> Our team will submit a listing of those subcontractors which we believe to be the best suited for the project. The focus of the list will be to receive three to five qualified bids in each category of work. This process allows the City/Partners to proactively participate in the selection of sub bidders for the project.
- STEP 3** >> After approval of the list of subcontractors and vendors, we will issue bid documents including plans, specifications, project schedule, detailed bid instructions, and scope of work to the subs/vendors for review and pricing. We will hold a Pre-Bid Meeting for critical trades to discuss project specifics and highlight items that require special attention when preparing their bids.

- STEP 4** >> After the bids are received, our team will review and analyze the quotations for completeness. The bids for each scope of work are tracked on our Subcontractor Bid Tabulation Form which clearly compares scope and pricing for all of the sub bidders side by side to facilitate the decision-making process. This ensures the City/Partners is receiving the best overall project value.
- STEP 5** >> Depending upon subcontractor/vendor scope and complexity, we will conduct Procurement Interviews with selected bidders to discuss the scope of work and cost proposal completeness, and analyze the bid figures.
- STEP 6** >> After the interview, our team will make a recommendation of the subcontractors which we believe will provide the best overall value to the project, considering each subcontractor's qualifications and price, and make our final recommendation for selection.
- STEP 7** >> After final team and City/Partners approval, we will prepare and execute subcontracts or purchase orders with the best valued subcontractors and suppliers.

Haydon Subcontracting Process Benefits

Use of this system will help to assure orderly dissemination of information with verifiable records of the information content. To communicate with potential subcontractors during the pre-construction phase, Haydon utilizes **iSqFt**, a powerful internet tool for distributing bid invitations, project plans, specs, and addenda to all potential vendors, enabling us to obtain the most competitive bids - and translating to cost savings for the City/Partners.



Subcontractor Liaison Trevor Brown at a vendor fair to promote local interest

CONCEPT OF THE PROPOSAL

3. CONSTRUCTION MANAGEMENT SERVICES

The extensive effort that goes into the pre-construction steps of the project is expended to prepare the team for the smoothest possible transition into the construction phase. The work that we do will assure that the members are working as a team, the issues are identified and worked out, and that the plans, budgets, and schedule are set and ready to go to construction. We will handle each of the construction issues identified previously and those additional challenges developed during the pre-construction phase, as outlined. In the construction phase, Haydon will implement its time proven procedures for constructing the project.

Included in our construction phase services are:

- Team management and coordination
- Communications management
- Plan coordination
- Subcontracting and subcontractor management
- Regular project meetings
- Scheduling
- Cost controls and change order management
- Submittal process management
- Field management and coordination
- Invoicing
- Quality assurance and control
- Safety program management

An important aspect of our construction service is Quality Control. At each step of your project, our team will establish a well-defined set of objectives to meet. Clear goals are recognized by virtue of the extensive coordination, budgeting, scheduling, implementation, and quality assurance processes that Haydon employs. As the project progresses, the quality of our service will be measured against those objectives. During the construction process, our Project Superintendent will be responsible for all on-site quality. He will assure the work in place is continuously inspected and verified against the standard of quality established by the project team.

4. SAFETY & SITE MANAGEMENT

Haydon strives for the highest of safety standards within our organization. It is the result of careful attention to all company operations by those who are directly and indirectly involved. Employees at all levels must work diligently to execute the company's policies of maintaining safety and occupational health.

James Harbor, our Corporate Safety Director, will ensure Haydon operates at the highest level of safety at all times. He will be involved during the design phase to assist in the safety layout of walkways for pedestrian traffic and safe access through construction work zones.

As our Safety Director, his responsibilities include:

- Overall Site & Safety Program
- Proactive Public Relations
- Emergency Medical Response Plan
- Site Security Plan
- Hazardous Materials Plans
- Onsite Coordination
- Fire Protection
- Mentor Subcontractors

To maintain a safe and healthy work environment, Haydon Building Corp employs a Safety Program, which clearly defines the duties and responsibilities of all employees. Our Safety Program has been developed to assure compliance with all Federal, State and local regulations with particular emphasis on the Occupational Health Act of 1970 (OSHA), and the OSHA requirements that apply to our construction operations. **Haydon maintains an excellent E-MOD factor of 0.64, which is well-below the industry average of 1.0.**

5. COMMISSIONING & START-UP SERVICES

The commissioning process is a collaborative effort that requires planning and participation by all project team members. Our approach promotes a cooperative effort by asking each team member for their involvement and input throughout the design, construction, acceptance, and occupancy phases of the project.

Early in the process, the team will develop a project commissioning plan that clearly describes team member roles and responsibilities. The plan is reviewed and completed with input from all team members. One unique element of Haydon's commissioning plan is that we test components' performance concurrently with construction, not after all of the work is finished. Commissioning will be performed as portions of the systems become available. In that manner, if deficiencies are found, our workforce is already there onsite, mobilized, and prepared to resolve issues quickly with less defensive posturing or delay to remobilize his crew. This methodology effectively reduces the time spent on a final system performance test because a majority of the verification has already been witnessed during start-up and component-level testing.

CONCEPT OF THE PROPOSAL

6. PROJECT CLOSE-OUT SERVICES

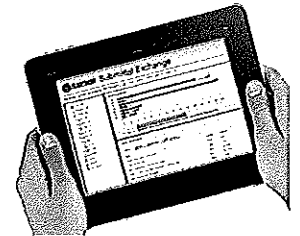
Complete close-out will involve the collection of all warranties, product information, commissioning reports, and operating manuals, as well as providing the **operations and maintenance (O&M)** training for all facilities personnel.

Haydon will prepare a punch list of all items required for close-out of the project. Each item is collected and recorded prior to final payment of any subcontractor or supplier. Upon notice of substantial completion, Haydon will jointly inspect the facilities with City/Partner personnel to verify construction quality has been met.

One important aspect of our service as your CMAR will be to completely document the work as it is put in place for use in the future as a reference for maintenance, repairs or improvements. We do this by carefully examining the work as it is installed, measuring and recording the progress and documenting the results in a set of documents that constitute the **"as-built"** plans for the project. These as-built plans are a set of the latest plans on which are recorded any deviations from the plans, the exact locations and elevations of any underground utilities, as well as actual elevations and locations of all surface features.

A hard copy of the as-built Plans are provided, along with a digital set, that is part of the closeout documentation package that is generated by our **Submittal Exchange** management system.

Haydon's commitment extends past project close-out and ensures that our clients know they will receive the best quality warranty service, quickly and comprehensively. Clients are provided access to our **Web-Integrated Client Warranty Portal**, where they can electronically issue a warranty request ticket to Haydon for each warranty item as it arises. The ticket will be distributed to the project team via email. Haydon's project team will ensure that each item is addressed by the appropriate party and update the warranty page with the status of each item, in order to keep the City/Partners informed of any corrective work being performed. The Haydon Warranty System provides the user with efficiency and accountability for warranty fulfillment, with a minimum amount of time and effort for our clients.



ABILITY TO MEET TIME & BUDGET REQUIREMENTS

At Haydon, we are extremely proud of the fact that, out of over 140 CMAR and Design/Build projects, **we have never delivered a project late or exceeded a GMP.** The table below highlights the Haydon team's schedule and budget performance for the CMAR/GMP projects highlighted on **pages 1-3.**

Project	Owner's Original Construction Estimate	Original Guaranteed Maximum Price	Final Contract Cost	Original Completion Date	Actual Date of Substantial Completion
Rio Vista Recreation Center D/B with GMP Delivery	\$10.9 M	\$10.9 M	\$10.9 M	09/2007	09/2007
Pecos Park, Recreation Center, & Aquatics Center CMAR	\$18.0 M	\$18.0 M	\$18.0 M	01/2007	01/2007
Grande Sports World CMAR	\$18.0 M	\$18.0 M	\$16.4 M	09/2009	09/2009
Phoenix Country Day School Aquatics Center CMAR	\$7.4 M	\$7.4 M	\$7.4 M	09/2014	09/2014
Xavier College Preparatory Academy Athletic Complex & Founders Hall CMAR	\$15.3 M	\$15.3 M	\$15.3 M	06/2012	06/2012

EXPERIENCE & UTILIZATION OF SUBCONTRACTORS & MATERIAL SUPPLIERS IN NEW MEXICO

EXPERIENCE SUCCESSFULLY COMPLETING NEW MEXICO PROJECTS

Haydon developed and maintained superior working relationships with the local New Mexico subcontractor community while working on the **US Army Corps of Engineers Directorate of Emergency Services (DES) Headquarters & Police Station White Sands Missile Range**. This 2-story, 36,693 SF emergency services headquarters and police operations facility included a dispatch area, detention center, small arms vault, and administrative areas.

On this project, Haydon made extensive efforts to include New Mexico owned and operated subcontractors; in fact, although the project is located closer to El Paso than Albuquerque, over 80% of the money available to subcontract was with New Mexico subcontractors. **In total, our subcontractor database contains over 360 local New Mexico firms.** Below are some primary examples of New Mexico firms that worked on the project:

- Corbins Electric
- Ortega Plumbing and HVAC
- Devcorp, Inc. Steel

Local Labor Market

Haydon is currently registered with the **New Mexico Department of Workforce Solutions**. We are diligent at cross-referencing New Mexico subcontractors with the Workforce Solutions registry prior to accepting proposals on projects funded by the state. We use the Workforce Solutions website to monitor labor market information, as well as the **New Mexico Bid Depository** to find qualified, New Mexico-owned firms through their services.

The local firms utilized on the DES Headquarters project were found and solicited for their project involvement through community outreach efforts and reference recommendations. For your project, we will host various local events to raise project awareness and to introduce interested parties to the Haydon team. We will engage iSqft, Work Solutions, Dodge, Bluebook, and the Bid depository to generate more interest in the project as the design progresses.

We understand the importance of participating within the communities in which we work, and that we have a responsibility to keep as much money as possible within Hobbs and the surrounding communities through the use of local subcontractors, suppliers, equipment providers, and laborers. Our approach to local vendor qualification and selection (outlined on **pages 15-16**) begins with a carefully screened list of qualified prospective bidders for each division of the work. We will only consider vendors that provide expert service and workmanship for your project.

Developing Viable Pricing Alternatives

Haydon provides potential subcontractors and suppliers with a bid package, including all relevant information required to ensure complete understanding of their responsibilities, including: detailed trade-specific scope definition, a sample subcontract agreement, project schedule, insurance and bonding requirements, and project goals. This procedure has proven successful in receiving complete and accurate bids and maintaining superior working relationships with competent subcontractors and suppliers.

RECENT, CURRENT, & PROJECTED WORKLOAD

Annual Volume for the Past Five Years

Year	Annual Volume
2014	\$230,000,000
2013	\$224,000,000
2012	\$205,000,000
2011	\$190,000,000
2010	\$180,000,000

Anticipated Volume for 2015 - 2017

Year	Projected Volume
2015	\$240,000,000
2016	\$250,000,000
2017	\$260,000,000

Plan for 2016-2017/ Participation in HWLC

Haydon's participation in the Health and Wellness Learning Center project fits in with our staffing capabilities, resources, and overall business plan for the next two years.

LEED EXPERIENCE

LEED CERTIFICATION PROJECTS

Haydon has planned and constructed **14 projects** that have achieved LEED Certification (**7 Gold, 7 Silver**), and has **5 LEED Accredited personnel on-staff, including Pre-Construction Director Fritz Behrhorst**. As your CMAR, Haydon will play a vital role in helping the City/Partners and BRS successfully achieve project LEED certification. For each LEED certified project that Haydon has completed, we have performed the following tasks outlined in our General Contractor LEED Action Plan:

Pre-Construction

- Budget Review
 - Develop "what-if" scenarios of cost implications
 - Identify materials to target
- Site Visit
 - Assess the existing site-specific condition
 - Define LEED jobsite quality control requirements

Project Buy-Out

- Subcontractor/Bidder Education
 - Host Pre-bid meetings to describe LEED requirements
 - Potential cost and schedule impacts

Construction

- Jobsite Quality
 - Provide a LEED consultant
 - Hold pre-task meetings / subcontractor training
 - Review manufacturer data for compliance
 - Continuous monitoring
- Documentation
 - Subcontractor submittal reviews
 - Ongoing LEED goal monitoring
 - Collect and file material documentation
 - Perform mid-project audit
 - Photographic documentation for conformance

Close-Out

- Subconsultant/subcontractor commissioning coordination
- Final documentation and close-out manual
- Complete certification application



Papago Readiness Center

- Services Provided:
- Low VOC Materials (flooring, carpet, paint)
 - Local Materials
 - Recycled Materials – Concrete, Structural Steel, Insulation, Flooring (carpet, tile, wood), Steel doors & frames, Aluminum window mullion, Metal Studs
 - Waste Management – Sorting Debris
 - Daylight Harvesting (Skylights, large windows, lighting controls)
 - High Efficiency Mechanical Central Plant & Controls.
 - Sustainable Materials
 - Solar Power System

Below is a select list of Haydon's LEED projects:



Salvation Army Kroc Corps Community Center
 ASU West Sun Devil Fitness Complex
 City of Scottsdale Appaloosa Library
 DEMA Florence Maintenance Shop
 DEMA Florence Readiness Center
 DEMA Papago Readiness Center
 Tucson VA Home



DES Headquarters & Police Station
 Peoria City Hall Mechanical Upgrades
 Mercedes-Benz of Arrowhead
 Predator Beddown Facility
 Joint Air Ground Center
 DEMA Camp Navajo Building 1 Renovation

Demonstrated Experience LEED Certification



South Mountain Ray & Joan Kroc Corps Community Center

- Services Provided:
- Low VOC Materials (flooring, carpet, paint)
 - Local Materials
 - Recycled Materials – Concrete, Structural Steel, Insulation, Flooring (carpet, tile, wood), Steel doors & frames, Aluminum window mullion, Metal Studs
 - Waste Management – Sorting Debris
 - Daylight Harvesting (Skylights, large windows, lighting controls)
 - High Efficiency Mechanical Central Plant & Controls
 - Sustainable Materials
 - Solar Power & Pool Heating



ASU West Sun Devil Fitness Complex

- Services Provided:
- Low VOC Materials (flooring, carpet, paint)
 - Local Materials
 - Recycled Materials – Concrete, Structural Steel, Insulation, Flooring (carpet, tile, wood), Steel doors & frames, Aluminum window mullion, Metal Studs
 - Waste Management – Sorting Debris
 - Daylight Harvesting (Skylights, large windows, lighting controls)
 - High Efficiency Mechanical Central Plant & Controls
 - Sustainable Materials
 - Solar Power and pool heating

Attachment B
CURRENT ACTIVE PROJECTS

List all the major projects your organization has in progress. List the name of the project, owner, MACC or contract amount, phase of the project (preconstruction or construction), percent complete and planned or actual Substantial Completion Date.

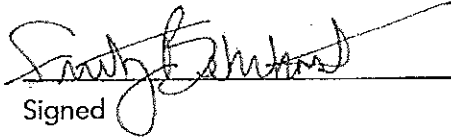
Project Title and Location	Owner	MACC or Contract Amount	Phase	Percent Complete	Substantial Completion
Opportunity Way Park CMAR Anthem, AZ	Anthem Community Council	\$1.8 million	Pre-Construction	0% (project currently in pre-construction)	04/2016 (anticipated)
Surprise Farms Park Phase II & Veramonte Park Improvements Phase II CMAR Surprise, AZ	City of Surprise	\$3.0 million	Pre-Construction	0% (project currently in pre-construction)	09/2015
Desert Arroyo Park CMAR Mesa, AZ	City of Mesa	\$1.7 million	Construction	20%	08/2015
Northern Arizona University Aquatics Center CMAR Flagstaff, AZ	Northern Arizona University	\$36.7 million	Construction	40%	06/2016
Montrose Recreation District Community Center CMAR Montrose, CO	Montrose Recreation District	\$25.5 million	Pre-Construction	0% (project currently in pre-construction)	08/2016
Athletics Facilities Expansion CMAR Phoenix, AZ	Phoenix Country Day School	\$5.4 million	Construction	65%	10/2015
Foundation for Blind Children Campus Extension D/B/B Phoenix, AZ	Foundation for Blind Children	\$6.6 million	Construction	60%	07/2015
Desert Sky Transit Center D/B/B Phoenix, AZ	City of Phoenix	\$5.6 million	Construction	10%	09/2015
Art & Science Building CMAR Phoenix, AZ	Phoenix Country Day School	\$2.9 million	Pre-Construction	0% (project currently in pre-construction)	10/2015
Oncology Laboratory CMAR Show Low, AZ	Summit Healthcare Regional Medical Center	\$4.5 million	Construction	80%	09/2015

Attachment C

STATEMENT OF APPLICABLE NEW MEXICO GROSS RECEIPTS TAX RATE

Provide a declaration executed by a Principal in the Firm stating the Location Code from the New Mexico Gross Receipts Tax Schedule that will be cited in determining the NMGRT Rate to be charged for work during preconstruction.

As a Principal and authorized representative for Haydon Building Corp, I certify that our company will utilize the Location Code 06-111 (per the Gross Receipts Tax Rate Schedule effective January 1, 2015 through June 30, 2015) to determine the NMGRT Rate to be charged for work during pre-construction.



Signed

03-26-2015

Date



Attachment D
QUALIFICATIONS QUESTIONNAIRE

Project Name: Construction Manager at Risk Health and Wellness Learning Center

SECTION 1 – BUSINESS INFORMATION

1. COMPANY

Name: Haydon Building Corp

Address: 4640 E. Cotton Gin Loop

City: Phoenix State: AZ Zip: 85040 Telephone: 602-296-1496

Type of Firm:

Corporation: State of Incorporation Arizona

Partnership Sole Proprietorship Joint Venture Other

a. Year firm was established: 1995

b. Parent company (if applicable): _____

2. LICENSING

a. Does your firm hold the proper contractor's license for the type of work to be performed issued pursuant to the Construction Industries Licensing Act?

Yes No

b. If yes, provide the following information about the contractor's license:

1) Name of license holder (or qualifying party) exactly as on file with the State of New Mexico Construction Industries Division:

Haydon Building Corp - Gary T Haydon

2) License Classification: GB98 & GA01

3) License Code: N/A

4) License Number: 52406

5) Issue Date: 12-14-1993

6) Expiration Date: 12-31-2017

c. Is the firm's contractor's license free of ever being suspended or revoked by the CID or by the appropriate licensing agency in any other state?

Yes No (Attach explanation)

3. RESIDENT OR VETERAN PREFERENCE

a. Does your firm hold a current/valid Resident or Veteran Preference Certification Number pursuant to Section 13-1-22 NMSA 1978?

Yes No

Certification Number: _____ Date of Expiration: _____

ATTACH A COPY OF YOUR VALID RESIDENT OR VETERAN PREFERENCE CERTIFICATE.

b. If a joint proposal, provide the percentage of the Work to be completed by the nonresident business based on the proposed dollar amount of the goods and services to be provided under the contract.

Percentage of Work By Nonresident Contractor: _____

4. REGISTRATION

a. Does your firm hold a current/valid Registration Number pursuant to Section 13-4-13.1 NMSA 1978?

Yes No

Registration Number: 1-742620150121 Date of Registration 1-21-2015

5. SURETY

Provide the following information on all surety companies utilized since 1998:

a. Name of Firm's current surety company:

Travelers Casualty & Surety Co. of America

Surety telephone number: 602-861-8632 - Justin Price

Period covered by Surety: 1998 - Present

b. Maximum amount of bonding capacity provided by surety to your firm:

\$ 550,000,000

c. Is your firm free of having a project taken over by surety for completion of a project in the past five years?

Yes No

d. Is the surety company to be used on this construction project licensed to do business in the State of New Mexico?

Yes No

If yes, provide the name and telephone number of the surety to be used on this construction project:

Surety Name: Travelers Casualty & Surety Co. of America

Contact Agent Name: Barry Farr Telephone: 480-968-0100

e. Is your firm able to obtain bonding in the amount required for this construction project?

Yes No

6. **SAFETY**

a. What has been your Workers' Compensation Experience Modification Rate (EMR) for each of the past five years?

.64 .67 .68 .69 .64

If EMR in any year exceeds 1.0 provide explanation in Para. 10 below.

b. Does your firm have a written safety program compliant with current State regulations?

Yes No (attach explanation)

If yes, provide one (1) copy of your firm's written safety program and state the names of key safety personnel, including the designated lead safety program manager, who will be assigned and individually list their specific duties. Please find an electronic copy of Haydon's safety and health manual in Tab 3 (Attachments), immediately following Attachment D.

Yes No _____ (attach explanation)

- c. Does your firm have the ability to provide the required insurance in the limits stated in the project documents?

Yes No _____ (attach explanation)

8. LABOR CODE VIOLATIONS

- a. Has your firm, at any time during the past five years, been debarred pursuant to the Public Works Minimum Wage Act (NMSA 1978 13-4-10 to 13-4-17)?

Yes _____ No (attach explanation)

- b. Has your firm incurred any Subcontractor Fair Practices Act violations in the past five (5) years?

Yes _____ (Attach explanation) No

9. VERIFICATION OF THE MAXIMUM ALLOWABLE CONSTRUCTION COST (MACC)

Has your firm reviewed the MACC for this project and found it to be reasonable for the Scope of Work described in the Request for Qualifications?

Yes No _____ (attach explanation)

10. CONTRACTOR'S COMMENTS:

Use this area or attach a sheet to provide further explanation of the answers to any questions asked in this Qualifications Questionnaire. Please key your explanations to the appropriate Sections, 1 through 9

No additional explanation required.

SECTION 00 0106

RFQ No: 477-15

City of Hobbs and their Partners

**PROPOSAL OF CONSTRUCTION MANAGER AT RISK FEE AND SPECIFIED GENERAL CONDITIONS
FOR**

The Health and Wellness Learning Center

The Undersigned submits the following proposal.

PROPOSAL

Pursuant to and in compliance with the Request for Proposal, the undersigned certify, having carefully examined the Contract Documents and conditions affecting the Work, and being familiar with the site: proposes to furnish all labor, materials, equipment and services necessary to complete the work as follows:

NOTE: Applicable New Mexico Gross Receipts Tax (NMGRT) shall not be included in any amounts on this Proposal Form.

1. CMAR Fee (Percentage of Total Estimated Cost of the Work):

$$\underline{2.9} \% \times \$45,000,000 = \underline{\$1,305,000}$$

2. Specified General Conditions:

One Million Nine Hundred Fifty Four Thousand Three Hundred Eighty Four Dollars (\$ 1,954,384)

TOTAL PROPOSAL (Total of 1 and 2 above)

Three Million Two Hundred Fifty Nine Thousand Three Hundred Eighty Four Dollars (\$ 3,259,384)

TIME FOR COMPLETION AND LIQUIDATED DAMAGES

The Undersigned hereby agrees, if awarded the Contract, to complete all of the Work in the Contract by the date specified in Article 5 of the Contract for Construction Manager at Risk, and also agrees to the amount specified for Liquidated Damages in that Article.

AGREEMENT AND RFP PROPOSAL BOND

A proposal bond on the form provided in the amount of five percent (5 %) of the MACC is attached.



For the purposes of calculating the costs of payment and performance bonds and insurance, the Offeror shall assume a MACC as indicated on this form and in the Agreement Between the Owner and the Construction Manager at Risk and General Conditions of the Construction Manager at Risk Agreement that are a part of this Request For Proposal.

If Offeror is selected for award and a Preconstruction Fee is negotiated between Offeror and Owner, the Undersigned agrees to execute a contract using the Agreement between the Owner and Construction Manager at Risk included in this RFP.

If a Guaranteed Maximum Price (GMP) is agreed between the Owner and the Construction Manager at Risk, the GMP will be established by GMP Amendment. The GMP shall equal the sum of the Preconstruction Fee the Negotiated Cost of the Work, the Percent Fee bid in this proposal times the Negotiated Cost of the Work and the Fixed Dollar Amount bid in this Proposal for Specified General Conditions Work. The Undersigned agrees to execute the GMP Amendment and to furnish bonds and insurance as required by the Contract Documents.

ACKNOWLEDGEMENT OF AMENDMENTS TO THE RFP

Acknowledge receipt of amendment(s) to the Contract Documents below.
Failure to acknowledge an amendment may cause your Proposal to be deemed non-responsive.

Amendment No. 1 Date 5-4-15

Amendment No. 2 Date

Amendment No. 3 Date

OFFEROR:

NAME OF FIRM: Haydon Building Corp

SIGNED BY Fritz Behrhorst

OFFICIAL CAPACITY Vice President

DATE 5-8-15

ADDRESS 4640 E. Cotton Gin Loop,

Phoenix
CITY AND STATE ZIP 85040

DATE 5-8-15 TELEPHONE 602-296-1496

FAX 602-296-1495 E-MAIL fbehrrorst@haydonbc.com

Contractor's License # & Class:
52406 / GB98 & GA01

CRS tax # 02-238113-00-9

Labor Enforcement Fund Registration #
1 742620150121

SECTION 00 01 07

RFP PROPOSAL BOND

FOR

RFQ/RFP # 477-15 for Construction Manager At Risk

PROJECT NAME: Health and Wellness Learning Center, Hobbs, New Mexico

INSTRUCTIONS: This executed form must accompany your RFP submittal. Failure to provide this executed form and a Proposal Bond per the terms and conditions described herein shall render your RFP submittal as non-responsive.

The New Mexico Procurement Code, 13-1-124.4, Construction Manager at Risk delivery method authorized; multiphase selection procedure, Para. C(4), requires per 13-1-146 NMSA 1978 Requirement for bid security, that "bid security shall be required of bidders or *offerors* for construction contracts when the price is estimated by the procurement officer to exceed \$25,000, bid security in an amount equal to at least five percent of the amount of the bid shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the state agency or a local public body."

If the Offeror/undersigned, per the three-step process, is short-listed to receive a Request for Proposal, the Offeror shall attach a Proposal Bond in the amount of 5% of the MACC as proposal security. And, if the Offeror/undersigned herein is awarded a CMAR Agreement for Construction Manager at Risk services, the Proposal Bond attached herein shall be in effect until the pre-construction services are satisfactorily completed per the contract, and the Guaranteed Maximum Price Amendment is executed. If the contracted Offeror does not satisfactorily complete the terms and conditions of the Pre-construction contract resulting in the execution of the Guaranteed Maximum Price Amendment, the Proposal Bond shall be forfeited, except that if through no fault of the CMAR, the Owner chooses not to execute the Guaranteed Maximum Price Amendment.

A handwritten signature in black ink, appearing to be the initials 'JB' or similar, located at the bottom right of the page.

The undersigned, as an authorized representative for the Company named below, acknowledges that the Offeror has examined this RFQ with its related documents and is familiar with all the conditions surrounding the Proposal Bond for CMAR projects per 13-1-124.1, Short title; NMSA 1978 of the NM Procurement Code. Offeror hereby agrees to furnish a Proposal Bond in the amount of 5% of the MACC for the referenced project that, if awarded a CMAR pre-construction contract, said Proposal Bond shall be in affect as good faith to perform the required work.

This acknowledgement and acceptance shall be signed and returned with the Proposal Bond as a part of your RFQ submittal.

FIRM: Haydon Building Corp

REPRESENTED BY: Fritz Behrhorst, Vice President
(Printed Name & Title)

ADDRESS: 4640 E. Cotton Gin Loop

CITY: PHX STATE: AZ ZIP: 85040

TELEPHONE: FAX: 602-296-1496 (p) / 602-296-1495(f)

E-Mail: fbehhorst@haydonbc.com

Signature: _____ Date: 5-8-15

(Signature of Person authorized to sign for Firm)

NOTARY 

SEAL:



DATE: 5-8-15



THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A310

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we

HAYDON BUILDING CORP

4640 E. Cotton Gin Loop, Phoenix, AZ 85040

(Here insert full name, and address or legal title of Contractor)

as Principal, hereinafter called the Principal, and

Travelers Casualty And Surety Company Of America

One Tower Square, Hartford, CT 06183

a corporation duly organized under the laws of the State of CT as Surety, hereinafter called the Surety, are held and firmly bound unto **City of Hobbs, NM; Finance Department**

200 E. Broadway St. Hobbs, NM 88240

(Here insert full name, and address or legal title of Owner)

as Obligee, hereinafter called the Obligee, in the sum of **Five Percent of Amount Bid-----Dollars (5%)**, for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for

Health and Wellness Learning Center

RFQ/RFP No. 477-15

(Here insert full name, address and description of project)

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference, not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 30th day of April, 2015.

BID DATE: May 5, 2015

(Witness) PAULA RICHARDS

HAYDON BUILDING CORP
(Principal) (Seal)
(Title) FRITZ BEHRHORN, VICE PRESIDENT

(Witness) Stephanie L. Bucholz

Travelers Casualty And Surety Company Of America
(Surety) (Seal)
(Title) Barry R. Farr, Attorney-in-Fact



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 225219

Certificate No. 006043935

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Barry R. Farr, Susan A. Toomey, Andrew Farr, Gregory P. Griffith, Debra K. Williams, and Stephanie L. Bucholz

of the City of Mesa, State of Arizona, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 3rd day of September, 2014.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 3rd day of September, 2014, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

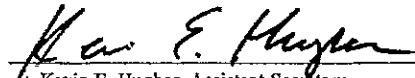
FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 5th day of May, 20 15.


Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

REVIEW AND APPROVAL:

This Bond has been executed by a Surety named in the current list of "companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, United States Treasury Department.

APPROVED:

Owner's Representative or Governing Authority

Date:

AGENT'S AFFIDAVIT

THIS FORM MUST BE USED BY SURETY

(To be filled in by Agent)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

Barry R. Farr
being first duly sworn, deposes and says that he /she is the duly appointed agent for and is licensed in the State of New Mexico.

Deponent further states that a certain bond was given to indemnify the State of New Mexico in Health and Wellness Learning Center connection with the construction of RFQ/RFP No. 477-15 dated the 5th day of May, 2015, executed by Haydon Building Corp

Contractor, as principal, and Travelers Casualty and Surety Company of America, as surety, signed by this Deponent; and Deponent further states that said bond was written, signed, and delivered by him/her; that the premium on the same has been or will be collected by him/her; and that the full commission thereon has been or will be retained by him/her.

Subscribed and sworn to before me, a notary public in and for the County of, Maricopa, this 30th day of April, 2015.

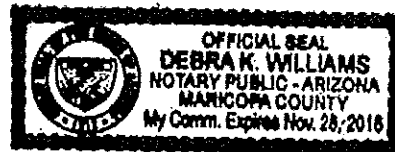
My Commission Expires: November 28, 2015

Notary Public

Debra K. Williams

AGENT'S ADDRESS: 535 E. McKellips Road, #129
Mesa, AZ 85203

Telephone (480) 968-0100





CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15, 2015

SUBJECT: PUBLICATION OF AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF HOBBS, NEW MEXICO MULTIFAMILY HOUSING REVENUE BONDS, IN ONE OR MORE TAX-EXEMPT OR TAXABLE SERIES (WASHINGTON PLACE APARTMENTS) IN AN AMOUNT NOT TO EXCEED \$6,500,000 (THE "BONDS")

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: June 8, 2015
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: Authorizing the issuance and sale of the City of Hobbs, New Mexico multifamily housing revenue bonds, in one or more tax-exempt or taxable series (Washington Place Apartments) in an amount not to exceed \$6,500,000 (the "BONDS") for the purposes of (i) providing funds for the rehabilitation, improvement and equipping of a 76-unit multifamily housing project located in the City of Hobbs, Lea County, New Mexico and known as the Washington Place Apartments (the "PROJECT"), (ii) funding required reserve funds and (iii) paying the costs of issuing the bonds; authorizing the execution and delivery of an indenture, a lease agreement, a regulatory agreement, the bonds, and other documents in connection with the issuance of the bonds and the project; making certain determinations and findings relating to the bonds and the project; providing that the City shall not be pledging its faith and credit to the payment of the bonds or incurring any pecuniary liability in connection with the bonds; ratifying certain actions taken previously; and repealing all actions inconsistent with this ordinance.

Fiscal Impact:

Reviewed By: [Signature] Finance Department

The City is not pledging its faith and credit to the payment of the principal of or the interest on the Bonds.

Attachments: Ordinance for Publication.

Legal Review:

Approved As To Form: [Signature] City Attorney

Recommendation:

Consider approval of the Publication of the Bond Ordinance.

Approved For Submittal By: [Signatures] 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.

THE CITY OF HOBBS, NEW MEXICO
ORDINANCE NO. ____

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF HOBBS, NEW MEXICO MULTIFAMILY HOUSING REVENUE BONDS, IN ONE OR MORE TAX-EXEMPT OR TAXABLE SERIES (WASHINGTON PLACE APARTMENTS) IN AN AMOUNT NOT TO EXCEED \$6,500,000 (THE "BONDS") FOR THE PURPOSES OF (i) PROVIDING FUNDS FOR THE REHABILITATION, IMPROVEMENT AND EQUIPPING OF A 76-UNIT MULTIFAMILY HOUSING PROJECT LOCATED IN THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO AND KNOWN AS THE WASHINGTON PLACE APARTMENTS (THE "PROJECT"), (ii) FUNDING REQUIRED RESERVE FUNDS AND (iii) PAYING THE COSTS OF ISSUING THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A REGULATORY AGREEMENT, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; PROVIDING THAT THE CITY SHALL NOT BE PLEDGING ITS FAITH AND CREDIT TO THE PAYMENT OF THE BONDS OR INCURRING ANY PECUNIARY LIABILITY IN CONNECTION WITH THE BONDS; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, the City of Hobbs, New Mexico (the "City") is a legally and regularly created, established, organized and existing city under the general laws of the State of New Mexico (the "State"); and

WHEREAS, the City is authorized by the Revenue Bond Act, Sections 3-31-1 through 3-31-12, NMSA 1978, as amended and the Municipal Housing Law Act, Section 3-45-1 through 3-45-25, NMSA 1978, as amended (collectively, the "Act"), to issue bonds for the purposes provided in the Act; and

WHEREAS, the City has determined that it is in the best interests of the City and its inhabitants to issue its Multifamily Housing Revenue Bonds (Washington Place Apartments), in one or more tax-exempt or taxable series as may be established in the Indenture, as defined below, in the aggregate principal amount not to exceed \$6,500,000 (the "Bonds") for the purposes of (a) rehabilitating the Washington Place Apartments, consisting of 76-units of multifamily housing located at 1405 East Marland Street, 321 East Clearfork Drive and 400 Wolfcamp Drive, Hobbs, New Mexico 88240, to be leased to Washington Place Partners, LLLP, a New Mexico limited liability limited partnership (the "Developer"), to be rented to persons of low and moderate income (the "Project") (b) establishing a Reserve Fund for the Bonds in the amount of the Reserve Fund Requirement, as defined in the Indenture, and (c) paying certain expenses incurred in connection with the issuance of the Bonds. It is intended by the City that the interest on the 2015A Bonds, as defined in the Indenture, be tax-exempt; and

WHEREAS, there has been published in the *Hobbs News-Sun*, a newspaper of general circulation in the City, public notice of the City's intention to adopt this Ordinance, which notice contained certain information concerning the purpose, location and size of the Project and the amount of the Bonds to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Ordinance; and

WHEREAS, the Bonds will be issued by the City pursuant to the Act and in accordance with the terms of a Trust Indenture dated as of July 1, 2015 (the "Indenture") by and between the City and Wilmington Trust, NA, as Trustee (the "Trustee"); and

WHEREAS, Stifel, Nicolaus & Company, Inc. (the "Underwriter") has offered to purchase all of the Bonds at a purchase price to be established in the Indenture and the Sale Resolution, as defined below; and

WHEREAS, the City is not pledging its faith and credit to the payment of the principal of or the interest on the Bonds; and

WHEREAS, the City is a municipal corporation having a commission-manager form of government duly organized and existing under the laws of the State. The Bonds shall not be the general obligation of the City within the meaning of Article 9, Sections 12 and 13 of the Constitution of the State. The Bonds shall be payable solely out of the revenue derived from the Project, including amounts received under the Lease Agreement as defined below. The Bonds shall never constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to pecuniary liability of the City or a charge against its general credit or taxing power; and

WHEREAS, all required authorizations, consents or approvals of any state, governmental body, agency or authority in connection with the authorization, execution and delivery of the Bonds that are required to have been obtained by the date hereof have been obtained and that will be required to be obtained prior to the date of the issuance of the Bonds will have been obtained by such date; and

WHEREAS, the following documents have been prepared in connection with the issuance of the Bonds and have been reviewed by Bond Counsel and Issuer's Counsel:

- (a) the Indenture;
- (b) Lease Agreement by and between the City and the Developer dated as of July 1, 2015 (the "Lease Agreement");
- (c) Regulatory Agreement and Declaration of Restrictive Covenants by and among the City, the Developer and the Trustee dated as of July 1, 2015 relating to the Project (the "Regulatory Agreement"); and
- (d) Notice of Intent to Adopt Bond Ordinance published by the City on May 31, 2015.

WHEREAS, there is on deposit with the City Clerk the proposed form of Bond Ordinance, Indenture, Lease Agreement and Regulatory Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOBBS, NEW MEXICO:

Section 1. Approval and Execution of Indenture; Appointment of Trustee, Bond Registrar and Paying Agent. The Indenture, substantially in the form presented herewith, with such changes, insertions, deletions and modifications as may be approved by the Mayor or Mayor Pro Tem of the City and as may be recommended by Bond Counsel and the Issuer's Counsel is hereby ratified and approved. All such changes, insertions, deletions and modifications shall be deemed to have been approved by the City upon execution and delivery of the Indenture, such execution and delivery to be conclusive evidence of such approval. Wilmington Trust, NA is hereby appointed the Trustee, Registrar and Paying Agent with respect to the Bonds. The Mayor or Mayor Pro Tem of the City is authorized to execute the Indenture on behalf of the City.

Section 2. Authorization of the Bonds. The City hereby authorizes and approves the issuance of the Bonds for the purposes of rehabilitating and improving the Project and leasing the Project to the Developer, funding a reserve fund, paying accrued interest on the Bonds and paying the costs of issuance of the Bonds, including, but not limited to, the reimbursement of certain costs incurred by the Developer prior to the adoption of this Ordinance. The Bonds shall be issued under the terms and conditions of the Indenture and a Sale Resolution to be adopted by the Commission (the "Sale Resolution") and shall be signed by or bear the facsimile signature of the Mayor, or the Mayor Pro Tem, of the City and the City Treasurer or City Clerk or a Deputy City Treasurer or Deputy City Clerk.

Section 3. Approval and Execution of Regulatory Agreement. The Regulatory Agreement is approved and ratified and the Mayor or Mayor Pro Tem of the City is authorized to execute the Regulatory Agreement with such changes, insertions, deletions and modifications as may be approved by the Mayor or Mayor Pro Tem of the City and as may be recommended by Bond Counsel and Issuer's Counsel. All such changes, insertions, deletions and modifications shall be deemed to have been approved by the City upon execution and delivery of the Regulatory Agreement, such execution and delivery to be conclusive evidence of such approval.

Section 4. Approval and Execution of Lease Agreement. The Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute and deliver the Lease Agreement on behalf of the City in substantially the form presented herewith, with such changes, insertions, deletions and modifications as may be approved by the Mayor or Mayor Pro Tem of the City and as may be recommended by Bond Counsel and Issuer's Counsel. All such changes, insertions, deletions and modifications shall be deemed to have been approved by the City upon execution and delivery of the Lease Agreement, such execution and delivery to be conclusive evidence of such approval.

Section 5. General Authorization. The Commission hereby authorizes, empowers and directs each of the officers (including the Commission officers) and employees of the City, and its counsel, to carry out or cause to be carried out, and to perform, such obligations of the City

and such other actions as they, in consultation with Bond Counsel, Issuer's Counsel and advisors to the City in connection with the issuance, sale and delivery by the City of the Bonds, shall consider necessary or advisable in connection with this Ordinance, including, but not limited to, preparation and execution of the Indenture, the Lease Agreement, the Regulatory Agreement and such other documents deemed necessary, and the issuance, sale and delivery of the Bonds, including, without limitation, arrangements with financial printers, credit agencies and The Depository Trust Company.

Section 6. Severability. If any one or more provisions of this Ordinance should be determined by a court of competent jurisdiction to be contrary to law, any such provision shall be deemed separable from the remaining provisions hereby and the invalidity or unenforceability thereof shall in no way affect the validity or the enforceability of the other provisions of this Ordinance.

Section 7. No Recourse and Liability. All covenants, stipulations, obligations and agreements of the City contained in this Ordinance, and in the documents hereby approved and authorized for execution, shall be deemed to be the covenants, stipulations, obligations and agreements of the City, and all such covenants, stipulations, obligations and agreements shall be binding upon the City, and, except as otherwise provided in this Ordinance and such documents, all rights, powers and privileges conferred, and duties and liabilities imposed, upon the City by the provisions of this Ordinance, and in the documents hereby approved and authorized for execution, shall be exercised or performed by the Commission, provided that no covenant, stipulation, obligation or agreement herein contained or contained in any document hereby approved and authorized for execution shall be deemed to be a covenant, stipulation, obligation or agreement of any commissioner, officer or employee of the City in his or her individual capacity, and neither the members of the Commission nor any officials executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Nothing contained in this Ordinance, the Lease Agreement, the Regulatory Agreement, the Indenture, or any other instrument shall be construed as obligating the City, except to the extent provided in the Lease Agreement, the Regulatory Agreement and the Indenture, or as incurring a pecuniary liability or a charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contained in this Ordinance, the Indenture, the Lease Agreement, the Regulatory Agreement or any other instrument impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power, the City having no power to pay out of its general funds, or otherwise contribute any part of the costs of acquiring the Project, any part of the cost of operating any part of the Project or any part of the costs of administering, defending or otherwise acting or failing to act with respect to the Project or the business or in any manner except as lessee thereof. THE BONDS SHALL NOT BE THE GENERAL OBLIGATION OF THE CITY WITHIN THE MEANING OF ARTICLE 9, SECTIONS 12 AND 13 OF THE CONSTITUTION OF THE STATE. THE BONDS SHALL BE PAYABLE SOLELY OUT OF THE REVENUE DERIVED FROM THE PROJECT, INCLUDING AMOUNTS RECEIVED UNDER THE LEASE AGREEMENT, AND THE BONDS SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY

LIABILITY OF THE CITY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

Section 8. Ordinance Irrepealable. After the Bonds are issued, this Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as provided in the Indenture, or there has been a defeasance as provided in the Indenture.

Section 9. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 10. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor or Mayor Pro Tem of the Commission and City Clerk or a Deputy City Clerk, and the title and general summary of the subject matter contained in this Ordinance shall be published in a newspaper that maintains an office and is of general circulation in the City, or posted in accordance with law, and this Ordinance shall be in full force and effect [five days] thereafter, in accordance with law.

[Signature Page to Follow]

PASSED AND ADOPTED: June 15, 2015.

CITY COMMISSION OF THE CITY OF
HOBBS, NEW MEXICO

By _____
_____, Mayor

By _____
_____, Mayor Pro Tem

By _____
_____, Commissioner

By _____
_____, Commissioner

By _____
_____, Commissioner

ATTEST:

[SEAL]

Jan Fletcher, City Clerk

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, dated as of July 1, 2015 (this “Memorandum”), is made between **CITY OF HOBBS, NEW MEXICO**, a city duly organized and existing under the laws of the State of New Mexico (“Issuer”), and **WASHINGTON PLACE PARTNERS, LLLP**, a New Mexico limited liability limited partnership (“Lessee”), to document and provide notice of a written lease agreement between Issuer and Lessee dated as of July 1, 2015.

WITNESSETH:

WHEREAS, the Issuer is empowered under the New Mexico Municipal Housing Act, Sections 3-45-1 through 3-45-25, NMSA 1978, as amended, and the New Mexico Municipal Revenue Bond Act, Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, (collectively, the “Act”) to acquire, construct and equip and lease the Project (as hereinafter defined) to the Lessee; and

WHEREAS, pursuant to and in accordance with the laws of the State of New Mexico, including the Act, the Issuer has determined to issue and sell certain bonds captioned as the City of Hobbs, New Mexico Multifamily Housing Revenue Bonds (Washington Place Apartments), Series 2015A; and Multifamily Housing Revenue Bonds (Washington Place Apartments), Taxable Series 2015B in the aggregate principal amount of not to exceed \$6,500,000 (together, the Series 2015A and 2015B bonds, the “Bonds”) to finance the acquisition, rehabilitation, and equipping of a 76-unit multifamily rental housing development (the “Project”) with the proceeds of the Bonds; and

WHEREAS, the Issuer proposes to lease the Project to the Lessee and the Lessee desires to lease and rent the Project from the Issuer upon the terms and conditions as set forth in a Lease Agreement dated as of July 1, 2015 (the “Lease”) among the Issuer, the Lessee and Wilmington Trust, NA (the “Trustee”) and the Tax Regulatory Agreement dated as of July 1, 2015 among the Issuer, the Trustee and the Lessee; and

WHEREAS, the Bonds will be secured by the Indenture (as defined in the Lease) and payable from the Lease Payments (as defined in the Lease); and

WHEREAS, the Issuer and the Lessee desire to enter into this Memorandum and cause this Memorandum to be recorded in the records of Lea County, New Mexico for notice purposes only and is not a complete summary of the Lease. Accordingly, the provisions of this Memorandum shall not be used in interpreting the Lease, nor shall the provisions contained herein be construed to modify the Lease. Capitalized terms not defined in this Memorandum shall have the meaning set forth in the Lease.

Section 1. Project. Pursuant to the Lease, Issuer has leased and demised to Lessee, and Lessee has leased from Issuer the Site, which is more particularly described on Exhibit A attached hereto, and the Project.

Section 2. Term of Lease. The terms of the Lease shall commence upon the execution of the Lease and shall expire on the date on which the Bonds have then been fully paid and retired (or provisions for such payment made as provided in the Indenture), and all Additional Payments have been paid through such date.

Section 3. Construction of Project. Pursuant to the Lease, Lessee agrees to renovate, rehabilitate, equip, lease and maintain the Project. Lessee covenants to comply at all times with the requirements of the Regulatory Agreement and the Tax Certificate.

Section 4. Prepayment and Redemption of Bonds. The Lease contains provisions governing the prepayment and redemption of the Bonds.

Section 5. Reconveyance of Project. Pursuant to the Lease, upon payment in full of all obligations under the Lease, including payment in full of all Lease Payments and Additional Payments thereunder, the corresponding redemption or payment at maturity of the Bonds, Issuer will sell, assign, grant and convey all of the Issuer's right, title and interest in the Project to the Lessee. The purchase price payable by the Lessee upon such reconveyance shall be calculated in accordance with the Lease.

Section 6. Notices. All notices, certificates or other communications pursuant to the Lease shall be delivered in the manner and to the addresses set forth in the Lease.

Section 7. Agreement. The provisions set forth in the written Lease are hereby incorporated in this Memorandum as if fully set forth herein, and the provisions of this Memorandum are subject in all respects to the provisions of the Lease. This Memorandum is being recorded for notice purposes only and is not a complete summary of the Lease. Accordingly, the provisions of this Memorandum shall not be used in interpreting the Lease, nor shall the provisions contained herein be construed to modify the Lease. In the event of any discrepancy or inconsistency between the terms and conditions of this Memorandum and the Lease, the terms and conditions of the Lease shall control.

IN WITNESS WHEREOF, the Issuer and the Lessee have caused this Memorandum to be executed in their respective names and their respective seals to be hereunto affixed by their duly authorized officers, all as of the date first above written.

CITY OF HOBBS, NEW MEXICO

By _____
Mayor

(SEAL)

ATTEST:

City Clerk

STATE OF NEW MEXICO)
) SS
COUNTY OF LEA)

The foregoing instrument was acknowledged before me this ____ day of July, 2015, by _____, the _____ for Lea County, New Mexico.

Notary Public for New Mexico

My commission expires: _____

**WASHINGTON PLACE PARTNERS,
LLLP, a New Mexico limited liability limited
partnership**

By: Washington Place Management, LLC, its
General Partner

By: Huntley Witmer Development, LLC, its
Managing Member

By: _____
Joshua Latter
Its: Member

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on July ____, 2015, by Joshua Latter
of Huntley Witmer Development, LLC, Managing Member of Washington Place Management
LLC, General Partner of Washington Place Partners LLLP, a New Mexico limited liability
limited partnership.

Notary Public for _____
My commission expires: _____

THIS INSTRUMENT WAS DRAFTED BY AND UPON RECORDING RETURN TO:

Joshua P. Meyer, Esq.
Kutak Rock
1650 Farnam Street
Omaha, NE 68102
(402) 346-6000

EXHIBIT "A"
LEGAL DESCRIPTION

[LEGAL]



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15, 2015

SUBJECT: RESOLUTION TO APPROVE THE PRELIMINARY AND FINAL PLAN FOR DAVIS ACRES, WITH VARIANCES, AS RECOMMENDED BY THE PLANNING BOARD. Located northwest of the intersection of Lovelady Road and N. Fowler within the extra-territorial platting jurisdiction of the City of Hobbs, submitted by Clayton Davis.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: March 30, 2015
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: The Preliminary & Final Plan for Davis Acres is submitted by Clayton Davis. The proposed subdivision is located northwest of the intersection of Lovelady Road and N. Fowler and within the extra-territorial platting jurisdiction of the City of Hobbs. The proposed subdivision encompasses +/- 4.4 acres and will contain 4 lots. The Planning Board reviewed this issue on December 16, 2014 and voted 5 to 0 to recommend approval with variances (see variance letter attached hereto) to Municipal Code Chapter 16.16.010 - B.1 and Municipal Code Chapter 16.12.040 - A.

This item was tabled at the April 6, 2015 Commission Meeting. Subsequently the developer has entered into an agreement (attached hereto) with Lea County requiring limited developer participation for the possible future development of Fowler, providing said development occurs within 10 years.

Fiscal Impact: Reviewed By: [Signature] 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 any infrastructure dedicated upon their acceptance of the same.

Attachments: Resolution, Preliminary\Final Plan, Planning Board Variance Letter, Planning Board Minutes and Developer\Lea County Agreement.

Legal Review: Approved As To Form: [Signature] City Attorney

Recommendation: Consideration of Approval of the Resolution to approve the Preliminary\Final Plan for Davis Acres, as recommended by the Planning Board.

Approved For Submittal By: [Signature] Department Director
[Signature] City Manager

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

CITY OF HOBBS

RESOLUTION NO. 6308.

A RESOLUTION APPROVING THE PRELIMINARY AND FINAL PLAN OF DAVIS ACRES, AS RECOMMENDED BY THE PLANNING BOARD.

WHEREAS, Clayton Davis has submitted a Preliminary and Final Plan for Davis Acres, for review by the City Planning Board; and

WHEREAS, the subdivision's Preliminary and Final Plan was reviewed and recommended for approval, with variances, by the Hobbs Planning Board at the December 16, 2014 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 Preliminary and Final Plan Approval to Davis Acres, with variances, 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 15th day of June, 2015.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, CITY CLERK

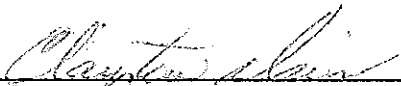
Clayton D. Davis Construction LLC

NM License: 58465
821 Desert Sage
Hobbs, NM 88242
(575)390-6826

AGREEMENT

Although the Lea County Planning and Zoning Board approved the Davis Acres Subdivision, the City Attorney and City Planner for the City of Hobbs have indicated that the City of Hobbs will not approve the subdivision unless I either deposit \$12,000.00 with the County or enter into an Agreement with the County to pay up to \$12,000.00 for the construction of an extension of Fowler Street into what is now located in the Extra-Territorial Zone of Hobbs and Lea County.

Since time is of the essence in my moving forward with the development of the Davis Acres Subdivision or I will suffer substantial financial loss, I agree to pay up to \$12,000.00 when and if Fowler Street is extended to run along the east side of Davis Acres Subdivision. This offer will remain open until May 1, 2025. I would ask that Lea County sign below indicating its acceptance of my offer.



Clayton Davis
Developer, Davis Acres Subdivision

Date: 5-28-2015



Michael P. Gallagher II
County Manager, Lea County

Date: Thursday, May 28, 2015

LEA COUNTY

MAY 28 2015

Manager
Board of County Commissioners



PLANNING BOARD

200 E. Broadway Street, Hobbs, NM 88240
Ph. 1-505-397-9232 Fax 1-505-397-9227

January 21, 2015

RE: Planning Board variance to Municipal Code Chapter 16.16.010 – B.1 and Municipal Code Chapter 16.12.040 – A for proposed subdivision of property within the City of Hobbs extra-territorial platting jurisdiction located northwest of the intersection of Lovelady Road and North Fowler.

The following variance to the City of Hobbs Municipal Code Chapter 16.16.010 - B.1 which states:

B. Arrangement Where Same not Shown in City Map or Master Plan. Where such is not shown in the current official City map, master plan or part thereof, the arrangement of streets in a subdivision shall either:

1. *Provide for the continuation of appropriate projection of existing principal streets in surrounding areas; or*
2. Conform to a plan for the neighborhood approved or adopted by the Planning Board to meet a particular situation, where topographical or other conditions make continuance or conformance to existing streets impracticable.

is hereby recommended to the City of Hobbs Commission, allowing for final plat approval of property located northwest of the intersection of Lovelady Road and Fowler without projecting the continuation of Linam, an existing and improved minor residential street located south of Lovelady Road.

Additionally, the following variance to the City of Hobbs Municipal Code Chapter 16.12.040-A which states:

A. For all new subdivisions and re-subdivisions, all improvements will be required to be completed at the summary process approval or at the final plat filing, unless adequate financial security has been approved by the Planning Board and City Commission.

is hereby also recommended to the City of Hobbs Commission, allowing for final plat approval of property located northwest of the intersection of Lovelady Road and Fowler without improving the projection of Fowler, an existing and improved, to County standards, minor collector street located south of Lovelady Road.

The proposed subdivision plat must receive approval from Lea County and all signatures attached thereto prior to submitting to the City of Hobbs Commission for approval.

Sincerely,

CITY OF HOBBS, PLANNING BOARD

Guy Kesner – Vice Chairman

5) Public Hearing to Review and Consider a Request to Grant a Special Use Permit and Amend the Planning District Map to Allow a Recreational Vehicle Park (RVP), on a 2.75 +/- acre parent parcel located at 1149 W. Marland.

Mr. Robinson said this is a request for a Special Use Permit for 1149 W. Marland. He said notices have gone out. He said there is another RV Park in the area to the northwest of this location. Mr. Kesner asked if there was a site plan? Mr. Robinson said not at this time.

Mr. Robinson said the RV Park will be located on the back lot and there is plenty of access from Marland to where the RV Park will be. Mr. Penick asked if there would be one entrance and exit? Mr. Robinson said yes. Mr. Kesner asked if the RV Park would be paved? Mr. Robinson said the first 100 feet from Marland would have to be paved and the RV Park can be caliche packed. Mr. Boerner said it is caliche packed and gravel topped.

Mr. Shaw made a motion, seconded by Mr. Penick to approve the Special Use Permit. The vote on the motion was 5-0 and the motion carried.

6) Review and Consider proposed encroachment agreements and encroachment easements for properties owned by Rick Ford located on Sunset Circle to allow carports to be extended within the public right-of-way.

Mr. Robinson said this property was granted a carport variance in June of this year for an open walled structure at a 0 setback. He said in this area there is a 50 foot right-of-way and the roadway is 36 foot. He said with encroachment easements they are telling the property owners they can occupy public property. He said to do that the property owner will have to supply staff with either a survey with location points or encroachment plats.

Mr. Robinson said along Sunset there are a lot of legal non-conforming carport structures that exist today that do not have encroachment agreements. Mr. Penick asked if the new carports would match the existing carports? Mr. Robinson said yes. Mr. Eric Enriquez said the Fire Department does not have a problem with the carports but they do not want any combustible materials added on the carports.

Mr. Penick made a motion, seconded by Mr. Ramirez to approve the carport variances. The vote on the motion was 5-0 and the motion carried.

7) Review and Consider Preliminary and Final Plat Approval - proposed Subdivision of property located northwest of the intersection of Lovelady Road and Fowler Street within the extra territorial jurisdiction of the Municipality, as submitted by property owner Clayton Davis.

Mr. Robinson said this is a review of preliminary and final plat approval for the proposed subdivision at Lovelady and Fowler Streets. He said there are some questions about the subdivision. He said the projection of Fowler Street within our subdivision regulations would be required as well as the projection of Linam Street. He said the Board may feel that

Linam Street may not be the appropriate location for that street. He said the preliminary comments staff had is the location of Linam and the setbacks along Lovelady Road and the projection of Fowler.

Mr. Kesner asked if there were enough setbacks on Lovelady Road for them to build the subdivision?

Mr. Robinson said Lovelady Road is projected to be an 80 foot right-of-way and is a 60 foot right-of-way at this time. He said it would require a 20 foot dedication in this instance because when they built the roadway they built it south of the section line. He said 20 foot north of the section would give the 80 foot which is required for our right-of-way. He said staff is asking for an additional 20 foot dedication. He said that would move his property line 20 foot north of the existing roadway and increase his setback to our setback which is 35 on a minor arterial. Mr. Kesner asked if the lots would still have an acre a piece then? Mr. Robinson said that becomes problematic and they would not have an acre a piece. He said if they have $\frac{3}{4}$ of an acre there is a possibility of a variance with Environmental. Mr. Shaw said Environment allows $\frac{3}{4}$ of an acre but the County does not and they would have to ask for a variance. Mr. Robinson said the city would request a dedication to remove the dedicated land from private property and move it to the hands of Lea County.

Mr. Davis said that he spoke with Mr. Gasch at the County and discussed not dedicating the 20 foot right-of-way until the properties are built so he could still make the requirements of 1 acre. He said the dedication would still not be built on. Mr. Robinson said since the City will not be the recipient of the dedication then in the past the fee simple property is still retained by the property owner but the right-of-way can still be dedicated which complies with the City's code.

Mr. Shaw said he would be in favor of leaving the 20 feet within the property line with language added that it will be a dedicated public right-of-way. Mr. Kesner said that the developer will have to go to the County Planning Board. Mr. Robinson said that the city's co-jurisdiction regulations say Linam and Fowler have to be projected for future development. He said a variance with those projections and with right-of-ways projected is good.

Mr. Shaw made a motion, seconded by Mr. Sanderson to approve the proposed subdivision with a variance allowing Linam Street not to be projected through the developers site, a 20 foot dedicated public infrastructure easement along Lovelady and a variance allowing a 40 foot public infrastructure easement for the projection on Fowler to be built at another date. The vote on the motion was 5-0 and the motion carried.

8) Review and Consider Planning Board Calendar for Calendar Year 2015.

There were no changes to the Planning Board Calendar. Mr. Ramirez made a motion, seconded by Mr. Penick to approve the calendar as presented. The vote on the motion was 5-0 and the motion carried.

9) Adjournment.

CERTIFICATE OF APPROVAL, LEA COUNTY PLANNING AND ZONING BOARD

BE FURTHER THAT THIS PART OF SAID AGRES CONSISTING OF THIS SUBDIVISION AS SHOWN ON THE ATTACHED PLAT WAS REVIEWED AND APPROVED BY THE LEA COUNTY PLANNING AND ZONING BOARD AND THIS SUBDIVISION AS SHOWN ON THE ATTACHED PLAT WAS REVIEWED AND APPROVED AND ACCEPTED BY A MAJORITY OF THE MEMBERS OF THE SAID BOARD.

IN WITNESS WHEREOF THE PLANNING AND ZONING BOARD OF LEA COUNTY, NEW MEXICO HAS CAUSED THIS INSTRUMENT TO BE SIGNED ON ITS BEHALF BY ITS CLERK AND APPROVED AND ACCEPTED BY THE COMMISSIONER OF LEA COUNTY, NEW MEXICO ON THIS 20th DAY OF FEBRUARY 2015.

PLANNING AND ZONING BOARD
LEA COUNTY, NEW MEXICO

Katie Morrison
Katie Morrison - Chairman

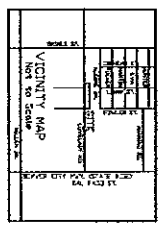
STATE OF NEW MEXICO
COUNTY OF LEA

Jan Fletcher
Jan Fletcher - City Clerk

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ BY THE COMMISSIONER OF LEA COUNTY, NEW MEXICO AND CLERK OF THE LEA COUNTY PLANNING AND ZONING BOARD.

MY COMMISSION EXPIRES: _____

MONTER PUEBLA



CERTIFICATE OF APPROVAL BY THE CITY PLANNING BOARD

THIS PLAT IS APPROVED AND ACCEPTED BY THE CITY PLANNING BOARD OF HOBBBS, NEW MEXICO, AND SIGNED ON ITS BEHALF BY ITS CHAIRMAN ON THE _____ DAY OF _____, 2015.

WILLIAM HOBBS - CHAIRMAN

CERTIFICATE OF MUNICIPAL APPROVAL
STATE OF NEW MEXICO
COUNTY OF LEA

JAN FLETCHER, THE CITY CLERK OF HOBBBS, LEA COUNTY, NEW MEXICO, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT WAS APPROVED BY THE COMMISSIONER OF THE CITY OF HOBBBS, LEA COUNTY, NEW MEXICO ON THE _____ DAY OF _____, 2015.

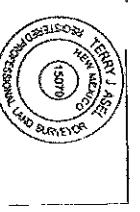
JAN FLETCHER, CITY CLERK

PLANNED ALTERNATE ADDITION
1ST UNIT

CLAYTON M. DAVIS
BOOK 985 PAGE 375

TINA J. YOUNG
BOOK 454 PAGE 761

HAROLD E. KENNEDY
BOOK 454 PAGE 760



TERRY J. ASEL
REGISTERED PROFESSIONAL SURVEYOR
NO. 15079
STATE OF NEW MEXICO

LINEA STREET

FOWLER STREET

Asel Surveying



Scale: 1" = 100'

Date Surveyed:	Work Order #	Surveyed By:
11/11/2014	#480898 (Rev. 0)	Terry J. Asel
01/14/2015	#480898 (Rev. 0) Rev. 0	Terry J. Asel

State of New Mexico, County of _____

Subscribed and sworn to before me on this _____ day of _____, 2015, by _____

Notary Public _____

DAVIS ACRES
A TYPE 3A SUBDIVISION FOR SUMMARY REVIEW-LEA COUNTY
LOCATED IN THE SOUTH HALF (S/2) OF THE
NORTHWEST QUARTER (NW/4) OF SECTION 10,
TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M.,
LEA COUNTY, NEW MEXICO

LEGAL DESCRIPTION

DAVIS ACRES, CAPACED IN SECTION 10, TOWNSHIP 18 SOUTH, RANGE 38 EAST, N.M.P.M., LEA COUNTY, NEW MEXICO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEINGING AT A 1/2" REBAR W/P/C CAP MARKED "P23220 P517841" FOUND AS THE SOUTHWEST CORNER OF THIS TRACT WHICH LIES N89°19'33"W - 1832.0 FEET TO A 1/2" REBAR W/P/C CAP MARKED "15M 15079 TX 5204" SET AS THE SOUTHWEST CORNER OF THIS TRACT; THENCE N02°09'17"W - 171.77 FEET TO A 1/2" REBAR W/P/C CAP MARKED "15M 15079 TX 5204" SET AS THE NORTHEAST CORNER OF THIS TRACT; THENCE S89°19'33"W - 1171.73 FEET TO A 1/2" REBAR W/P/C CAP MARKED "P23220 P517841" FOUND AS THE POINT OF BEGINNING AND CONTAINING 4.40 ACRES OF LAND, MORE OR LESS, THE DIST 40' BEING SUBJECT TO A PRIVATE INTEREST/ENCUMBRANCE.

ALTERNATE ADDITION:

ALTERNATE ADDITION AND SUB-DIVISION HEREBY DESCRIBED HEREIN BEINGING AND SUB-DIVISION HEREBY DESCRIBED AS FOLLOWS:

THE SOUTH 20 FEET OF TRACTS 1, 2, 3 AND 4 AND THE EAST 40 FEET OF TRACT 4.

DEDICATION:

SAID TRACTS ARE BEING SUBMITTED AND REPLICATED WITH THE FREE CONSENT AND AS A CONTRIBUTION TO THE PUBLIC USE, INCLUDING STREETS AND ALLEYS, ARE HEREBY DEDICATED TO THE PUBLIC USE.

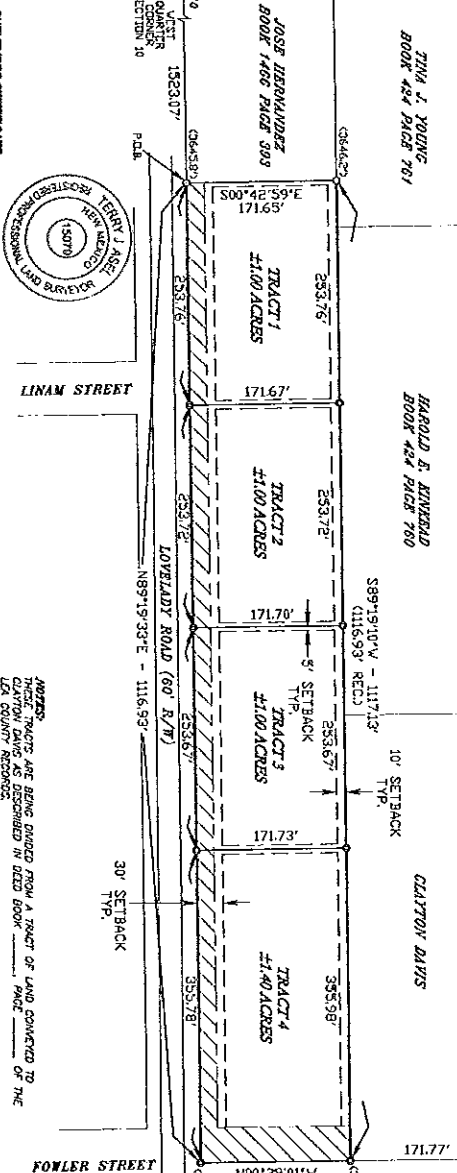
ON THE _____ DAY OF _____, 2015, BEFORE ME PERSONALLY OR BY _____, I, _____, A NOTARY PUBLIC, TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME AS THEIR FREE ACT AND DEED.

WITNESSES MY HAND AND OFFICIAL SEAL, THE DAY AND YEAR LAST ABOVE WRITTEN.

MY COMMISSION EXPIRES _____

NOTARY PUBLIC

Sandra Bolchman
Sandra Bolchman
Notary Public
State of New Mexico



SURVEYOR'S CERTIFICATE

I, TERRY J. ASEL, NEW MEXICO PROFESSIONAL SURVEYOR NO. 15079, DO HEREBY CERTIFY THAT CONDUCTED AND AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND MEETS THE MINIMUM STANDARD FOR SURVEYING IN NEW MEXICO AS ADOPTED BY THE NEW MEXICO STATE BOARD OF REGISTRATION FOR PROFESSIONAL SURVEYORS AND SURVEYORS.

IN WITNESS WHEREOF, I HEREBY SET MY HAND AND AFFIX MY OFFICIAL SEAL, THIS 20th DAY OF FEBRUARY, 2015.

TERRY J. ASEL
REGISTERED PROFESSIONAL SURVEYOR
NO. 15079

NOTES:

THESE TRACTS ARE BEING DIVIDED FROM A TRACT OF LAND CONVEYED TO LEA COUNTY, NEW MEXICO, BY DEED BOOK _____ PAGE _____ OF THE LEA COUNTY RECORDS.

DRAWINGS SHOWN HEREON ARE FROM GPS MEASUREMENTS AND CORRECTED TO LEA COUNTY RECORDS.

MEASUREMENTS FROM 1983, DISTANCES ARE GROUND MEASUREMENTS.

LEGEND

● - DENOTES: FOUND MONUMENT AS NOTED

○ - DENOTES: SET MONUMENT 1/2" REBAR W/P/C CAP MARKED "15M 15079 TX 5204"

○ - DENOTES: FOUND 1/2" REBAR W/P/C CAP MARKED "P23220 P517841"

□ - DENOTES: GROUND LEVEL ELEVATION (NAVD83)

▨ - DENOTES: DESIGNATED EASEMENT

1/2" REBAR W/P/C CAP MARKED "P23220 P517841" FOUND AS THE SOUTHWEST CORNER OF THIS TRACT WHICH LIES N89°19'33"W - 1832.0 FEET TO A 1/2" REBAR W/P/C CAP MARKED "15M 15079 TX 5204" SET AS THE SOUTHWEST CORNER OF THIS TRACT; THENCE N02°09'17"W - 171.77 FEET TO A 1/2" REBAR W/P/C CAP MARKED "15M 15079 TX 5204" SET AS THE NORTHEAST CORNER OF THIS TRACT; THENCE S89°19'33"W - 1171.73 FEET TO A 1/2" REBAR W/P/C CAP MARKED "P23220 P517841" FOUND AS THE POINT OF BEGINNING AND CONTAINING 4.40 ACRES OF LAND, MORE OR LESS, THE DIST 40' BEING SUBJECT TO A PRIVATE INTEREST/ENCUMBRANCE.



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15, 2015

SUBJECT: RESOLUTION TO APPROVE AN AFFORDABLE HOUSING DEVELOPMENT AGREEMENT WITH TIERRA REALTY TRUST, LLC FOR AN AFFORDABLE HOUSING COMPLEX UPON DEVELOPER PROPERTY LOCATED SOUTHWEST OF THE INTERSECTION OF YESO AND JEFFERSON.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: June 9, 2015
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: Tierra Realty Trust, LLC has received an allocation of Low-Income Housing Tax Credits from the New Mexico Mortgage Finance Authority to finance the development of a 60 unit affordable multi-family housing complex, to be named "Playa Escondida", on developer owned property. The Developer was also allocated a Local Contribution of \$1,100,000.00 in financial assistance per Resolution #6089 passed by the Commission on December 30, 2013. The Resolution attached hereto approves the Development Agreement between the City of Hobbs and Tierra Realty Trust, LLC, guiding the development of the complex. The Development agreement allows for the creation and execution of restrictive covenants upon the real property to assure the units produced shall remain affordable units for a period of 45 years. Additionally, the Development Agreement contains a promissory note securing the Local Contribution allowing for the yearly forgiveness of the accrued interest on the principle providing the properties exterior is maintained in "as new condition". The entirety of the principal shall be forgiven at the end of the 45 year term providing that all affordability requirements have been met during the term. As per the Development Agreement \$500,000 dollars of the available funds shall be disbursed to the Developer when the project is "dried-in" and the remaining \$600,000 dollars shall be made available after the Developer has obtained Certificates of Occupancy for the development.

Fiscal Impact:

Reviewed By: [Signature]
Finance Department

The City incurred an expense of \$1,100,000.00 in fund 01-0100-44901-00169 upon approval of Resolution #6089 on December 30, 2013.

Attachments: Resolution, Development Agreement with Exhibits.

Legal Review:

Approved As To Form: [Signature]
City Attorney

Recommendation:

Staff recommends consideration of the Resolution to approve the Development Agreement.

Approved For Submittal By:
[Signature]
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. 6309.

A RESOLUTION TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN TIERRA REALTY TRUST, LLC AND THE CITY OF HOBBS CONCERNING THE DEVELOPMENT OF AN AFFORDABLE HOUSING COMPLEX, PLAYA ESCONDIDA, UPON DEVELOPERS PROPERTY LOCATED SOUTHWEST OF THE INTERSECTION OF YESO AND JEFFERSON.

WHEREAS, the City amended Municipal Code Chapter 3.14 by adopting Ordinance #1050 on December 5, 2011 allowing a local contribution to developers providing for the affordable housing needs of working families; and

WHEREAS, the City has adopted a Resolution adopted December 30, 2013, Resolution #6089, appropriating \$1,100,000 to the Developers project; and

WHEREAS, the Development includes a mixed income, affordable rental project located southwest of the corner of Yeso and Jefferson, located within the corporate limits of the City; and

WHEREAS, the Developer has received an allocation of Low-Income Housing Tax Credits from the New Mexico Mortgage Finance Authority which will fund a significant portion of the overall cost of the Project; and

WHEREAS, the Developer has the necessary construction, and marketing expertise to develop and market the Development; and

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

1. The City of Hobbs hereby approves the Development Agreement for the Affordable Multi-Family Housing Project, and the Mayor is hereby authorized to sign the same and all attachments thereto, a copy of which is attached hereto as Exhibit "1" and made a part of this Resolution.

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 15th day of June, 2015

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

DEVELOPMENT AGREEMENT

**By and between the
City of Hobbs, New Mexico
a municipal corporation,**

and

**Playa Escondida Housing, LLLP,
a New Mexico limited liability limited partnership
440 Gausteo Street
Santa Fe, NM 87501**

June 12, 2015

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this 12th day of June 2015, by and between the City of Hobbs, New Mexico, a municipal corporation, (hereinafter "City") and Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership, or its successors or assigns or an affiliate of Developer so long as Developer retains a controlling interest in the affiliate (hereinafter "Developer"). City and Developer are sometimes hereinafter referred to collectively as "the Parties" and individually as "a Party."

RECITALS

WHEREAS, the City amended Municipal Code Chapter 3.14 by adopting Ordinance #1050 on December 5, 2011 allowing a local contribution to developers providing for the affordable housing needs of working families; and

WHEREAS, the City adopted a Resolution on December 30, 2013, Resolution #6089, appropriating \$1,100,000 plus Municipal Property to the Developer project; and

WHEREAS, the Development (defined below) includes a mixed income, affordable rental project located southeast of the corner of Yeso and Jefferson and within the corporate limits of the City; and

WHEREAS, the Developer is receiving a Low-Income Housing Tax Credit ("LIHTC") allocation (the "Tax Credit Award") from the New Mexico Mortgage Finance Authority (hereinafter "MFA") which will fund a significant portion of the overall cost of the Project; and

WHEREAS, the Developer has the necessary construction, and marketing expertise to develop and market the Development.

NOW, THEREFORE, and in consideration of the premises and the mutual covenants hereinafter, set forth, the Parties formally covenant and agree as follows:

ARTICLE I

Definitions

Section 1.1 The Definitions in the City's Municipal Code Chapter 3.14, if any, as they exist at the time of the execution of this Agreement or as amended during the term of this Agreement are adopted by reference and incorporated herein as though set forth in full in this paragraph.

Section 1.2 The following additional Definitions as shown in Exhibit A except where the context indicates otherwise, shall have the respective meanings set forth in Exhibit A.

ARTICLE II

Project Purpose and Description

Section 2.1 Purpose of Project. The purpose of the Project is to develop an affordable, mixed income, rental housing development. Populations to be served will range from the very low income to market rate tenants. Rents shall be restricted for Low to Moderate income households.

Section 2.2 Project Term. The development of the Project and the provision of the Affordable Units (as defined below) by the Developer are to commence dependent upon the award of Low Income Housing Tax Credits by the Mortgage Finance Authority to the Developer, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement but, in any event, the obligation to provide the Affordable Units required hereunder shall be continued for forty five (45) years from the completion of the Project ("Affordability Period").

Section 2.3. Project Description. The Project named Playa Escondida is located southwest of the corner of E. Yeso Drive and N. Jefferson, as legally described in Exhibit B (the "Real Property"). The community will consist of 1, 2 and 3 bedroom affordable housing units producing 60 units in this phase ("Affordable Units"). A "LEED for Homes Platinum" rating is anticipated and their criteria will be used in order to keep the site sustainable, provide for efficient use of water and energy, and keep the community healthy for residents. The Development is convenient to essential services such as groceries, retail, restaurants, churches, and public schools.

ARTICLE III

Funds Committed to the Project

Section 3.1 Description of City Loan. To assist with the Development, the City shall lend to the Developer an amount not to exceed One Million One Hundred Thousand Dollars and Zero Cents (\$1,100,000.00) of Municipal funds (the "City Funds") subject to the terms and conditions contained herein. The City Funds loaned to the Developer will be evidenced by a City note in the form attached as Exhibit D ("City Note"), secured by a City mortgage encumbering the Project in the form attached as Exhibit C ("City Mortgage") and the Developer shall encumber the Project with the Restrictive Real Estate Covenants running to the benefit of the City in the form attached as Exhibit I. The Developer agrees to sign at closing the City Mortgage and the City Note, both of which evidence and secure the Developer's obligation to abide by the terms of the City Mortgage. The City Mortgage shall be subordinate to all other Project financing.

Section 3.2 Project Budget. The Project Budget is attached in Exhibit E.

Section 3.3 Schedule of Loans. Attached hereto as Exhibit F and incorporated herein as though set forth in full in this paragraph is the schedule of loans and grants from the City to be paid or forgiven and the terms thereof.

Section 3.4 Other Loans/Subsidies. Other loans and subsidies, if applicable, are listed on the attached Exhibit F and incorporated herein as though set forth in full in this paragraph. Except for the loans listed on the attached Exhibit F, without the prior knowledge and written approval of the City, the Developer shall not encumber either the Project or the Developer as a whole with obligations which could impede the success of the Project.

Section 3.5 Tax Credits. Tax Credits, if applicable, are listed on the attached Exhibit F and incorporated herein as though set forth in full in this paragraph.

ARTICLE IV

Commencement and Completion of the Project

Section 4.1 Agreement to Construct and Complete the Project. Developer agrees that:

A. It shall construct the Project in accordance with the Plans, Specifications and Elevations (the "Plans and Specifications") prepared by Developer, including any and all supplements, amendments and additions or deletions thereon or therein, as approved by the City.

B. It shall construct the Project with all reasonable dispatch and according to the Development Schedule attached as Exhibit G. An updated Development Schedule shall be provided within sixty (60) days after execution of the Agreement and shall be provided as part of the subsequent quarterly reports.

C. Developer shall have sole responsibility for construction of the Project and shall perform the responsibilities by itself or through affiliates, agents, contractors, subcontractors or others selected by it in whatever lawful manner it deems necessary or advisable provided it is in conformance with all applicable funding sources. Developer shall procure from the appropriate state, county, municipal and other authorities and corporations appropriate building permits and certificates of occupancy, connection arrangements for the supply of water, electricity and other utilities and discharge of sewage and industrial waste disposal for the operation of the Project.

Section 4.2 Establishment of Completion Date.

A. The Developer shall complete the construction of the Project no later than January 30, 2017.

B. The completion date shall be evidenced to the City by (i) a permanent Certificate(s) of Occupancy issued by the City; (ii) if applicable, a certificate of completion and acceptance by the City accepting public infrastructure required to be constructed; and (iii) release of liens by contractors, subcontractors and suppliers employed in the

Project. Such documents shall be delivered to the City promptly but not later than thirty (30) days after the completion of the Project, unless an extension of such date has been agreed to in writing by the parties to this Agreement. Notwithstanding the foregoing, such certificates of occupancy shall be given without prejudice to any rights of the City against any third party existing at the date of such documents or which may subsequently come into being.

C. City may conduct inspections of the Project during normal business hours after giving reasonable notice to Developer. Notwithstanding the above, Developer shall arrange for a Project walk through within five (5) days after substantial completion of the Project with the Developer's authorized representative, City's Authorized Representative, Construction Contractor and Independent Architect/Engineer.

Section 4.3 Developer to Pursue Remedies Against Contractor and Subcontractors and their Sureties. In the event of default of any contractor or subcontractor under any contract made in connection with the Project, Developer shall promptly precede either separately or in conjunction with others to exhaust any remedies against the contractor or subcontractor so in default and against each surety for the performance of such contractor or subcontractor. Developer may prosecute or defend any action or proceeding or take other action involving such contractor or subcontractor or surety or other guarantor or indemnitee which Developer deems reasonably necessary.

ARTICLE V

Usage and Documentation of City Funds

Section 5.1 Use of Loan Proceeds, Repayment, Discharge. The City Funds shall be an amount not greater than ONE MILLION ONE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,100,000.00), which includes all City Funds allocated for this Project, and shall be used for the development and construction of the Project. The City Funds shall be repayable to the City by the Developer in accordance with the terms and conditions of the City Note and this Agreement.

Section 5.2 Disbursement of City Loan Proceeds Authorized Under This Agreement. The City Loan authorized under this Agreement in the amount of ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000.00) shall be disbursed to the Developer to pay actual costs incurred by Developer for purposes authorized under this Agreement ("City Loan") and per the project budget attached hereto and incorporated herein as Exhibit E.

A. In addition to any other requirements herein, the City Funds shall only be disbursed in the event Developer meets the criteria set forth herein.

B. Developer agrees to provide City with a Request for City Loan Disbursement, in a form acceptable to City and substantially similar to Exhibit H, not less than ten (10) days prior to distribution date.

C. Plans and Specifications. Developer shall submit one complete set of the Plans and Specifications for the units to the City. The City shall review and approve the proposed Plans and Specifications prior to the commencement of any construction work pursuant hereto. In a case of material change, the authorized development representative shall certify to the City that such revised Plans and Specifications will not materially affect the purpose of the development Project as set forth herein, provided that no such material change shall be made without the prior written consent of the City.

Section 5.3 Loan Documentation. Developer shall execute and deliver the City Note to the City in order to evidence the obligation to repay to the City the City Loan, and the City Note shall be secured by the City Mortgage encumbering the Project.

Section 5.4 Subordination and Release. The City Mortgage shall be subject and subordinate to any mortgage or bond securing the Construction Loan(s) and the initial Permanent Loan(s), and the New Mexico Mortgage Finance Authority Land Use Restriction Agreement, and City shall execute documents as may be necessary to effectuate such subordination.

ARTICLE VI

Warranties and Obligations

Section 6.1 Warranties and Obligations by the City. The City makes the following warranties as the basis for the undertakings on its part contained herein.

A. The City is a municipal corporation organized and existing under and pursuant to the laws of the State of New Mexico and is authorized by the Act to provide financing for, acquire, construct, own, lease, rehabilitate, improve, sell and otherwise assist projects for the purpose of providing adequate residential housing including residential housing for individuals and families of low and moderate income by inducing private enterprise to locate, develop and expand such residential housing facilities in the City.

B. Consistent with the City Agreements, the Real Property has, or will be, conveyed to the Developer for the sole purpose of developing the Project. This Project, specifically, includes a mixed income, affordable rental project located on the Real Property within the corporate limits of the City so that adequate residential housing is available within the City and promoting the public health, safety, welfare, convenience and prosperity thereby.

C. Adhere to initial rents for Affordable Units as published by the New Mexico Mortgage Finance Authority annually. Any rent increases of the Affordable Units must be approved in writing by the NMMFA prior to implementation.

Section 6.2 Warranties and Obligations by Developer. Developer makes the following warranties as the basis for the undertakings on its part herein contained.

A. Developer is a New Mexico limited liability company duly organized and validly existing as such under the laws of the State of New Mexico with authority to perform the transactions set forth herein, has the power to enter into this Agreement and by proper action has duly authorized the execution and delivery of this Agreement.

B. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the compliance with the terms and conditions of this Agreement violate or will violate the terms of Developer's Amended and Restated Agreement of Limited Partnership and the Certificate of Limited Partnership or conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or any instrument to which Developer is now a party or by which it is bound or constitutes or will constitute a default under any of the foregoing or will result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the Real Property or assets of Developer under the terms of any instrument or agreement.

C. There are no pending or threatened legal or administrative proceedings against Developer or affecting the Project which, if determined adversely, would have a material adverse effect on Developer or the Project.

D. The Real Property shall be used towards the development of the Project.

E. The Restrictive Real Estate Covenants attached hereto as Exhibit I are binding on the Project and the Developer who shall comply therewith.

F. The Developer shall comply with the following provisions including, but not limited, to:

1. Requirements of the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24), if applicable, and Section 104(d) of the Housing and Community Development Act of 1974.
2. Regulations of the Uniform Administrative Requirements as described in 24 CFR Part 92.505.
3. Federal laws and regulations as described in 24 CFR Part 92, Subpart E.
4. Maintain accurate records which document and verify affirmative marketing efforts.
5. Maintain the Project as an affordable rental housing project as provided by the City Loan.

G. None of the units in the Project shall at any time be utilized on a transient basis; and none of the Project nor any portion thereof shall ever be used as a hotel, motel dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park.

H. At all times material hereto, the Project shall comply in all material respects with all applicable municipal codes, planning ordinances, building codes, Federal Model Energy Code, flood regulations, environmental laws, ordinances, statutes, rules and regulations relating to the Project.

I. Developer shall not, during the term of this Agreement, amend or change its Amended and Restated Agreement of Limited Partnership and the Certificate of Limited Partnership in any manner if such amendment or change would result in a conflict with the terms of this Agreement. Developer shall have the right to admit the City as a member, which admission will not conflict with the terms of this Agreement.

J. The Developer shall comply with the provisions of, and act in accordance with, all federal laws, rules and regulations, and Executive Orders related to equal employment opportunity, affirmative action, equal access to programs and services, and the enforcement of Civil Rights, including, but not limited to, Section 3 of the Housing

and Urban Development Act of 1968, Sections 103 and 109 of the Housing and Community Development Act of 1974, as amended, Title VI and Title VII of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, Sections 502, 503, 504 and 505 of the Rehabilitation Act of 1973, Equal Pay Act of 1963, Age Discrimination in Employment Act of 1967, as amended, the Vietnam Era Veterans Readjustment Act of 1974, the 1986 U.S. Immigration Reform and Control Act, Americans With Disabilities Act of 1990, Executive Order 11063 of 1962 and Executive Order 11246 of 1965, as amended, and the Nontraditional Employment for Women Act of 1991; the New Mexico Human Rights Act and the Hobbs Human Rights Ordinance, and as well as all rules and regulations pertaining to each such statute or ordinance; and will not discriminate against any person or applicant because of race, color, religion, sex, age, family status, national origin or ancestry, physical or mental handicap, sexual orientation, gender identity, disability, or Vietnam-era or disabled veteran status, and will make reasonable accommodation to the known physical or mental handicap or disability of an otherwise qualified applicant for tenancy.

K. Required Assurances: During the performance of this Agreement, the Developer agrees as follows:

1. Compliance with Civil Rights Laws and Executive Orders:

a. The Developer will comply with the provisions of, and act in accordance with, all federal laws, rules and regulations, and Executive Orders related to equal employment opportunity, affirmative action, equal access to programs and services, and the enforcement of Civil Rights, including, but not limited to: Section 3 of the Housing and Urban Development Act of 1968, Sections 103 and 109 of the Housing and Community Development Act of 1974, as amended, Title VI and Title VII of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, Sections 502, 503, 504 and 505 of the Rehabilitation Act of 1973, Equal Pay Act of 1963, Age Discrimination in Employment Act of 1967, as amended, the Vietnam Era Veterans Readjustment Act of 1974, the 1986 U.S. Immigration Reform and Control Act, Americans With Disabilities Act of 1990, Executive Order 11063 of 1962 and Executive Order 11246 of 1965, as amended, and the Nontraditional Employment for Women Act of 1991.

b. The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual preference, sexual orientation, age, national origin or ancestry, physical or mental handicap, disability, or Vietnam era or disabled veteran status.

c. The Developer will make reasonable accommodation to the known physical or mental handicap or disability of an otherwise qualified employee or applicant for employment.

d. The Developer will ensure and maintain a working environment free of sexual harassment and other unlawful forms of harassment, intimidation, and coercion in all facilities at which the Developer's employees are assigned to work.

e. The Developer will in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration of employment without regard to race, color, religion, gender, sexual preference, sexual orientation, age, national origin or ancestry, or physical or mental handicap or disability.

L. The Developer shall comply with all applicable provisions of the Act including, but not limited to:

1. Provide the City with an approved schedule of activities from the date of acquisition of the Real Property through completion of construction of the Project.
2. Requirements of the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24), if applicable, and Section 104(d) of the Housing and Community Development Act of 1974.
3. Regulations of the Uniform Administrative Requirements as described in 24 CFR Part 92.505.
4. Federal laws and regulations as described in 24 CFR Part 92, Subpart E.
5. Federal laws and regulations as described in 24 CFR Part 92, Subpart F.
6. Federal laws and regulations as described in 24 CFR Part 92, Subpart H.
7. Federal laws and regulations as described in 24 CFR Part 893.6(b).
8. Adhere to all applicable labor provisions outlined in 24 CFR 92.354.

M. The Plans and Specifications for the construction of the Project shall be reviewed by the City.

N. At no time are the units in the Project to be utilized on a transient basis; and none of the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park.

O. The provisions contained herein shall be binding on the successors and assigns of Developer.

P. At all times material hereto, the Project shall comply in all material respects with all applicable municipal codes, planning ordinances, building codes, Federal Model Energy Code, flood regulations, environmental laws, ordinances, statutes, rules and regulations relating to the Project.

Q. Developer shall have sole responsibility for construction of the units and may perform the same by itself or through affiliates, agents, contractors, subcontractors or others selected by it in whatever lawful manner it deems necessary or advisable provided it is in conformance with the terms of this Agreement. Developer shall procure from the appropriate state, county, municipal and other authorities and corporations appropriate building permits and

certificates of occupancy, connection arrangements for the supply of gas, water, electricity and other utilities and discharge of sewage and industrial waste disposal for the operation of the units.

R. Developer shall not, during the term of this Agreement, amend or change its Amended and Restated Agreement of Limited Partnership and the Certificate of Limited Partnership in any manner if such amendment or change would result in a conflict with the terms of this Agreement.

S. Developer shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry or physical handicap.

ARTICLE VII

Monitoring /Reports Required

Section 7.1 The Developer shall report, in writing, at least quarterly during the construction and lease-up phases of the Project. The quarterly report shall include the progress of construction as a percentage complete, construction funds expended with remaining balance, and number of units completed.

Section 7.2 The Developer shall comply with all applicable monitoring provisions of the New Mexico Mortgage Authority as determined by the NMMFA.

Article VIII

Fees, Taxes, Insurance and Other Amounts Payable

Section 8.1 Payment, Fees and Other Amounts Payable. Developer shall promptly pay or cause to be paid, as the same become due, all governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any interest therein or other property constructed, installed or bought by Developer therein or thereon which, if not paid, will become a lien on the Real Property prior to or on a parity with the City Mortgage including all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, provided that with respect to governmental charges that may lawfully be paid in installments over a period of years, Developer shall be obligated to pay only such installments as are required to be paid during the term of this Agreement when due. Developer may, in good faith, contest any such charges and in the event of any such contest may permit the charges so contested to remain unpaid during the period of such a contest and any appeal therefrom, provided that during such period, enforcement of any such contested item shall be effectively stayed. If Developer shall fail to pay any of the foregoing items required herein to be paid by Developer, the City may (but shall be under no obligation to) pay the same and any amounts so advanced therefore by the City shall become an additional obligation of Developer to the City, which amounts, together with interest thereon at statutory judgment interest rate from the date thereof, Developer agrees to pay on demand. Any such amounts so advanced by the City shall be secured by the City Mortgage.

Section 8.2 Payments Required. The obligations of Developer to make the payments required in Section 8.1 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional without offset or counterclaim for claims against the City or any other party.

Section 8.3 Maintenance of Project. Developer agrees that, during the term of this Agreement, it shall, at its own expense, keep, or cause to be kept, the Project in as reasonably safe condition as its operations shall permit and keep the buildings and all other improvements forming a part of the Project in good repair and in good operating condition making, from time to time, all necessary repairs thereto and renewals and replacements thereof. Any tangible property purchased or installed with proceeds from the City Funds or City Loan or received in exchange for tangible property purchased or installed with proceeds from the City Funds or City Loan shall become a part of the Project and the Real Property thereof. Developer shall not permit any mechanic's lien, security interest, or other encumbrance to be established or to remain against the Project for labor or materials furnished in connection with the construction or installation of the Project or any additions, modifications, improvements, repairs, renewals or replacements made by it, provided that if Developer shall notify the City of its intention to do so, Developer may, in good faith, contest any mechanic's or other liens filed or established against the Project and such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Developer determines or the City shall notify Developer that, in the opinion of the City, by non-payment of any such items, the City Mortgage as to any part of the Project shall be materially endangered or the Project or any part thereof shall be subject to loss or forfeiture in which event the Developer shall promptly pay and cause to be satisfied and discharged all such unpaid items.

Section 8.4 Insurance Required. During the construction period and throughout the term of this Agreement, Developer itself through its contractors, subcontractors or agents shall keep the Project insured against loss or damage by maintaining policies of insurance and by paying, as the same become due and payable, all premiums with respect thereto including but not necessarily limited to the following coverage:

A. COMPREHENSIVE GENERAL LIABILITY INSURANCE. Developer shall obtain comprehensive general liability insurance, including automobile insurance, with liability limits in amounts not less than \$1,000,000 aggregate limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance must include coverage for all operations performed on or about the Project, including coverage for collapse, explosion and underground liability coverage, coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off the Project site and contractual liability coverage which shall specifically insure the indemnification provisions of this Agreement. The above requirement shall include but shall not be limited to protection against damage or destruction of public and private property, including telephone conduit, telegraph conduit, power conduit, telephone signal cables, fiber optics cables, television cables, computer cables, fire alarm circuits, gas mains, water service connections, sanitary sewer, sewer, house or building connections, water mains, water service connections, steam lines, petroleum products pipelines, storm drains, storm inlet lines including all appurtenances thereto while located below the surface of the ground including injury or death to person or persons caused by Developer's operations including blasting and trenching, backfilling, tamping, with or without the use of mechanical equipment, and the collapse of or structural damage to a building, house or structure including power, telephone, telegraph, fire alarm, street light poles, curb, gutter and sidewalk on public or private property and destruction of or damage to other public or private property resulting therefrom including injury or death to person or persons and all causes by Developer's operations in the removal of other building structures including their supports, trees and utility poles or by excavation including blasting and trenching, backfilling, tamping with or without use of mechanical equipment. Other public and private property as used above shall include but not be limited to lawns, plants, flowers, trees, fences, yards, walls.

B. OWNER'S PROTECTIVE PUBLIC LIABILITY INSURANCE. Developer shall procure, or cause or be procured, and maintain, during the life of construction, an owner's protective public liability insurance policy with liability limits in an amount not less than \$1,000,000 combined single limit of liability for bodily injury, including death and property damage in any one occurrence.

C. WORKER'S COMPENSATION INSURANCE. Developer shall comply with the provisions of the Worker's Compensation Act, the Subsequent Injury Act and the New Mexico Occupational Disease Disablement Law. Developer shall procure and, maintain, during the life of the Project complete Worker's and Employer's Liability Insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under NMSA 1978, §52-1-10 for safety devices. With respect to worker's compensation insurance, if Developer elects to be self-insured, it shall comply with the applicable requirements of law. If any portion of the construction of the Project is to be subcontracted or sublet, Developer shall require the contractor and subcontractor to similarly provide such coverage (or qualify as self-insured) for all latter's employees to be engaged in such work. It is agreed with respect to all worker's compensation insurance, Developer and its surety shall waive any right of subrogation they may acquire against the City, its officers, agents and employees by reason of any payment made on account of injury, including death, resulting therefrom sustained by any employee of the insured arising out of performance of this Agreement. Neither the Developer nor its employees are considered to be employees of the City of Hobbs for any purpose whatsoever. The Developer is considered to be an independent contractor at all times in the performance of this Agreement. The Developer further agrees that neither it nor its employees are entitle to any benefits from the City under the provisions of the Worker's Compensation Act of the State of New Mexico, nor to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

D. BUILDER'S RISK INSURANCE. Developer shall procure and maintain, until completion of the construction, builder's risk, vandalism and malicious mischief insurance. Alternatively, Developer shall procure and maintain insurance against loss or damage to the Project by fire, lightning, vandalism, and malicious mischief with the uniform extended coverage endorsement limited only as may be provided in the standard form or extended coverage endorsement at the time in use by the State of New Mexico to provide for not less than 90% recovery of the market value of the buildings and other improvements but in any event no less than the cost of fully paying the City Note.

E. INCREASED LIMITS: The City may require Developer to reasonably increase the maximum limits of any insurance required herein and Developer shall promptly comply.

F. PROOF OF INSURANCE: Prior to any funding and during the term of this Agreement, not less than once each year, on or before May 31, Developer shall provide to the City without demand, or more frequently upon demand, proof of all required insurance coverages.

Section 8.5 Performance, Payment and Other Bonds. Developer or Contractor shall furnish or cause to be furnished, performance and payment bonds, or other security such as an irrevocable letter of credit, acceptable to the City, as security for the faithful performance and payment of all its obligations pursuant to the construction of the Project. These bonds shall be in amounts at least equal to the amount of the City Note and in such form and with such sureties as are licensed to conduct business in the State of New Mexico and are named in the current list of surety companies acceptable on federal bonds as published in the Federal Register by the Audit Staff of Accounts, U. S.

Treasury Department. The performance bond shall also include coverage for any guaranty period provided by the contractor. The surety on the performance bond shall furnish a waiver whereby it consents to the progress or partial payment to any contractor of amounts for materials and acknowledges that such payment shall not preclude enforcement of such remedied as may be available against such surety. Developer shall cause the City to be named a joint obligee on such bonds. If the surety on any bond furnished by Developer is declared bankrupt or becomes insolvent or its right to do business in the State of New Mexico is revoked, Developer shall substitute or cause to be substituted another bond and surety within ten (10) days thereafter. The Developer may furnish an irrevocable letter or letters of credit in form satisfactory to the City as an alternative to the performance, payment bonds specified above. Any such letter must be drawn against a New Mexico institution whose deposits are federally insured and shall be payable exclusively to the City on demand.

Section 8.6 Application of Net Proceeds of Insurance. The Net Proceeds of builder's risk insurance and of fire and other hazard and casualty insurance, carried pursuant to the provisions of this Agreement hereof, shall be applied as provided in this Agreement and the Net Proceeds of liability insurance carried pursuant to the provisions of this Agreement hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid. The net proceeds of the bonds provided pursuant to this Agreement shall be applied to curing the defect in performance or payment.

Section 8.7 Additional Provisions Respecting Insurance. All insurance required to be taken out by Developer pursuant to this Agreement shall be taken out and maintained in generally recognized responsible insurance companies authorized to do business in the state of New Mexico selected by Developer. All applicable policies evidencing such insurance shall name both the City and Developer as named insured and the City shall be named as loss payee as to the City's mortgages under the builder's risk and property insurance required by this Agreement. An original or duplicate copy of the insurance policies providing the coverage required by Section 6 hereof shall be deposited with the City. Prior to expiration or exchange of such policy, Developer shall furnish the City evidence satisfactory to the City that the policy has been renewed or replaced or is no longer required by this Agreement. All policies required hereunder shall provide that the City shall be given thirty (30) days prior written notice of cancellation, non-renewal or material alteration of coverage. Provisions that the insurance company shall "endeavor to give the City notice" shall not be allowed.

Section 8.8 Advances by City. If Developer shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Project in as reasonably safe condition as its operating condition shall permit or shall fail to keep the buildings in good repair and good operating condition, the City may, but shall be under no obligation to, obtain the required policies of insurance and pay the premiums on the same or make the required repairs, renewals and replacements and all amounts so advanced therefore by the City shall become an additional obligation of Developer to the City which amounts, together with any interest thereon at the statutory judgment interest rate thereof, Developer agrees to pay on demand. Any such amounts advanced by the City shall be secured by the City Mortgage and shall be paid upon demand by the City.

ARTICLE IX

Damage, Destruction and Condemnation

Section 9.1 Damage, Destruction, and Condemnation. In the event the Project is destroyed or damaged, in whole or in part, by fire, or other casualty or title to or the temporary use of the Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or any person, firm or corporation, acting under governmental authority, Developer shall have the right to use the net proceeds of insurance or from any award made in such eminent domain proceedings to be applied to the restoration of the buildings and other improvements located on the Real Property to substantially the same conditions as existed prior to the casualty causing the damage or destruction or the exercise of eminent domain; provided that such proceeds are sufficient to rebuild the Project or if such proceeds are insufficient, then Developer shall fund any deficiency.

Section 9.2 Partial Damage, Destruction, and Condemnation If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the City Loan, in a manner that provides adequate security to the City for repayment of the remaining balance of the City Loan. In the event City and Developer cannot agree on the approach to take, City shall make the final decision and Developer agrees to be bound by that decision. In the event of any conflicts between the terms of mortgages encumbering the Project regarding the application of casualty proceeds or condemnation proceeds, the terms of the mortgages shall control in the order of their priority.

ARTICLE X

Special Covenants

Section 10.1 City's Right of Access to the Project. Developer agrees that the City and any of its duly authorized agents shall have the right at all reasonable times, and subject to the rights of the tenants to enter upon and examine and inspect the Project provided that any such inspections shall be conducted in a manner that will minimize any intrusion on the operations of the Project.

Section 10.2 Good Standing. Developer warrants and represents that it has executed, filed and recorded all certificates and other documents and has done and shall continue to do throughout the term of this Agreement such other acts as may be necessary or appropriate to comply with all applicable requirements for the formation, qualification and operation of a limited liability company and the operation and ownership of the Project under the laws of the State of New Mexico.

Section 10.3 Granting of Easements. If no Event of Default under this Agreement shall then be continuing, Developer may at any time grant easements, licenses, rights-of-way including the dedication of public roads, streets or highways, and other rights or privileges in the nature of easements with respect to any Real Property included in the Project, consistent with the purposes of the Project, free from the lien of the City Mortgage or Developer may release existing easements, licenses, rights-of-way and other rights or privileges with or without consideration subject to review and approval by the City. Developer shall furnish to the City a survey showing such easement, license or right-of-way, a copy of the instrument of grant and a certificate executed by a duly Authorized Developer Representative stating that such grant or release is not detrimental to the proper conduct of the business of Developer and that such grant or release shall not impair the effective use of market value or interfere with the effective operation of the Project.

Section 10.4 Release and Indemnification Agreement. Developer releases the City from, and covenants and agrees that the City shall not be liable to the Developer for any loss or damage to property or any injury to or death of any person or persons occasioned by any cause whatsoever pertaining to the Project or the use thereof.

Developer shall defend, indemnify and hold harmless the City from any loss, claim, damage, acts, penalty, liability, disbursement, litigation expense, attorney's fees and expense or court costs arising out of or in any way relating to this Agreement, the City Mortgage, the City Note or any other cause whatsoever pertaining to the Project, subject to the limitations found in NMSA 1978 § 56-7-1 due to the fault of Developer. The City shall promptly, after receipt of notice of the existence of a claim in respect of which indemnity hereunder shall be sought or of the commencement of any action against the City in respect of which indemnity hereunder may be sought, notify Developer in writing of the existence of such claim or commencement of such action. This section shall not apply to the negligent act or failure to act of the City or of its officials, employees and agents.

This indemnification agreement shall survive the term or termination of this Agreement.

Section 10.5 Sale, Assignment or Encumbrance of Project. Except as otherwise expressly permitted herein including the financing referenced in Exhibit F or in the City Mortgage, Developer shall not sell, assign, dispose of, mortgage or in any way encumber the Project or any part thereof without the prior written consent of the City. Any conveyance of the Project during the term of this Agreement shall incorporate the covenants found in Exhibit I and agreements contained herein.

Section 10.6 Exceptions. Notwithstanding the foregoing, the following shall not constitute a sale or conveyance, cause a default under this Agreement, or cause an acceleration of the City Loan: (A) the withdrawal, removal, and/or replacement of a managing general partner of Developer pursuant to the terms of the Amended and Restated Agreement of Limited Partnership of Developer, provided that any required substitute managing general partner is reasonably acceptable to the City; (B) an admission of an investor into the Developer, or a transfer of an investor member's interest in Developer; (C) the execution and delivery of a purchase option and right of first refusal agreement (the "Option"), as described in the Amended and Restated Agreement of Limited Partnership of Developer; and (D) the exercise of the Option by the project sponsor identified therein.

The City's consent to (a) the exercise of the Option by the project sponsor identified therein, and to (b) the assumption without penalty of the City Note by the project sponsor shall be required and such consent shall not be unreasonably withheld.

Section 10.7 Authority of Authorized City Representative. Whenever, under the provisions of this Agreement, the approval of the City is required or Developer is required to take some action at the request of the City, such approval or such request shall be made by the Authorized City Representative unless otherwise specified in this Agreement and Developer shall be authorized to act on any such approval or request.

Section 10.8 Authority of Authorized Developer Representative. The Developer represents and warrants to the City that the Authorized Developer Representative is empowered to take all actions contemplated herein and that reliance

by the City on the authority of the Authorized Developer Representative shall not give rise to a complaint against the City as a result of any action taken by the City.

Section 10.9 Financial Statement of Developer. During the term of this Agreement, Developer agrees to furnish the City a copy of its audited annual financial statements at least annually within ninety (90) days of the end of the Developer's fiscal year.

ARTICLE XI

Events of Default Defined and Remedies Upon Default

Section 11.1 Events of Default Defined. The following shall be "material events of Default" under this Agreement, also referred to as "Events of Default" or "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

A. Failure by Developer to pay within fifteen (15) days of the receipt of notice of monies due any amount required to be paid pursuant to the City Note.

B. Failure by Developer to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, or under the City Mortgage or City Note (other than payment, which is governed under Section 12.1.A of this Agreement) for a period of thirty (30) days after written notice from City to Developer specifying such failure and requesting that it be remedied. Provided, however, if the default in question is not reasonably susceptible to cure within such thirty (30) day period Developer shall not be in default if, within such thirty day period, Developer notifies City that it has undertaken reasonable measures to cure the default and specifies the nature of such measures. If Developer fails to take corrective action or to cure the default within a reasonable time, the investor member of the Developer may remove and replace the managing general partner with a substitute managing general partner reasonably acceptable to the City who and shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions.

C. Developer agrees that as long as this Agreement is in effect, it shall maintain its existence as a New Mexico limited liability company, shall not dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate with or merge into another entity.

D. The occurrence of an "Event of Default" under the City Mortgage, City Note or Restrictive Real Estate Covenants.

Section 11.2 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City nor any remedy conferred upon or reserved to the City pursuant to the City Mortgage or the City Note is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or

shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be herein expressly required.

Section 11.3 Agreement to Pay Attorneys' Fees and Expenses. If Developer defaults under any of the provisions of this Agreement or the City Mortgage, City Note or the Restrictive Real Estate Covenants and the City employs attorneys, in house or outside, or incurs other expenses for the enforcement of performance or observance or any obligations or agreement on the part of Developer herein contained in this Agreement, the City Mortgage, the City Note or the Restrictive Real Estate Covenants, Developer agrees that it shall on demand therefore pay to the City the reasonable fees of such attorneys and such other reasonable expenses incurred by the City.

Section 11.4 No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by any Party and thereafter waived by the Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

Section 11.5 Redemption Period. In the event the City shall elect to foreclose the City Mortgage, the period of redemption shall be three months in lieu of nine months.

Section 11.6 Remedies Upon Default.

A. Upon any Event of Default ("Default") and regardless of any other notices previously provided, the City may send a Final Notice of Default to Developer describing the Default and requiring cure within fifteen (15) days from the date of the mailing or delivery of the Notice.

B. If the Default is not cured or arrangements satisfactory to the City made to cure the Default, the City may elect to (1) accelerate, impose interest and call due the City Note and City Mortgage; and (2) sue for compensatory and consequential damages suffered by the City due to the Default as well as, if appropriate, punitive damages.

ARTICLE XII

Miscellaneous

Section 12.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City: Authorized City Representative
 Legal & Planning Department
 City of Hobbs
 200 E. Broadway

Hobbs, NM 88240

If to Developer: Playa Escondida Housing, LLLP
440 Gausteo Street
Santa Fe, NM 87501

The City and Developer may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificate or other communication shall be sent.

The City hereby allows the Investor Limited Partner of Developer the right to notice and cure of any default and the City shall provide the Investor Limited Partner with copies of all other notices to the Developer. The addresses for such notices to the Investor Limited Partner are as set forth below. The City agrees that the Investor Limited Partner hereby has the right, but not the obligation, to cure any default on behalf to the Developer.

Wells Fargo Affordable Housing
Community Development Corporation
MAC D1053-170
301 South College Street, 17th Floor
Charlotte, NC 28202-6000
Attention: Director of Asset Management

with copies to:

Joel Hjelmaas, Counsel
Wells Fargo Bank, N.A.
MAC X2401-06T
1 Home Campus, 6th Floor
Des Moines, IA 50328-0001

and

Craig A. deRidder, Esq.
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, DC 20036

Section 12.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and Developer, and their respective successors and assigns, subject however to the limitations contained herein.

Section 12.3 Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and

provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City of, or the Developer in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

Section 12.4 Amendments, Changes and Modifications. Except as otherwise provided in this Agreement or in the City Mortgage, this Agreement shall not be effectively amended, changed, modified, altered or terminated except by mutual written agreement of the Parties. The City Manager is authorized to enter into amendments to this Agreement which do not materially adversely impact the City's rights or obligations pursuant to this Agreement.

Section 12.5 Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6 Other Instruments. Developer and the City covenant that they shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such instrument, supplemental hereto and further acts, instruments and transfers as may be required hereunder.

Section 12.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 12.8 Recording. This Agreement as well as the City Mortgage, the Note and the Restrictive Real Estate Covenants and every assignment and modification thereof shall be recorded in the office of the County Clerk of Lea County New Mexico, by the Planning Department.

Section 12.9 No Pecuniary Liability of City. No provision, covenant or agreement contained in this Agreement or any obligations herein imposed upon the City or the breach thereof shall constitute an indebtedness of the City within the meaning of any constitutional provision or statutory limitations of the State of New Mexico or shall constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

Section 12.10 Officials, Agents and Employees Not Personally Liable. No official, agent or employee of the City and no member of the City Council shall be personally liable on this Agreement.

Section 12.11 Waiver. No provisions of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waiver or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

Section 12.12 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Section 12.13 Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

Section 12.14 Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all. Any inconsistency among the various documents shall be resolved in favor of the language in this Agreement which, along with its amendments, if any, is deemed to be the primary document.

Section 12.15 Exhibits, Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

Section 12.16 Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, waiving, or defining governmental rights and the police powers of the City or abrogating the requirement of any ordinance.

Section 12.17 Cross References. References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections or exhibits of this Agreement unless otherwise specified.

Section 12.18 Time is of the Essence. Subject to the qualifications otherwise set forth herein, time is of the essence in the performance of this Agreement.

Section 12.19 Assignment and Subletting. The Developer shall not delegate, assign, sublet, mortgage or otherwise transfer, in whole or in part, any of the rights or responsibilities granted in this Agreement or the City Mortgage, the City Note and the Restrictive Real Estate Covenants without the prior written approval of the City. The City has no obligation to and shall not be required to approve any assignment or other transfer of this Agreement that would result in the services required in this Agreement being performed by any other person or entity other than the Developer.

Section 12.20 No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of the owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Developer the general representative or agent of City for any purpose whatsoever.

Section 12.21 Force Majeure. Except as expressly provided in this Agreement, neither City, nor Developer shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rental, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control. After the termination of any such event of Force Majeure forbearance shall terminate, and the obligation to perform shall recommence with an appropriate and reasonable extension to any deadlines.

Section 12.22 Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Lea County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either of both said courts. The provisions of this section shall survive the termination of this Agreement.

Section 12.23 Compliance with Laws. The Developer shall comply with all applicable laws, ordinances, regulations and procedures of Federal, State, and local governments in the development, construction, maintenance and management of the Project

Section 12.24 Savings. City and Developer acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Developer further acknowledge that the Agreement is the result of negotiations between them and this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

Section 12.25 Survival. All obligations, covenants and agreements contained herein which are not performed at or before the closing but which are to be performed after the closing as provided in this Agreement shall survive the closing of this transaction.

Section 12.26 Approval Required. This Agreement shall not become effective or binding until approved by the City of Hobbs Commission. The effective date of this Agreement shall be the date of the Commission's approval.

Section 12.27 Agreement Binding. This Agreement and all parts contained herein shall be binding upon each party and such transferees, their successors, assigns and all parties claiming by, through or under any of them. It is further agreed that each and every conveyance of any portion of the Project shall contain the covenants specified in this Agreement and those contained in Exhibit I, Restrictive Real Estate Covenants, attached hereto.

WITNESS WHEREOF the City and Developer have caused this Agreement to be executed in their respective names and all as of the date first written above.

Developer:

PLAYA ESCONDIDA HOUSING, LLLP, a New Mexico limited liability limited partnership

By: Tierra Realty Trust XIII, LLC, a New Mexico limited liability company,
its managing general partner

By: _____
Stephen G. Crozier,
Manager and Sole Member

By: Golden Spread Rural Frontier Coalition, a New Mexico nonprofit corporation,
its administrative general partner

By _____
Ferdinand Garcia,
Chairman of the Board of Directors

CITY OF HOBBS, a New Mexico municipal corporation:

Sam D. Cobb - Mayor

ATTEST:

Jan Fletcher, City Clerk

APPROVED AS TO FORM:

Michael Stone, City Attorney

Definitions

The following additional terms, except where the context indicates otherwise, shall have the respective meanings set forth below: None.

Legal Description

A tract of land in the Southwest Quarter of Section 26, Township 18 South, Range 38 East, N.M.P.M., Lea County, New Mexico, and being more particularly described as follows:

Beginning at a point which lies $N00^{\circ}41'31''W$ - 1650 feet and $N89^{\circ}21'01''E$ - 285 feet from the Southwest corner of said Section 26; thence $N45^{\circ}34'33''W$ - 28.34 feet; thence $N00^{\circ}41'31''W$ - 310.00 feet; thence $N89^{\circ}21'14''E$ - 1055.00 feet; thence $S00^{\circ}41'31''E$ - 330.00 feet; thence $S89^{\circ}21'01''W$ - 1035.00 feet to the point of beginning.

MORTGAGE AND SECURITY AGREEMENT

(Not to Exceed the Principal Sum of \$1,100,000.00)

KNOW ALL MEN BY THESE PRESENTS THAT this instrument ("Mortgage") made this ____ day of _____, 2015, between Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership ("Borrower") whose address is 440 Gausteo Street, Santa Fe, New Mexico 87501, and the Mortgagee/Grantee, the CITY OF HOBBS, a New Mexico municipal corporation, organized and existing under its charter and the Constitution and laws of the State of New Mexico, with offices at the 200 E. Broadway, Hobbs, New Mexico 88240 ("Lender");

WITNESSETH:

WHEREAS, Borrower is indebted to Lender in the principal sum of ONE MILLION ONE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,100,000.00) Affordable Housing Funds Loan, which indebtedness is evidenced by that certain Promissory Note of even date herewith (the "City Note"), executed by Playa Escondida Housing, LLLP a copy of which Note is attached hereto as Exhibit D;

WHEREAS, Borrower and Lender have entered into that certain agreement, entitled "Development Agreement" between the City of Hobbs, New Mexico, and Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership ("Development Agreement") as of June 12, 2015, which Agreement provides for Borrower to construct a certain affordable housing project ("Project"), as defined and described in said Development Agreement.

This Mortgage secures the performance of the following obligations: (i) all terms and conditions in said Development Agreement, (ii) the discharge of the indebtedness evidenced by the City Note, together with interest thereon, in accordance with the payment provisions set forth in the City Note and all renewals, extensions and modifications thereof, and (iii) the performance of all covenants contained therein, (iv) the payment of such amounts, if any, advanced, or costs incurred by Lender in accordance herewith to protect the security of this Mortgage or in connection with the enforcement of this Mortgage or City Note; (v) the performance of the covenants, agreements and obligations of Borrower herein contained, and (vi) upon the statutory mortgage conditions, for the breach of which it is subject to foreclosure as provided by law. No interest shall accrue or be payable on the principal balance except in the event of default, as provided in the City Note.

For consideration paid, Borrower does hereby MORTGAGE, GRANT, BARGAIN, SELL, ASSIGN, GRANT A SECURITY INTEREST IN and CONVEY TO Lender, its successors and assigns, all of Borrower's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter held or acquired, with mortgage covenants.

(a) All of Borrower's fee simple estate and interest in those certain parcels of real property situated in the City of Hobbs, County of Lea, and State of New Mexico, described in Exhibit B of the Development Agreement.

(b) All and singular the buildings and improvements, structures, additions, tenements, easements, hereditament, and appurtenances belonging or in anywise appertaining to the aforesaid real property ("Real Property"), now existing or hereafter acquired, installed, or constructed and the revision or reversions, remainder and remainders rents, issues, and profits thereof and also all the estate, right, title, interest, property, claim and demand whatsoever of Borrower of, in, and to the same, and of, in and to every part and parcel thereof;

(c) All right, title and interest of Borrower in all fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and other articles of personal property and replacements thereof, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Real Property or the Project, together with any proceeds realized from the sale, transfer or conversion of any of the above (subject to the right of replacement described in the City Note);

(d) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards or judgments, and any unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Borrower;

(e) To the extent assignable, any and all plans, specifications, site plans, drawings renderings and schematics, however characterized, from time to time prepared for use in connection with the construction and operation of the Project;

(f) To the extent assignable, all contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, the rendering of any services, the supply of any materials or the conduct of operations in the management of the Real Property or the Project including without limitation, construction contracts, architect agreements, development agreements, management agreements with respect to hotel operations, franchise agreements and other similar agreements;

(g) To the extent assignable, any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished, whether necessary or not, for the operation and use of the Real Property and/or the Project, including, without limitation, building permits, environmental certificates, certificates of occupancy, certificates of operation, room permits, bar or restaurant permits, liquor or cabaret licenses, food service operation licenses, elevator licenses, warranties and guaranties; and

(h) All municipal or utility deposits made by or on behalf of Borrower or made in connection with the Real Property or the Project, together with all escrow accounts or reserves maintained or required to be maintained by Borrower hereunder, and any and all other assets revenues and profits of any kind of the Project.

All of the property described in the foregoing subparagraphs (a) through (h) shall sometimes hereinafter be collectively referred to as the "Property." All of the assignments hereinabove referenced are subject to the right of Borrower to collect, receive, apply, manage, and use the rights assigned until the occurrence of an event of default

hereunder. The maximum amount of unpaid loan indebtedness, exclusive of interest thereon, which may be outstanding at any time is One Million One Hundred Thousand Dollars and No Cents (\$1,100,000.00).

Borrower represents and warrants that it has full right and authority to grant this Mortgage, and that it shall warrant and defend the lien and interest of the Lender in the Property against all claims and demands whatsoever, except any encumbrances acceptable to Lender, which includes that certain construction loan and that certain permanent loan from Wells Fargo Bank, National Association, a national banking association and that certain permanent loan from New Mexico Mortgage Finance Authority to Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership, and that Borrower shall maintain the priority of the third mortgage lien of and the security interest granted by this Mortgage upon the property until the defeasance of the Mortgage as provided herein. The Lender hereby represents that the Loan has not been and will not be funded in whole or in part, directly or indirectly, with proceeds of obligations the interest on which is exempt from federal income tax under Section 103 of the Internal Revenue Code of 1986, as amended.

Lender shall cause this Mortgage and instruments supplemental hereto and financing statements and all necessary supplements appropriate continuation statements, to be recorded, registered, and filed in such manner and in such places required in order to establish, preserve, and protect the lien of this Mortgage as a valid third mortgage lien on all real property, fixtures, and interests therein included in the Property, and a valid, perfected third priority security interest in all personal property, fixtures and interest therein included in the Property, including in each such case and without limitation, any such properties acquired after the execution hereof.

All property of every kind acquired by Borrower after the date hereof which, by the terms herein, is intended to be subject to the lien of this Mortgage, shall immediately upon the acquisition thereof by Borrower, and without further mortgage or assignment, become subject to the lien of this Mortgage as fully as though now owned by Borrower and specifically described herein. Borrower shall take such actions and execute such additional instruments as the Lender shall reasonably require to further evidence or confirm the subjection to the lien of this Mortgage of any such after-acquired property.

Any sale of the Real Property must have prior approval by Lender and such sale shall be subject to the terms and conditions of the Development Agreement, this Mortgage and the City Note. Lender reserves the right to subordinate this Mortgage. The following shall not constitute a sale, cause a default under this Mortgage, or cause an acceleration of the City Note: (A) the withdrawal, removal, and/or replacement of a managing general partner of Borrower pursuant to the terms of the Amended and Restated Agreement of Limited Partnership of Borrower, provided that any required substitute managing general partner is reasonably acceptable to the Lender and an affiliate of the Investor Limited Partner is hereby deemed acceptable to the Lender for this purpose; (B) a transfer of an Investor Limited Partner's interest in Borrower or the admission of an affiliate of the Investor Limited Partner; (C) the execution and delivery of a purchase option and right of first refusal agreement (the "Option"), as described in the Amended and Restated Agreement of Limited Partnership of Borrower; (D) the exercise of the Option by the project sponsor identified therein.

The City Mortgage shall be subject and subordinate to any mortgage securing any Construction Loan and the permanent loans approved by the City.

The City Mortgage shall be subject and subordinate to any mortgage securing the Construction Loan, the Permanent Loan and to a LIHTC land use restriction agreement (to be executed after the Project is placed in service), and City shall execute documents as may be necessary to effectuate such subordination.

This Mortgage constitutes a security agreement as to all or any part of the Property which is of a nature that a security interest therein can be perfected under the Uniform Commercial Code. This Mortgage also constitutes a financing statement with respect to any and all property included in the Property which is or may become fixtures.

Borrower shall pay promptly when due all taxes, tax increment payments, assessments, and other governmental charges on the property which, if not paid, may become a lien on the Property or any part thereof.

During construction of the Project, until issuance of Certificates of Occupancy for each unit and, if applicable, a certificate of completion and acceptance by the City for public infrastructure, Borrower, at its expense, shall keep or cause to be kept, the Property fully insured by a policy or policies of Builder's Risk and Fire Insurance, in an amount not less than the outstanding balances of the loan evidenced by the City Note and of any mortgage to which this Mortgage is subordinate. Upon issuance of a Certificate of Occupancy for the each unit, and thereafter during the term of the loan evidenced by the City Note, Borrower, at its expense, shall keep or cause to be kept, the Property insured, in an amount not less than the outstanding balances of the loan evidenced by the City Note and of any mortgage to which this Mortgage is subordinate, against fire with extended coverage and in good order and condition, ordinary wear and tear excepted, and shall make all necessary or appropriate repairs, replacements, and renewals thereof. All policies of insurance required by this paragraph shall be endorsed to indicate Lender as an insured Mortgagee.

In the event of any damage or injury to the Project, Borrower agrees that it shall take any and all actions necessary to restore the Project substantially to its condition prior to the damage or injury, and shall apply any proceeds of such insurance coverage to the extent necessary to the costs of such restoration.

Notwithstanding any other provisions of this Mortgage, the City Note, or the Development Agreement, upon any failure by Borrower to pay when due any installment of principal or interest under the City Note, or failure to pay any other obligation under the City Note, and such failure is not cured within five (5) business days after receipt of written notice from the Lender, such failure to pay or cure shall constitute an immediate default entitling the Lender to exercise any remedy hereafter described in this paragraph, or elsewhere in this Mortgage, the City Note, or the Development Agreement. Upon any failure to observe or perform any other obligation under this Mortgage, subject to the terms of Section 11.IB of the Development Agreement, the Lender may declare the entire unpaid principal balance of the City Note immediately due and payable without notice or demand, the same being expressly waived by Borrower; may proceed at law or equity to collect all amounts secured by this Mortgage and due hereunder, whether at maturity or by acceleration; may foreclose the lien of this Mortgage as against all or any part, of the Property; and may exercise any rights, powers, and remedies it may have as a secured party under the Uniform Commercial Code, or other similar laws in effect from time to time.

Each right, power, and remedy of the Lender provided for in the Development Agreement, the City Note, and Mortgage, or now or hereafter existing at law or in equity, shall be cumulative and concurrent and shall be in addition to every other rights, power, or remedy provided for this Mortgage, the Development Agreement, or the

City Note, or now or hereafter existing at law or in equity, and the exercise or beginning of exercise or partial exercise by the Lender of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by the Lender of any or all such rights, power or remedies.

No failure by the Lender to insist upon the strict performance of any term whereof to exercise any right, power, or remedy consequent upon a breach hereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, and the Mortgage shall continue in full force and effect with respect to any other then existing or subsequent breach.

PROVIDED, however, that these presents are upon the condition that if Borrower shall well and truly pay to Lender, its successors and assigns, not less than the total of the indebtedness secured hereby and shall fully keep and perform all the conditions, covenants and agreements to be kept and performed by Borrower under this Mortgage, then this Mortgage shall be void; otherwise to remain in full force and effect in law and equity forever.

The existence and lien of this Mortgage shall not impede or affect the right of Borrower from time to time with respect to all or a portion of the Premises, to dedicate public areas by subdivision plat or otherwise, including streets, easements and park areas, grant to public utilities and other agencies entitled thereto ordinary and necessary easements, and apply for and obtain zoning acceptable to Borrower.

All notices, demands or requests permitted or required to be given under the provisions of this Mortgage or the City Note shall be made pursuant the Development Agreement.

In the event of foreclosure of this Mortgage, the period of foreclosure shall be one month in lieu of the statutory redemption period of nine months.

IN WITNESS WHEREOF, the said Borrower, Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership, hereunto duly authorized, has caused, this instrument to be executed on this the _____ day of _____, 2015.

PLAYA ESCONDIDA HOUSING, LLLP, a New Mexico limited liability limited partnership

By: Tierra Realty Trust XIII, LLC, a New Mexico limited liability company,
its managing general partner

By: _____
Stephen G. Crozier,
Manager and Sole Member

By: Golden Spread Rural Frontier Coalition, a New Mexico nonprofit corporation,
its administrative general partner

By _____
Ferdinand Garcia,
Chairman of the Board of Directors

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned PLAYA ESCONDIDA HOUSING, LLLP, a New Mexico limited liability limited partnership ("Maker") promises to pay to the order of the CITY OF HOBBS ("Holder"), a New Mexico municipal corporation, organized and existing under the Constitution and laws of the State of New Mexico and its charter, and having an office at 200 E. Broadway, Hobbs, New Mexico 88240, or its assigns, the principal sum of ONE MILLION ONE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,100,000.00), Affordable Housing Funds Loan ("Loan"), or so much thereof as shall have been advanced to Maker by Holder from time to time, together with all charges as provided herein and in the City Mortgage, as hereinafter defined, and default interest in the event of default as hereinafter specified.

On June 12, 2015, the Maker and the Holder entered into a certain Development Agreement (the "Development Agreement") which provided for the above referenced loan and grants by the Holder to the Maker of an amount not to exceed the Principal Sum of this Note. All capitalized terms used in this Note have the meaning provided in the Development Agreement.

The maturity date and amortization of the Loan is 45 years from the date of this Promissory Note with annual payments of principal.

Interest at the New Mexico statutory rate as it may be from time to time during the term of this Note shall not be payable on the principal balance, except as provided herein in the event of default.

The proceeds of the loan evidenced by this City Note may be assigned, with prior written City approval, to any successors, assignees or purchasers of the Project who agree in writing to assume all of the obligations of Maker, its successors and assigns under the Agreement, this City Note and the City Mortgage and the Maker shall thereupon be released from all future liability hereunder.

The \$1,100,000.00 shall become immediately due and payable, to the extent and if permitted by federal bankruptcy law, upon: (i) the dissolution or liquidation of the Maker prior to the permitted assignment of Maker's rights and assumption of its obligations hereunder; and (ii) Maker's default in any warranty, obligation or other term, condition, of the Development Agreement or the City Mortgage which secures this City Note, (iii) as otherwise provided in this City Note and all sums owing on this City Note shall bear interest a rate per annum equal to five percent (5%) in excess of the New Mexico statutory rate as it may be from time to time during the term of this Note as the default rate in the event of default.

If at any time during the term of this City Note, any material portion of the improvements or equipment situated on the Project site shall be removed, demolished or materially altered without prior written consent of Holder, (except by as may occur under an event of casualty or condemnation), the entire principal balance of this City Note, plus accrued and unpaid interest thereon, shall become immediately due and payable; provided, however, that Maker shall have the right, without such consent to remove and dispose of, free from any lien of Holder, such equipment as from time to time has become worn out or obsolete, provided that simultaneously with or prior to such

removal, any such equipment shall be replaced with other equipment of value at least equal to that of the replaced equipment and free from any title retention or other encumbrance not otherwise permitted herein or in the City Mortgage. By such removal and replacement, Maker shall be deemed to have subjected such equipment to the lien of Holder.

All cash payments hereunder shall be payable in lawful money of the United States, which shall be legal tender for public and private debts at the time of payment, at the office of the City Treasurer, or at such other place as the Holder hereof may from time to time give notice in writing to the Maker.

Prepayments of all or any part of the principal balance of this City Note may be made at any time and from time to time by Maker. No premium or penalty shall be charged in connection with such prepayment.

The proceeds of this City Note shall be disbursed or applied by the Holder to or for the benefit of the Maker for the construction and development of the improvements on the Project site as provided in the Development Agreement, and for costs related thereto. Disbursements of principal hereon shall be made in accordance with the terms of the Agreement.

This City Note is secured by a Mortgage and Security Agreement of even date here with, conveying a mortgage and security interest in the Project and the Real Property constituting the site thereof, which Mortgage is to be filed for record in the Office of the Clerk of Lea County, New Mexico. All of the provisions of the City Mortgage are incorporated herein by reference.

If default be made in the payment when due of any installment of principal hereunder and the same shall not be paid in the manner provided in this City Note within five (5) business days after receipt of written notice at once or at any time thereafter during the continuance of such default, at the option of the Holder, thereof, become due and payable, and thereafter all of the unpaid principal shall bear interest at an annual interest rate of ten percent (10%), the undersigned Maker hereof shall pay on demand to the Holder of this Note all costs and expenses incurred by such Holder in pursuing remedies under this Note and the City Mortgage to collect any sums due under this City Note, all of which shall include, without limitation, such reasonable attorney's fees incurred in taking any and all such actions.

Subject to the terms and conditions of Section 12.1(B) of the Development Agreement, the following are a breach of the terms of the Note: (i) default be made, and not timely cured, under the terms of any mortgage loan to which the City Mortgage is subordinate; (ii) Maker shall dissolve or otherwise fail to maintain its status as a New Mexico limited liability company; (iii) Maker or the affiliated entity with ownership of the project financed with the proceeds hereof sells or conveys the Project to a third party who does not agree in writing to assume all of obligations of Maker, its successors and assigns under the Development Agreement, this City Note and the City Mortgage; or (iv) default be made in the performance of any of the other covenants contained in this City Note or in the City Mortgage. After any applicable cure period, the whole unpaid principal balance hereof shall, upon ten (10) days written notice to the Maker, at once or at any time thereafter during the continuance of such default, at the option of the Holder thereof, become due and payable, and thereafter all of the unpaid principal shall bear interest until paid at an annual interest rate of ten percent (10%), and the undersigned Maker hereof shall pay on demand to the Holder of this Note all costs and expenses incurred by such Holder in pursuing its remedies under this Note and

the City Mortgage to collect any and all sums due under this City Note, all of which shall include, without limitation, such reasonable attorney's fees incurred in taking any and all such actions.

The indebtedness evidenced by this City Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a note ("Senior Note") in the original principal amount of \$7,500,000 issued by Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership (the "Partnership") and payable to Wells Fargo Bank, National Association, a national banking association ("Senior Lender"), or order, to the extent and in the manner provided in that certain Subordination and Standstill Agreement dated of even date herewith between the Holder of this City Note, the Senior Lender, and Partnership (the "Subordination Agreement"). The City Mortgage (the "Subordinate Mortgage") securing this City Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the mortgage securing the Senior Note as more fully set forth in the Subordination Agreement. The rights and remedies of the Holder and each subsequent holder of this City Note under the Subordinate Mortgage securing this City Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this City Note shall be deemed, by virtue of such holder's acquisition of the City Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender under the Subordination Agreement.

The Maker waives presentment for payment, protest notice of protest and notice of dishonor. The Maker consents to any number of renewals or extensions of the time of payment hereof. Any such renewals or extensions may be made without notice to Maker and without affecting its liability.

Neither Maker, any member or affiliate of Maker, or any third party shall have any personal liability for any amounts owing under this Note, and in the event of any default under this Note Holder shall look solely to the Project and shall not be entitled to seek any deficiency from Maker, or any member or affiliate of Maker, or any third person.

Failure to accelerate the indebtedness evidenced hereby by reason of default in the payment of an installment of principal, interest, or principal and interest, or the acceptance of a past due installment of the same, shall not be construed as a novation of this City Note or as a waiver of the right of the Holder to thereafter insist upon strict compliance with the terms of this City Note without previous notice of such intention being given to the Maker. This City Note shall not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

As used herein, the terms "Maker" and "Holder" shall be deemed to include their respective successors, legal representatives and assigns, whether voluntary by action of the parties or involuntary by operation of law. This City Note shall be construed according to the laws of the State of New Mexico.

The Holder hereby represents that the Loan has not been and will not be funded in whole or in part, directly or indirectly, with proceeds of obligations the interest on which is exempt from federal income tax under Section 103 of the Internal Revenue Code of 1986, as amended.

Any and all references in the City Note to any other document or documents shall be references to such document or documents as the same may from time to time be modified, amended, renewed, consolidated or extended.

Subject to the qualification otherwise set forth herein, time is of the essence in the performance of this Note.

The representative of Maker subscribing below represents that he has full power, authority and legal right to execute and deliver this Note and that the debt evidenced hereby constitutes a valid and binding obligation of Maker.

IN WITNESS WHEREOF, the said Maker, PLAYA ESCONDIDA HOUSING, LLLP, a New Mexico limited liability limited partnership, hereunto duly authorized, has caused, this instrument to be executed on this the _____ day of _____, 2015.

PLAYA ESCONDIDA HOUSING, LLLP, a New Mexico limited liability limited partnership

By: Tierra Realty Trust XIII, LLC, a New Mexico limited liability company,
its managing general partner

By: _____
Stephen G. Crozier,
Manager and Sole Member

By: Golden Spread Rural Frontier Coalition, a New Mexico nonprofit corporation,
its administrative general partner

By _____
Ferdinand Garcia,
Chairman of the Board of Directors

STATE OF NEW MEXICO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of 2015, by Stephen G. Crozier, in his capacity as Manager and Sole Member of Tierra Realty Trust XIII, LLC, a New Mexico limited liability company, as the managing general partner of Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership.

WITNESS my hand and official seal

My commission expires _____.

Notary Public

STATE OF NEW MEXICO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of 2015, by Ferdinand Garcia, in his capacity as Chairman of the Board of Directors of Golden Spread Rural Frontier Coalition, a New Mexico nonprofit corporation, as the administrative general partner of Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership.

WITNESS my hand and official seal

My commission expires _____.

Notary Public

:

SCHEDULE OF LOANS AND GRANTS

Made in Hobbs, New Mexico

Date _____

Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership ("Developer") shall convey to The City of Hobbs whose address is 200 E. Broadway, Hobbs, New Mexico, 88240, a municipal corporation ("City"), restrictive covenants to the benefit of the City to the following real property:

A tract of land in the Southwest Quarter of Section 26, Township 18 South, Range 38 East, N.M.P.M., Lea County, New Mexico, and being more particularly described as follows:

Beginning at a point which lies N00°41'31"W - 1650 feet and N89°21'01"E - 285 feet from the Southwest corner of said Section 26; thence N45°34'33"W - 28.34 feet; thence N00°41'31"W - 310.00 feet; thence N89°21'14"E - 1055.00 feet; thence S00°41'31"E - 330.00 feet; thence S89°21'01"W - 1035.00 feet to the point of beginning.

said covenants to be conveyed to City at time of closing.

The City of Hobbs shall provide to the Developer, a Loan in support of the Affordable Housing Development as evidenced by the Mortgage and Security Agreement and the Promissory Note contained herein, with the following terms:

- a. The principal amount shall be One Million One Hundred Thousand Dollars and Zero Cents (\$1,100,000.00), used to develop property serving low to moderate income individuals and families. Five Hundred Thousand Dollars and Zero Cents (\$500,000), of the aforesaid Principal shall be made available to Developer when the Project is "dried-in", and Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) upon issuance of a Municipal Certificate of Occupancy for the project.
- b. Interest at the New Mexico statutory rate as it may be from time to time during the term of this Note shall not be payable on the principal balance, except in the event of default which includes noncompliance with any Affordable Housing Rules and Regulations and exterior maintenance of the property is not maintained in an "as new" condition to include building facades, landscaping, lighting and any public hardscape.
- c. The term of the loan shall be for a period of 45 years amortized over a 45 year period with annual payments of principal, during which the Project shall continually restrict rent levels for all units to low or moderate income households.

- d. That certain \$7,500,000 construction loan to Borrower from Wells Fargo Bank, National Association.
- e. That certain \$1,900,000 permanent loan to Borrower from Wells Fargo Bank, National Association.
- f. That certain \$400,000 permanent loan to Borrower from New Mexico Mortgage Finance Authority.

WITNESS WHEREOF the City and Developer have caused this Schedule of Loans and Grants to be executed in their respective names and all as of the date first written above.

Developer:

PLAYA ESCONDIDA HOUSING, LLLP, a New Mexico limited liability limited partnership

By: Tierra Realty Trust XIII, LLC, a New Mexico limited liability company,
its managing general partner

By: _____
Stephen G. Crozier,
Manager and Sole Member

By: Golden Spread Rural Frontier Coalition, a New Mexico nonprofit corporation,
its administrative general partner

By _____
Ferdinand Garcia,
Chairman of the Board of Directors

CITY OF HOBBS, a New Mexico municipal corporation:

Sam D. Cobb - Mayor

ATTEST:

Jan Fletcher, City Clerk

APPROVED AS TO FORM:

Michael Stone, City Attorney

REQUEST FOR CITY LOAN DISBURSEMENT

As of this date, _____, Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership ("Borrower") hereby requests disbursement of Loan Proceeds from CITY OF HOBBS, a New Mexico municipal corporation ("Lender") as per supporting documents and authorities contained within Resolution # _____ and ratified by the local governing authority on _____.

Said disbursement request is for:

- Five Hundred Thousand Dollars and Zero Cents (\$500,000), draw down available to Developer when the Project is "dried-in". Attach hereto documentation from the City of Hobbs Chief Building Inspector of dried in status. Dried in status is hereby defined as a complete water tight envelope of each structure including rough in of all electrical and mechanical.
- Six Hundred Thousand Dollars and Zero Cents (\$600,000.00), is available to Developer upon issuance of Municipal Certificate of Occupancy. Attach hereto documentation from the City of Hobbs Chief Building Inspector.

Developer:

PLAYA ESCONDIDA HOUSING, LLLP, a New Mexico limited liability limited partnership

By: Tierra Realty Trust XIII, LLC, a New Mexico limited liability company,
its managing general partner

By: _____
Stephen G. Crozier,
Manager and Sole Member

By: Golden Spread Rural Frontier Coalition, a New Mexico nonprofit corporation,
its administrative general partner

By _____
Ferdinand Garcia,
Chairman of the Board of Directors

RESTRICTIVE REAL ESTATE COVENANTS

Made in Hobbs, New Mexico

Date _____

These Restrictive Real Estate Covenants are made by Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership ("Owner") in favor of the City of Hobbs whose address is 200 E. Broadway, Hobbs, New Mexico, 88240, a municipal corporation("City"), and shall run with the land until modified or released by the City.

1. Recitals:

A. The Owner is the owner fee simple of that certain real estate ("Real Property") in Lea County New Mexico, which is located in Hobbs, NM and whose legal description is:

A tract of land in the Southwest Quarter of Section 26, Township 18 South, Range 38 East, N.M.P.M., Lea County, New Mexico, and being more particularly described as follows:

Beginning at a point which lies N00°41'31"W - 1650 feet and N89°21'01"E - 285 feet from the Southwest corner of said Section 26; thence N45°34'33"W - 28.34 feet; thence N00°41'31"W - 310.00 feet; thence N89°21'14"E - 1055.00 feet; thence S00°41'31"E - 330.00 feet; thence S89°21'01"W - 1035.00 feet to the point of beginning.

B. For consideration for the assistance given by the City directly to the Owner, the Owner has agreed to restrictions on the use and rental of the Real Property.

2. Definitions:

"AMI" means Area Median Income which is the annual income figure for a specific geographic area which is determined annually by the Department of Housing and Urban Development and adjusted for family size.

"Annual Income" means the anticipated total income from all sources, as defined in 24 CFR 5.609, to be received by the Family Head and spouse and each additional member of the household during a twelve month period.

"Low Income" families means households earning Family Income of 80% or less of the City's median income for the area, as determined by the U.S. Department of Housing and Urban Development.

"Very Low-Income" families means households earning Family Income of 50% or less of Median Family Income.

"Family" means one or more individuals residing in a household.

"Family Income" means the gross annual income earned or received through all sources by a Family.

"HUD" means the U. S. Department of Housing and Urban Development.

"Project" means the residential apartment development to be constructed upon the Real Property, including a flood water retention area located upon Tract Two, related on-site and off-site improvements, equipment and related rights therein.

"Special Needs" households means homeless people and/or people with physical or developmental disabilities or chronic mental illnesses as defined in HUD's Handbook 4571.2, Section 1-5, Parts A.2. and A.3.

"Utility Allowance" is the amount established by a schedule that is appropriate for a specific rent to cover the cost of utilities that are paid to the utility company as approved by the City.

3. Restrictive Covenants

A. Use of Property. The Real Property shall be used as and only for the Project. The Project shall consist of sixty (60) units.

B. Income Qualifications. The owner shall determine the annual income of a household occupying or seeking to occupy the Affordable Units, in accordance with 24 CFR Part 5.609. The income of the household shall not exceed sixty percent (60%) of the City's Median Income for the Affordable Units.

(1) The Owner shall determine whether the annual income of household(s) occupying or seeking to occupy the Affordable Units, exceeds the applicable income limit prior to admission of the household(s) to occupancy.

(2) The Owner shall annually re-examine and document the income of households residing in the Affordable Units to ensure compliance with Sections B of these covenants.

C. Rent Determination. Rents charged occupants of the affordable units must not exceed 30% of the imputed income limit applicable to such unit.

1) Affordable Units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the income of existing tenants, if actions are being taken to ensure that a vacancy is filled in accordance with B above, until the noncompliance is corrected.

2) In the event a tenant's income exceeds 60% of median income following initial occupancy, the tenant must pay 30% of tenant's adjusted income as rent, or the market rate for the neighborhood, whichever is less.

3) The Owner shall ensure that each household occupying the affordable units will have an executed lease with the Owner in compliance with 24 CFR Part 92.253.

4) Any rent increases of the affordable units must be approved in writing by the City prior to implementation. If utilities are not included in the rent, an allowance must be made using the City's established utility allowance.

4. Encumbrances: The Owner covenants and agrees that it shall not refinance, mortgage, suffer or allow the creation of a lien, nor otherwise encumber the Real Property, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed; however the Owner may enter into a Land Use Restriction Agreement with the New Mexico Mortgage Finance Authority without the consent of the City and the Owner may encumber the Real Property with the mortgages securing the construction and permanent financing of the Project, which includes that certain construction loan and that certain permanent loan from Wells Fargo Bank, National Association, a national banking association to Owner and that certain permanent loan from New Mexico Mortgage Finance Authority to Owner and all such loans are senior liens to the City loan..

5. Property Standards Requirements: The Project will meet all Housing Quality Standards, or other physical property standards regulated by HUD, and local building code requirements, and allow the City to inspect the property, for the duration of this Agreement.

6. Monitoring/Reporting Requirements:

A. The Owner shall report, in writing, at least quarterly during the construction and lease-up phases of the Project. The quarterly report shall include the process of construction as a percentage complete, construction funds expended with remaining balance, and number of units completed. Following completion of construction and the lease-up of 65% of the units, income, the City, at its discretion, may require an Administrative Fee from the Owner for the purpose of monitoring the project, if monitoring is so requested.

B. At any time during normal business hours and as often as the City and/or the appropriate funding entity may deem necessary, there shall be made available to the City for examination, all of the Owner's records with respect to all matters covered by this Agreement. The Owner shall permit the City, at the City's expense, and/or the appropriate funding entity to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

7. Term. The Owner's obligations designated herein are to commence upon the execution of this Restrictive Real Estate Covenants by the last party to sign ("Commencement Date"), and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement but, in any event, the provision of the Affordable Units required hereunder shall be continued for forty five (45) years from the completion of the Project ("Affordability Period"). These Restrictive Real Estate Covenants shall be and constitute covenants running with the Real Property during the term of these Covenants and shall be enforceable by the City by legal and equitable action, including an action for injunctive relief.

8. The City has contributed the sum of \$1,100,000.00 Funds towards the development of the Project on the Real Property. The Funds must be repaid, without interest, to the City by the Developer and must be repaid in the event of a violation of the Affordable Unit obligations pursuant to these Restrictive Real Estate Covenants, by the Owner (the "Funds Repayment Obligation") during the first forty five (45) years of the term of these Restrictive Real Estate Covenants. The Funds, Repayment Obligation is the sole obligation of the Owner, its successors and assigns. In the event of violation of this Restrictive Real Estate Covenant the City shall give written notice to the Owner, the Owner's Tax Credit Investor, (the "Investor") and all holders of financial encumbrances against the Real Property, and these parties shall have thirty (30) days to cure the violation (or if the violation cannot reasonably be cured within thirty (30) days, then to commence to cure the violation and diligently pursue to cure the violation) before the Funds Repayment Obligation shall become due. The addresses for the Owner and the Investor are as follows:

Owner: Playa Escondida Housing, LLLP
440 Gausteo Street
Santa Fe, NM 87501

Owner's Tax Credit Investor:

Wells Fargo Affordable Housing
Community Development Corporation
MAC D1053-170
301 South College Street, 17th Floor
Charlotte, NC 28202-6000
Attention: Director of Asset Management

9. Binding Effect:

Upon execution of these Restrictive Real Estate Covenants by the Owner, the terms, conditions and covenants under these Restrictive Real Estate Covenants shall be binding and inure to the benefit of the parties and their representatives, successors and assigns.

10. Construction and Severability. If any parts of these Restrictive Real Estate Covenants are held to be invalid or unenforceable, the remainder of the Restrictive Real Estate Covenants will remain valid and enforceable if the remainder is reasonably capable of completion.

IN WITNESS WHEREOF, the said Managing and Administrative General Partners of Playa Escondida Housing, LLLP a New Mexico limited liability limited partnership, hereunto duly authorized, has caused, this instrument to be executed on this the _____ day of _____, 2015.

PLAYA ESCONDIDA HOUSING, LLLP, a New Mexico limited liability limited partnership

By: Tierra Realty Trust XIII, LLC, a New Mexico limited liability company,
its managing general partner

By: _____
Stephen G. Crozier,
Manager and Sole Member

By: Golden Spread Rural Frontier Coalition, a New Mexico nonprofit corporation,
its administrative general partner

By _____
Ferdinand Garcia,
Chairman of the Board of Directors

STATE OF NEW MEXICO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of 2015, by Stephen G. Crozier, in his capacity as Manager and Sole Member of Tierra Realty Trust XIII, LLC, a New Mexico limited liability company, as the managing general partner of Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership.

WITNESS my hand and official seal

My commission expires _____.

Notary Public

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

The foregoing instrument was acknowledged before me this _____ day of 2015, by Ferdinand Garcia, in his capacity as Chairman of the Board of Directors of Golden Spread Rural Frontier Coalition, a New Mexico nonprofit corporation, as the administrative general partner of Playa Escondida Housing, LLLP, a New Mexico limited liability limited partnership.

WITNESS my hand and official seal

My commission expires _____.

Notary Public



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15, 2015

SUBJECT: Approval of a Resolution to Fund Crime Stoppers to Assist with Solving Discrimination Based Crimes and Hate Crimes and Establishing a No-Tolerance Policy for Discrimination Based Crimes and Hate Crimes

DEPT. OF ORIGIN: City Manager's Office
DATE SUBMITTED: June 9, 2015
SUBMITTED BY: J. J. Murphy, City Manager

Summary:

Recently a discrimination based crime/hate crime occurred at the Lea County Center for the Arts. This Resolution will establish a no-tolerance policy regarding discrimination based crimes and hate crimes. The Resolution provides policy that municipal law enforcement will cooperate with state and federal authorities to investigate and assist with prosecuting all discrimination based crimes and hate crimes to the fullest extent of state and federal law. Also, the Resolution provides authority to fund Crime Stoppers \$10,000.00 to be ear-marked for rewards associated with discrimination based crimes and hate crimes. Each discrimination based crime and/or hate crime committed in the city limits of Hobbs shall be allotted \$2,500.00 from Crime Stoppers to assist in solving the crime. Finally, this Resolution encourages private donations to Crime Stoppers for rewards to individuals who provide tips that will solve discrimination based crimes and hate crimes.

Fiscal Impact:

There will need to be a budget established in FY 2016 of \$10,000.00 for the special Crime Stoppers funding

Reviewed By: 
Finance Department

Attachments:

Resolution

Legal Review:

Approved As To Form: 
City Attorney

Recommendation: The Commission should approve the Resolution

Approved For Submittal By:

Department Director

City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 6310

A RESOLUTION TO FUND CRIME STOPPERS TO ASSIST
WITH SOLVING DISCRIMINATION BASED CRIMES AND HATE CRIMES
AND ESTABLISHING A NO-TOLERANCE POLICY FOR
DISCRIMINATION BASED CRIMES AND HATE CRIMES

WHEREAS, the City of Hobbs is dedicated and empowered to improving the City's safety and welfare of all its citizens no matter their actual or perceived race, religion, color, national origin, ancestry, age, disability, gender, sexual orientation or gender identity, or any other federal, state or local protected class;

WHEREAS, discrimination based crimes and hate crimes occurring in the city limits of Hobbs shall not be tolerated;

WHEREAS, a no-tolerance policy for discrimination based crimes and hate crimes shall be instituted in the city limits of Hobbs;

WHEREAS, Hobbs Municipal Law Enforcement shall cooperate with state and federal authorities to investigate and assist with prosecuting all discrimination based crimes and hate crimes to the fullest extent of the law;

WHEREAS, the Hobbs City Commission desires to fund Crime Stoppers in the amount of \$10,000.00 for awards associated with the arrest and conviction of individuals(s) who commit discrimination based crimes and hate crimes;

WHEREAS, the funding should be allocated at \$2,500.00 per crime; and

WHEREAS, the Hobbs City Commission encourages private citizens and businesses to contribute money to Crime Stoppers for specific discrimination based crimes and hate crimes.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the City of Hobbs hereby institutes a no-tolerance policy for discrimination based crimes and hate crimes, that law enforcement

shall cooperated with state and federal authorities to investigate and assist with prosecuting all discrimination based crimes and hate crimes to the fullest extent of the law, that the City Commission shall fund Crime Stoppers in the amount of \$10,000.00 (FY 2016) for awards associated with the arrest and conviction of individual(s) who commit discrimination based crimes and hate crimes, that the city funding shall be allocated at \$2,500.00 per crime, and that the City Commission encourages private citizens and businesses to contribute money to Crime Stoppers for specific discrimination based crimes and hate crimes.

PASSED, ADOPTED AND APPROVED this 15th day of June, 2015.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15, 2015

SUBJECT: Resolution amending the City of Hobbs 401(A) Plan with Nationwide Retirement Solutions

DEPT. OF ORIGIN: Finance
DATE SUBMITTED: June 9, 2015
SUBMITTED BY: Toby Spears, Finance Director

Summary:

The City of Hobbs adopted a 401(A) Retirement Plan for certain employees in July of 2003. This amendment incorporates the following changes:

The plan allows for one time annual contributions which will be determined upon the City Managers annual performance evaluation.

The plan allows for the City Manager to fully invest in any City of Hobbs contribution upon enrollment

The plan allows for the City Manager to be a member of PERA and the City of Hobbs 401(a) plan

The plan changes the existing trustees to City Attorney, City Clerk, and Finance Director.

Fiscal Impact:

Reviewed By:
Finance Department

To be determined by the City Commission

Attachments:

Resolution
Plan Document

Legal Review:

Approved As To Form:
City Attorney

Recommendation:

Approve resolution for amended 401(A) Plan.

Approved For Submittal By:

Department Director

City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

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

CITY OF HOBBS

RESOLUTION NO. 6311

A RESOLUTION AMENDING THE
CITY OF HOBBS 401 (A) PLAN WITH
NATIONWIDE RETIREMENT SOLUTIONS

WHEREAS, the City of Hobbs adopted a 401(A) Retirement Plan for certain employees in July, 2003; and

WHEREAS, this amendment incorporates the following amendments;

1. The plan allows for one time contributions which will be determined upon the City Managers annual performance evaluation;
2. The plan allows for the City Manager to fully invest in any City of Hobbs contribution upon enrollment;
3. The plan allows for the City Manager to be a member of PERA and the City 401(A) plan; and
4. The plan changes the existing trustees to the City Attorney, City Clerk and Finance Director.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the City of Hobbs 401(A) Plan with Nationwide Retirement Solutions is amended as stated herein, and that the Mayor be and hereby is, authorized and directed to effectuate this resolution on behalf of the City of Hobbs and any other required documentation evidencing the adoption of said resolution.

PASSED, ADOPTED AND APPROVED this 15th day of June, 2015.

Sam D. Cobb, Mayor

ATTEST:

JAN FLETCHER, City Clerk

**ADOPTION AGREEMENT FOR
NATIONWIDE GOVERNMENTAL
401(A) PLAN**

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in this Employer Information Section.)

1. **EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER AND TIN**

Name: City of Hobbs, NM

Address: 200 E. Broadway Street

Hobbs City New Mexico State 88240 Zip

Telephone: 575-397-9229

Taxpayer Identification Number (TIN): 85-6000141

2. **TYPE OF GOVERNMENTAL ENTITY**

CAUTION: The Plan may only be adopted by State and local governments and agencies and may not be adopted by 501(c) tax-exempt organizations, federal governmental agencies, Native American tribes or private sector employers.

- a. State government or state agency
 b. County or county agency
 c. Municipality or municipal agency
 d. Other, please specify: _____ (e.g., an eligible water district)

3. **EMPLOYER'S FISCAL YEAR** means the 12 consecutive month period:

a. Beginning on July 1st month day (e.g., January 1st)

and ending on June 30th month day

b. Other: _____

PLAN INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9. through 11.)

4. **PLAN NAME:**

City of Hobbs, NM Money Purchase Plan

5. **EFFECTIVE DATE**

- a. This is a new Plan effective as of _____ (hereinafter called the "Effective Date").
 b. This is an amendment and restatement of a plan which was originally effective July 1, 2003. The effective date of this amendment and restatement is June 1, 2015 (hereinafter called the "Effective Date").
 c. FOR EGTRRA RESTATEMENTS: This is an amendment and restatement to bring a plan into compliance with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") and other legislative and regulatory changes. The Plan's original effective date was _____. Except as specifically provided in the Plan, the effective date of this amendment and restatement is _____ (hereinafter called the "Effective Date"). (May enter a restatement date that is the first day of the current Plan Year. The Plan contains appropriate retroactive effective dates with respect to provisions for the appropriate laws.)

6. PLAN YEAR means the 12 consecutive month period:

Beginning on July 1st _____ (e.g., January 1st)
 month day

and ending on June 30th _____
 month day

EXCEPT that there will be a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 16.):

a. N/A

b. beginning on _____ (e.g., July 1, 2007)
 month day, year

and ending on _____
 month day, year

7. VALUATION DATE means:

- a. Every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation).
- b. The last day of each Plan Year.
- c. The last day of each Plan Year half (semi-annual).
- d. The last day of each Plan Year quarter.
- e. Other (specify day or days): _____ (must be at least once each Plan Year).

8. PLAN NUMBER assigned by the Employer

a. 001

b. 002

c. Other: _____

9. TRUSTEE(S) OR INSURER(S):

a. This Plan is funded exclusively with Contracts and the name of the Insurer(s) is:

(1) _____ (2) _____ (if more than 2, add names to signature page).

b. Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (Add additional Trustees as necessary.)

Name(s)	Title(s)
<u>Michael Stone</u>	<u>City Attorney</u>
<u>Jan Fletcher</u>	<u>City Clerk</u>
<u>Toby Spears</u>	<u>Finance Director</u>

Address and Telephone number:

- 1. Use Employer address and telephone number.
- 2. Use address and telephone number below:

Address: _____
 Street

_____ City State Zip

Telephone: _____

c. Corporate Trustee

Name: _____

Address: _____
 Street

_____ City State Zip

Telephone: _____

AND, the Trustee shall serve as:

d. a Directed (nondiscretionary) Trustee over all Plan assets except for the following:

e. a Discretionary Trustee over all Plan assets except for the following:

10. PLAN ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER:

(If none is named, the Employer will be the Plan Administrator.)

a. Employer (Use Employer address and telephone number).

b. Use name, address and telephone number below:

Name: _____

Address: _____

Street

City

State

Zip

Telephone: _____

11. CONSTRUCTION OF PLAN

This Plan shall be governed by the laws of the state or commonwealth where the Employer's (or, in the case of a corporate Trustee (or Insurer), such Trustee's (or Insurer's)) principal place of business is located unless another state or commonwealth is specified: _____

12. CONTRIBUTION TYPES

The following contributions are authorized under this Plan. The selections made below should correspond with the selections made under the Contributions and Allocations section of this Adoption Agreement.

a. Employer Contributions.

1. The Contribution will be made each Plan Year and the Plan will be a Money Purchase Plan.

2. The Contribution will be discretionary each Plan Year and the Plan will be a Profit Sharing Plan.

b. Matching Contributions.

c. Rollover Contributions.

d. Employee Contributions (The Plan will treat as pick-up contributions under Code §414(h)(2)).

e. Employee After-Tax Contributions.

f. This Plan qualifies as a Social Security Replacement Plan.

g. This is a frozen Plan effective: _____.

ELIGIBILITY REQUIREMENTS

13. ELIGIBLE EMPLOYEES (Plan Section 1.21) means all Employees (including Leased Employees) EXCEPT for the following Employees: (select all that apply below)

a. N/A. No exclusions.

b. The following are excluded:

1. Union Employees (as defined in Plan Section 1.21)

2. Non-Resident Aliens without any United States source income, as described in Code §410(b)(3)(C).

3. Leased Employees.

4. Part-time/Temporary/Seasonal Employees. A part-time, temporary or seasonal Employee is an Employee whose regularly scheduled Service is less than _____ Hours of Service in the relevant eligibility computation period.

5. Other: Employees, except City Manager, who participate in the State of New Mexico Defined Benefit Plan. (must be definitely determinable)

14. CONDITIONS OF ELIGIBILITY (Plan Section 3.1)

Any Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following (select either a. OR b. and c.):

a. No age or service required.

b. Completion of the following service requirement which is based on Years of Service:

1. No service requirement

2. 6 months of service

3. 1 Year of Service

4. 2 Years of Service

5. _____ Hours of Service within _____ consecutive months from the Eligible Employee's employment commencement date.

6. _____ consecutive months of employment from the Eligible Employee's employment commencement date.

7. Other: _____

- c. Attainment of age:
 - 1. No age requirement
 - 2. 20 1/2
 - 3. 21
 - 4. Other: _____ (may not exceed 21)

15. EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)

An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan as of:

- a. the date such requirements are met.
- b. the first day of the month coinciding with or next following the date on which such requirements are met.
- c. the first day of the Plan Year quarter coinciding with or next following the date on which such requirements are met.
- d. the earlier of the first day of the Plan Year or the first day of the seventh month of the Plan Year coinciding with or next following the date on which such requirements are met.
- e. the first day of the Plan Year coinciding with or next following the date on which such requirements are met.
- f. the first day of the Plan Year in which such requirements are met.
- g. the first day of the Plan Year in which such requirements are met, if such requirements are met in the first 6 months of the Plan Year, or as of the first day of the next succeeding Plan Year if such requirements are met in the last 6 months of the Plan Year.
- h. other: _____

SERVICE

16. RECOGNITION OF SERVICE WITH OTHER EMPLOYERS (Plan Section 1.57)

- a. No service with other Employers shall be recognized.

OR, service with the designated employers and purposes is recognized as follows (attach an addendum to the Adoption Agreement if more than 3 employers):

	Eligibility	Vesting	Contribution Allocation
b. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Limitations: _____ (e.g., credit service with X only on/following 1/1/07 or credit all service with entities the Employer acquires after 12/31/06).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

NOTE: If the other Employer(s) maintained this qualified Plan, then Years of Service with such Employer(s) must be recognized pursuant to Plan Section 1.57 regardless of any selections above.

VESTING

17. VESTING OF PARTICIPANT'S INTEREST (Plan Section 6.4(b))

- a. N/A. No Employer contributions are subject to a vesting schedule (skip to Question 19).
- b. 100% for those Participants employed on _____ (enter date). For those Participants hired after such date, the vesting provisions selected below apply:
- c. The vesting provisions selected below apply.

Vesting for Employer Contributions.

- d. 100% vesting. Participants are 100% vested in Employer contributions upon entering Plan
- e. The following vesting schedule, based on a Participant's Years of Service, applies to Employer contributions:
 - 1. 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 - 2. 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 - 3. 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 - 4. 3 Year Cliff: 0-2 years-0%; 3 years-100%
 - 5. 7 Year Graded: 0-2 years-0%; 3 years-20%; 4 years-40%; 5 years-60%; 6 years-80%; 7 years-100%
 - 6. 5 Year Cliff: 0-4 years-0%; 5 years-100%

7. Other:

Service	Percentage
<u>1 year</u>	<u>20%%</u>
<u>2 years</u>	<u>40%%</u>
<u>3 years</u>	<u>60%%</u>
<u>4 years</u>	<u>80%%</u>
<u>5 years</u>	<u>100%%</u>
<u>City Manager Only</u>	<u>100%%</u>
_____	_____%
_____	_____%
_____	_____%
_____	_____%

18. **ADDITIONAL VESTING LIMITATIONS**

Regardless of the vesting schedule, Participants shall become fully Vested upon (select a. or all that apply of b. and c.):

- a. N/A. Apply contributions to the Plan are fully Vested.
- b. Death.
- c. Total and Permanent Disability.

AND, unless otherwise elected below, a Year of Service for vesting purposes means a Plan Year during which an Employee has completed at least 1,000 Hours of Service

- d. instead of 1,000 Hours of Service, a Year of Service for vesting purposes will be based on _____ Hours of Service
- e. the Elapsed Time Method (Period of Service applies instead of Year of Service) will be used for vesting purposes

RETIREMENT AGES

19. **NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.37) means the:**

- a. date of a Participant's 65th birthday.
- b. later of a Participant's _____ birthday or the _____ anniversary of the first day of the Plan Year in which participation in the Plan commenced.
- c. other: _____.

NORMAL RETIREMENT DATE (Plan Section 1.38) shall commence:

- d. Participant's NRA.
- OR (select one)
- e. first day of the month coinciding with or next following the Participant's NRA.
- f. first day of the month nearest the Participant's NRA.
- g. Anniversary Date coinciding with or next following the Participant's NRA.
- h. Anniversary Date nearest the Participant's NRA.

20. **EARLY RETIREMENT DATE (select one of a. or b.)**

- a. Not applicable. The Plan does not provide for an Early Retirement Age.
- b. Early Retirement Date means the:
 - 1. date on which a Participant satisfies the Early Retirement requirements.
 - 2. first day of the month coinciding with or next following the date on which a Participant satisfies the Early Retirement requirements.
 - 3. Anniversary Date coinciding with or next following the date on which a Participant satisfies the Early Retirement requirements.

AND, the Early Retirement requirements are the date (select one or more of the following):

- 4. Participant attains age ____.
- AND/OR**, completes.... (leave blank if not applicable)
- 5. at least _____ Years (or Periods) of Service
 - 1. Years (or Periods) of Service for vesting purposes.
 - 2. Years of Service for eligibility purposes.

AND, a Participant who attains his or her Early Retirement Date shall?

- 6. be 100% vested upon attainment of his or her Early Retirement Date.
- 7. be subject to the vesting schedule at 17.

COMPENSATION

21. **COMPENSATION (Plan Section 1.11) with respect to any Participant means:**

- a. Wages, tips and other compensation on Form W-2.
- b. Section 3401(a) wages (wages for withholding purposes).
- c. 415 safe harbor compensation.

COMPENSATION shall be based on the following determination period:

- d. the Plan Year.
 e. the Fiscal Year coinciding with or ending within the Plan Year.
 f. the calendar year coinciding with or ending within the Plan Year.

NOTE: The Limitation Year for Code Section 415 purposes shall be the same as the determination period for Compensation unless an alternative period is specified: _____ (must be a consecutive twelve month period).

ADJUSTMENTS TO COMPENSATION

- g. N/A. No adjustments.
 h. Compensation shall be adjusted by: (select all that apply)
1. including compensation which is not currently includible in the Participant's gross income by reason of the application of Code Sections 125 (cafeteria plan), 132(f)(4) (qualified transportation fringe), 402(e)(3) (401(k) plan), 402(h)(1)(B) (simplified employee pension plan), 414(h) (employer pickup contributions under a governmental plan), 403(b) (tax sheltered annuity) or 457(b) (eligible deferred compensation plan)
 2. excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in 1. above) and welfare benefits
 3. excluding Compensation paid during the determination period while not a Participant in the Plan
 4. excluding overtime
 5. excluding bonuses
 6. excluding commissions
 7. other: _____

(e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay)).

CONTRIBUTIONS AND ALLOCATIONS

22. FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION AND ALLOCATION (Plan Section 4.1) (Select all that apply)
- a. 15 % (not to exceed 25%) of each Participant's Compensation.
 - b. \$ _____ per Participant.
 - c. \$ _____ per Hour of Service worked while an Eligible Employee.
 - d. Discretionary contribution, to be determined by the Employer. ANY discretionary profit sharing contribution for a Plan Year will be allocated in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants.
 - e. other: Annual lump sum discretionary amount for City Manager.
 (e.g., describe the contribution, including any levels of contributions to groups of employees).
23. REQUIREMENTS TO SHARE IN ALLOCATIONS OF EMPLOYER CONTRIBUTIONS AND FORFEITURES (select a. OR b. and all that apply of c. or d.)
- a. No conditions. All Participants share in the allocations regardless of service completed during the Plan Year or employment status at the end of the Plan Year. (skip to next Question.)
 - b. Conditions for Participants NOT employed at the end of the Plan Year.
 1. A Participant must complete more than 1 Hours of Service.
 2. A Participant must complete a Year of Service.
 3. Participants will NOT share in the allocations, regardless of service.
 4. Participants will share in the allocations, regardless of service.
 5. Other: _____
 - c. AND, Waiver of conditions for Participants NOT employed at the end of the Plan Year. Participants who are not employed at the end of the Plan Year due to the following shall be eligible to share in the allocations regardless of the above conditions (select all that apply):
 1. Death.
 2. Total and Permanent Disability.
 3. Early or Normal Retirement.
 - d. Conditions for Participants employed at the end of the Plan Year.
 1. No service requirement.
 2. A Participant must complete a Year of Service.
 3. A Participant must complete at least 1 Hours of Service during the Plan Year.
24. EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 11.1(a)(2))
 NOTE: Any reference to Elective Deferrals means Elective Deferrals under an eligible governmental 457 plan.
- A. Matching Formula.
- a. N/A. There will not be any Employer matching contributions.
 - b. The Employer ... (select 1. or 2.)
 1. may make matching contributions equal to a discretionary percentage, to be determined by the Employer, of the Participant's Elective Deferrals.
 2. will make matching contributions equal to _____% (e.g., 50) of the Participant's Elective Deferrals.

AND, in determining the Employer matching contribution above, only Elective Deferrals up to the percentage or dollar amount specified below will be matched: (select 3. and/or 4. OR 5.)

3. _____% of a Participant's Compensation.
 4. \$_____.
 5. a discretionary percentage of a Participant's Compensation or a discretionary dollar amount, the percentage or dollar amount to be determined by the Employer on a uniform basis for all Participants.

- c. The Employer may make matching contributions equal to a discretionary percentage, to be determined by the Employer, of each tier, to be determined by the Employer, of the Participant's Elective Deferrals.
 d. The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's Elective Deferrals, determined as follows:

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate \$ or %)	Matching Percentage
First _____	_____%
Next _____	_____%
Next _____	_____%
Next _____	_____%

B. **Matching Limit.** The Employer matching contribution made on behalf of any Participant for any Plan Year will not exceed:

- e. N/A. No limit on the amount of matching contribution.
 f. \$_____.
 g. _____% of Compensation.

C. **Period of Determination.** The matching contribution formula will be applied on the following basis (and any Compensation or dollar limitation used in determining the match will be based on the applicable period):

- h. the Plan Year.
 i. each payroll period.
 j. all payroll periods ending within each month.
 k. all payroll periods ending with or within each Plan Year quarter.
 l. N/A, the Plan only provides for discretionary matching contributions (i.e., b.1. or c. is selected above).

NOTE: For any discretionary match, the Employer shall determine the calculation methodology at the time the matching contribution formula is determined.

D. **Allocation Conditions.** Select m. OR n. and all that apply of o. or p.

- m. No conditions. All Participants share in the allocations regardless of service completed during the Plan Year or employment status at the end of the Plan Year. (skip to next Question.)
 n. **Conditions for Participants NOT employed at the end of the Plan Year.**
 1. A Participant must complete a Year of Service.
 2. Participants will NOT share in the allocations, regardless of service.
 3. Participants will share in the allocations, regardless of service.
 4. Other: _____
 o. **AND, Waiver of conditions for Participants NOT employed at the end of the Plan Year.** Participants who are not employed at the end of the Plan Year due to the following shall be eligible to share in the allocations regardless of the above conditions (select all that apply):
 1. Death.
 2. Total and Permanent Disability.
 3. Early or Normal Retirement.
 p. **Conditions for Participants employed at the end of the Plan Year.**
 1. No service requirement.
 2. A Participant must complete a Year of Service.
 3. A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.

25. **FORFEITURES (Plan Sections 1.27 and 4.3(e))**

A. **Timing of Forfeiture.**

The Forfeiture will be disposed of in:

- a. N/A. (May only be selected if all contributions are fully Vested; skip to Question 27.)
 b. The Plan Year in which the Forfeiture occurs.
 c. The Plan Year following the Plan Year in which the Forfeiture occurs.

B. **Plan Expenses.** May Forfeitures first be used to pay any administrative expenses?

- d. Yes.
 e. No.

C. Use of Forfeitures.

Forfeitures will be:

- f. added to the Employer contribution and allocated in the same manner.
- g. used to reduce any Employer contribution.
- h. allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year.
- i. allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures, and who have an account balance at the end of the Plan Year (determined after the allocation of Employer contributions), in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year.
- j. other: _____.

Forfeitures of Employer matching contributions will be:

- k. N/A. Same as above or no Employer matching contributions.
- l. used to reduce the Employer matching contribution.
- m. added to any Employer matching contribution and allocated as an additional matching contribution.
- n. used to reduce any Employer contribution.
- o. other: _____.

26. ALLOCATION OF EARNINGS (Plan Section 4.3(c))

Allocation of earnings with respect to amounts which are not subject to Participant investment direction and which are contributed to the Plan after the previous Valuation Date will be determined:

- a. N/A. All assets in the Plan are subject to Participant investment direction.
- b. by using a weighted average based on the amount of time that has passed between the date a contribution or distribution is made and the prior Valuation Date.
- c. by treating one-half of all such contributions as being a part of the Participant's nonsegregated account balance as of the previous Valuation Date.
- d. by using the method specified in Plan Section 4.3(c) (balance forward method).
- e. other: _____.

27. PARTICIPATING EMPLOYEES' MANDATORY EMPLOYEE CONTRIBUTIONS

- a. No mandatory employee contributions.
- b. An Eligible Employee shall, subsequent to his Entry Date, contribute _____% his Compensation to the Plan; or
- c. An eligible Employee shall prior to his first Entry Date, make a one-time irrevocable election to contribute a percentage of Compensation to the Plan equal to a percentage from _____% to _____% (not to exceed 25%).

NOTE: The Mandatory Contribution shall be considered "picked up" by the Employer under Code Section 414(h)(2). All Eligible Employees are required to make a Mandatory Contribution as a condition of employment.

28. EMPLOYEE AFTER-TAX CONTRIBUTIONS

This Plan provides for:

- a. No Employee After-Tax Contributions.
- b. Employee After-Tax Contributions, subject to the following limitations, if any: _____.

DISTRIBUTIONS

29. FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)

Distributions under the Plan may be made in (select all that apply)

- a. Lump-sums.
- b. Substantially equal installments.
- c. Partial withdrawals, provided the minimum withdrawal is \$_____ (leave blank if no minimum).
- d. Partial withdrawals or installments are only permitted for required minimum distributions under Code Section 401(a)(9).
- e. Annuity (The distribution form will specify the available annuity options).

AND, distributions may be made in:

- f. Cash only.
- g. Cash only (except for insurance contracts, annuity contracts or Participant loans).
- h. Cash or property, except that the following limitation(s) apply: _____ (leave blank if there are no limitations on property distributions).

30. CONDITIONS FOR DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT. Distributions upon termination of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

- a. Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following termination of employment.
- b. Distributions may be made as soon as administratively feasible following termination of employment.
- c. Other: _____.

31. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))
Distributions upon the death of a Participant prior to receiving any benefits shall:
- be made pursuant to the election of the Participant or Beneficiary.
 - begin within 1 year of death for a designated Beneficiary and be payable over the life (or over a period not exceeding the life expectancy) of such Beneficiary, except that if the Beneficiary is the Participant's spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2.
 - be made within 5 (or if lesser _____) years of death for all Beneficiaries.
 - be made within 5 (or if lesser _____) years of death for all Beneficiaries, except that if the Beneficiary is the Participant's spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the life expectancy) of such surviving spouse.

32. IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)
- In-service distributions are NOT permitted.
 - In-service distributions may be made to a Participant who has reached _____ (insert "normal retirement age" but not earlier than age 62 for a money purchase plan or age 59 1/2 for a profit sharing plan) but has not separated from service.

AND, in-service distributions are permitted from the following Participant Accounts:

- All Accounts.
- Only from the following Accounts (select all that apply):
 - Account attributable to Employer contributions.
 - Rollover Account.
 - Transfer Account.
 - Other: _____ (specify account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion).

AND, the following limitations apply to in-service distributions

- N/A. No additional limitations.
- Additional limitations (select all that apply):
 - The minimum amount of a distribution is \$ _____ (may not exceed \$1,000).
 - No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 - Distributions may only be made from accounts which are fully Vested.
 - In-service distributions may be made subject to the following provisions: _____ (must be definitely determinable and not subject to discretion).

33. HARDSHIP DISTRIBUTIONS (Plan Section 11.4)
(May only be selected if this Plan is a Profit Sharing Plan.)
- Hardship distributions are NOT permitted.
 - Hardship distributions are permitted.

MISCELLANEOUS

34. LOANS TO PARTICIPANTS (Plan Section 7.6)
- Loans are NOT permitted.
 - Loans are permitted.
35. DIRECTED INVESTMENTS (Plan Section 4.10)
- Participant directed investments are NOT permitted.
 - Participant directed investments are permitted for:
 - All Accounts.
 - The following Participant Accounts (select all that apply):
 - Account attributable to Employer contributions.
 - Rollover Account.
 - Transfer Account.
 - Other: _____ (specify account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion).
36. ROLLOVERS (Plan Section 4.6)
- Rollovers will NOT be accepted by this Plan.
 - Rollovers will be accepted by this Plan, subject to approval by the Administrator.

AND, if b. is selected, rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply):

- Eligible Employees who are not Participants.
- Participants who are Former Employees.

AND, distributions from a Participant's Rollover Account may be made:

- at any time.
- only when the Participant is otherwise entitled to a distribution under the Plan.

EGTRRA TRANSITION RULES

The following questions only apply if this is an EGTRRA restatement (i.e., Question 5.c. is selected). If this is not an EGTRRA restatement, then this Plan will not be considered an individually designed plan merely because the following questions are deleted from the Adoption Agreement.

NOTE: The following provisions are designed to be left unanswered if the selections do not apply to the Plan.

37. MINIMUM DISTRIBUTIONS.

The Code Section 401(a)(9) Final and Temporary Treasury Regulations apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year unless otherwise selected below (leave blank if not applicable):

- a. Apply the 2001 Proposed Code Section 401(a)(9) Regulations to all minimum distributions for the 2002 distribution calendar year.
- b. Apply the 1987 Proposed Code Section 401(a)(9) Regulations to all minimum distributions for the 2002 distribution calendar year.
- c. Other: _____ (specify the date the Final and Temporary Regulations were first applied; e.g., the Final and Temporary Regulations only apply to distributions for the 2002 distribution calendar year that are made on or after a specified date *within* 2002 or the Plan's initial Effective Date if later).

Required minimum distributions for calendar year 2001 were made in accordance with Code Section 401(a)(9) and the 1987 Proposed Regulations, unless selected below:

- d. Required minimum distributions for 2001 were made pursuant to the proposed Regulations under Code Section 401(a)(9) published in the Federal Register on January 17, 2001 (the "2001 Proposed Regulations").

PLEASE CAREFULLY READ

This Adoption Agreement may be used only in conjunction with the Nationwide Governmental Plan. This Adoption Agreement and the basic Plan document shall together be known as the Nationwide Governmental 401(a) Plan.

The adoption of this Plan, the qualification of the Plan and Trust under Code Sections 401(a) and 501(a), respectively, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

This Adoption Agreement and the accompanying Plan document may not be used unless an authorized representative of Nationwide Retirement Solutions has acknowledged the use of the Plan. Such acknowledgement is for ministerial purposes only. It acknowledges that the Employer is using the Plan but does not represent that this Plan, including the choices selected on the Adoption Agreement, has been reviewed by a representative of Nationwide Retirement Solutions or constitutes a qualified defined contribution plan.

By: _____

With regard to any questions regarding the provisions of this Plan, adoption of the Plan, or the effect of an opinion letter from the IRS, call or write (this information must be completed by the sponsor of this Plan or its designated representative).

Name: Nationwide Retirement Solutions

Address: 5100 Rings Road

Dublin, Ohio 43017

Telephone: (800) 321-7167

The Employer and Trustee (or Insurer) hereby cause this Plan to be executed on the date(s) specified below:

EMPLOYER: City of Hobbs, NM

By: _____

DATE SIGNED

TRUSTEE (OR INSURER):

[] The signature of the Trustee or Insurer appears on a separate agreement or Contract,

OR

Michael Stone
TRUSTEE OR INSURER

DATE SIGNED

Jan Fletcher
TRUSTEE OR INSURER

DATE SIGNED

Toby Spears
TRUSTEE OR INSURER

DATE SIGNED

**APPENDIX A
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS**

A. Special effective dates. The following special effective dates apply: (Select a. or all that apply at b. - d.)

a. N/A. No special effective dates selected below.

b. **Employer Contributions.** The Employer Contribution provisions under Questions 22. - 24. are effective:

c. **Distribution elections.** The distribution elections under Questions _____ (Choose 29. - 32. as applicable) are effective:

d. **Other special effective date(s):** _____

For periods prior to the above-specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law.

**APPENDIX B
ADMINISTRATIVE ELECTIONS**

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this section without a formal Plan amendment. In addition, modifications to this Appendix B will not affect an Employer's reliance on an IRS advisory letter or determination letter.

- A. Loan Limitations.** Note: the separate loan program required by the DOL will override any inconsistent selections made below.
(complete only if loans to Participants are permitted)
- a. N/A. No loan limitations selected below.
- b. Limitations (select all that apply):
1. Loans will be treated as Participant directed investments.
 2. Loans will only be made for hardship or financial necessity (as defined in the loan program).
 3. The minimum loan will be \$_____ (may not exceed \$1,000).
 4. A Participant may only have _____ (e.g., one (1)) loan(s) outstanding at any time.
 5. All outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution (including a hardship distribution), if applicable).
 6. Loans are repaid by (if left blank, then payroll deduction applies):
 - a. payroll deduction
 - b. ACH (Automated Clearing House)
 - c. check
 7. Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
 - a. Account attributable to Employer contributions.
 - b. Rollover Account.
 - c. Transfer Account.
 - d. Other: _____

AND, if loans are restricted to certain accounts, the limitations of Code Section 72(p) and the adequate security requirement of the DOL Regulations will be applied:

- e. by determining the limits by only considering the restricted accounts.
- f. by determining the limits taking into account a Participant's entire interest in the Plan.

- B. Life Insurance.** (Plan Section 7.5)
- a. Life insurance may not be purchased.
- b. Life insurance may be purchased...
1. at the option of the Administrator.
 2. at the option of the Participant.

AND, the purchase of initial or additional life insurance will be subject to the following limitations:

3. N/A. No limitations.
4. Limitations (select all that apply):
 - a. Each initial Contract will have a minimum face amount of \$_____.
 - b. Each additional Contract will have a minimum face amount of \$_____.
 - c. The Participant has completed _____ Years (or Periods) of Service.
 - d. The Participant has completed _____ Years (or Periods) of Service while a Participant in the Plan.
 - e. The Participant is under age _____ on the Contract issue date.
 - f. The maximum amount of all Contracts on behalf of a Participant may not exceed \$_____.
 - g. The maximum face amount of any life insurance Contract will be \$_____.

- C. Plan Expenses.** Will the Plan assess against an individual Participant's account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan feature?

- a. No.
- b. Yes.

- D. Rollover Limitations.** Will the Plan accept rollover contributions and/or direct rollovers of distributions from the sources specified below?

- a. No.
- b. Yes.

AND, indicate the sources of rollovers that will be accepted (select all that apply)

1. **Direct Rollovers.** The Plan will accept a direct rollover of an eligible rollover distribution from: (Check each that applies or none.)
 - a. a qualified plan described in Code Section 401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions.
 - b. a qualified plan described in Code Section 401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions.

- c. a plan described in Code Section 403(a) (an annuity plan), excluding after-tax employee contributions.
 - d. a plan described in Code Section 403(a) (an annuity plan), including after-tax employee contributions.
 - e. a plan described in Code Section 403(b) (a tax-sheltered annuity), excluding after-tax employee contributions.
 - f. a plan described in Code Section 403(b) (a tax-sheltered annuity), including after-tax employee contributions.
 - g. a plan described in Code Section 457(b) (eligible deferred compensation plan).
2. **Participant Rollover Contributions from Other Plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution: (Check each that applies or none.)
- a. a qualified plan described in Code Section 401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan).
 - b. a plan described in Code Section 403(a) (an annuity plan).
 - c. a plan described in Code Section 403(b) (a tax-sheltered annuity).
 - d. a plan described in Code Section 457(b) (eligible deferred compensation plan).
3. **Participant Rollover Contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15, 2015

SUBJECT: RESOLUTION TO APPROVE THE ASSIGNMENT OF THAT CERTAIN AGREEMENT BETWEEN CITY OF HOBBS AND AUSTIN & NORTHWESTERN RAILROAD COMPANY, INC. (D/B/A TEXAS-NEW MEXICO RAILROAD) THE "ROADWAY CROSSING AND TRACK CONSTRUCTION AGREEMENT" DATED MARCH 4, 2013.

DEPT. OF ORIGIN: Legal
DATE SUBMITTED: June 10, 2015
SUBMITTED BY: Mike H. Stone, City Attorney

Summary: Austin & Northwestern Railroad Company, Inc. (d/b/a Texas-New Mexico Railroad) is in the process of transferring their ownership interest in the assets encumbered by the "Roadway Crossing and Track Construction Agreement" Dated March 4, 2013. Texas-New Mexico Railroad has asked that the aforesaid Agreement be assigned to Texas and New Mexico Railway, L.L.C and Lubbock and Western Railway, L.L.C which are subsidiaries of Watco Companies, L.L.C.

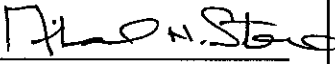
The Agreement requires written consent by the City for the assignment of the Agreement.

Fiscal Impact:

Reviewed By: 
Finance Department

Attachments: Resolution, Consent to Assignment Letter.

Legal Review:

Approved As To Form: 
City Attorney

Recommendation:

Consideration of Approval of the Resolution to approve assignment of the "Roadway Crossing and Track Construction Agreement" Dated March 4, 2013.

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. 6312.

RESOLUTION TO APPROVE THE ASSIGNMENT OF THAT CERTAIN AGREEMENT BETWEEN CITY OF HOBBS AND AUSTIN & NORTHWESTERN RAILROAD COMPANY, INC. (D/B/A TEXAS-NEW MEXICO RAILROAD) THE "ROADWAY CROSSING AND TRACK CONSTRUCTION AGREEMENT" DATED MARCH 4, 2013.

WHEREAS, in order to effectuate the disposition of certain assets of Austin & Northwestern Railroad Company, Inc. (d/b/a Texas-New Mexico Railroad) encumbered by the aforesaid Agreement, an assignment of the Agreement is required; and

WHEREAS, Texas-New Mexico Railroad desires to assign the Agreement to Texas and New Mexico Railway, L.L.C and Lubbock and Western Railway, L.L.C which are subsidiaries of Watco Companies, L.L.C., said assignment 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 "Consent to Assignment" letter, which is attached hereto and made a part of this Resolution as Exhibit #1 and the Mayor is hereby authorized to execute the same.
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 15th day of June, 2015

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

CONSENT TO ASSIGNMENT

June 8, 2015

Sent via email: trandall@hobbsnm.org

City of Hobbs

Attn: Todd Randall, City Engineer

200 E. Broadway

Hobbs, New Mexico 88240

Subject: Assignment of Roadway Crossings and Track Construction Agreement dated March 4, 2013 (the "Contract")

Dear Mr. Hobbs:

We anticipate that in the second quarter of 2015 that certain assets of Austin & Northwestern Railroad Company, Inc. (d/b/a Texas-New Mexico Railroad) (the "Seller") will be acquired (the "Sale") by Texas and New Mexico Railway, L.L.C and Lubbock and Western Railway, L.L.C. (each a "Buyer"), which are subsidiaries of Watco Companies, L.L.C.

As part of our commitment to make this transition as seamless as possible for you, we want to inform you that if and when the closing conditions are satisfied and the Sale is completed, this letter constitutes an assignment of the Contract from the Seller to the Buyer, effective on the closing date of the Sale. Based on current plans, we anticipate that the closing of the Sale will take place in the latter half of the second quarter of 2015.

As of closing, the Buyer will assume (on a going forward basis only) all of the rights, title, interest, obligations and responsibilities of the Seller under the Contract. Any liabilities under the Contract relating to periods before the closing will remain the responsibility of the Seller. After closing, all references to the Seller in your Contract will be deemed to be references to the Buyer and your ongoing contractual relationship will be between you and the Buyer.

Please indicate your consent to the assignment of the Contract by entering your signature below and returning a signed copy to me by email to CecilT@IowaPacific.com as soon as possible. If you have any questions, please contact Chris Riley with Lowis & Gellen LLP, who is managing this process, at (312) 456-7959. Thank you in advance for your cooperation.

Sincerely,



Iowa Pacific Holdings, LLC

Todd Cecil – Vice President, Real Estate

ACKNOWLEDGMENT

By this authorized signature, we hereby consent to the assignment and other transactions as described above.

Signature: _____

Name (please print): _____

Company: _____

Title: _____



315 W. 3rd Street
Pittsburg, KS 66762
P 620-231-2280
F 620-231-0812
www.watcocompanies.com

MEDIA RELEASE

Date: May 18, 2015
From: Stefan Loeb
Executive Vice President and Chief Marketing Officer
Watco Companies, LLC
(773) 480-2288

Ed Ellis
President & Chief Executive Officer
Iowa Pacific Holdings, LLC
(312) 545-7245

Pittsburg, KS, and Chicago, IL, MAY 18, 2015 – Watco Companies announced the purchase of the assets of two railroads from Iowa Pacific Holdings today. Watco's subsidiary, Watco Transportation Services (WTS), entered into a definitive agreement with Iowa Pacific Holdings, LLC to acquire the two west Texas railroads. The Permian Basin railroad assets are located in Texas and New Mexico and are the Austin & Northwestern Railroad Company, Inc. (d/b/a Texas New Mexico Railroad) (TNMR) and West Texas and Lubbock Railroad Company, Inc. (WTLC).

The new railroads owned by WTS will be the Texas and New Mexico Railway, which will take over operations of the rail line currently operated by TNMR, and the Lubbock and Western Railway, which will take over the rail line currently operated by WTLC.

WTS plans to file the appropriate notices on the properties today to begin the process for regulatory approval from the Surface Transportation Board. Closing of the transaction is expected to occur immediately after regulatory approvals are obtained.

The Texas and New Mexico Railway railroad extends from a Union Pacific connection at Monahans, Texas, to Lovington, New Mexico. The railroad serves the oil fields of west Texas and southeast New Mexico. The primary commodities shipped on the line are oilfield chemicals and minerals, construction aggregates, industrial waste, and scrap.

The Lubbock and Western Railway is divided into two segments; the most northern segment runs from just north of Dimmitt, Texas, to Plainview, Texas, and the second segment runs west from Lubbock, Texas, to Whiteface, Texas, and southwest from Lubbock to Seagraves. The Lubbock and Western Railway ships commodities such as fertilizer, construction aggregates, grain, cotton, chemicals, peanuts, and plastics.

"We see this addition of the two Permian Basin lines as a tremendous growth opportunity for Watco," said Stefan Loeb, executive vice president and chief marketing officer. "These two new railroads are a perfect addition to allow us to better serve our Texas Customers.

"We appreciate the hard work the Iowa Pacific team has done on growing the business on these two lines, and look forward to serving this key oil producing region of the United States. Our team looks forward to working with our energy industry customers to help bring additional value to the west Texas economy," Loeb added.

Ed Ellis, president & chief executive officer of Iowa Pacific, said "Since 2002, the WTLC and TNMR's freight traffic has grown exponentially, track speeds have increased, safety incidents have decreased and new customers have opened facilities all over these railroads. We are grateful to the hard working employees of the WTLC and TNMR for their



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Pittsburg, KS 66762
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MEDIA RELEASE

diligence and creativity in leading the turnaround of these important rail properties. This is an exciting day for both Iowa Pacific and Watco as it represents the culmination of a turnaround project for us. Watco has established itself as a leader in the US rail industry and we believe shippers are in good hands with Watco. We look forward to building upon this success by continuing to focus on future growth opportunities on the rest of our rail network.”

* * * *

Watco Companies, L.L.C., (Watco) is a Pittsburg, Kan., based transportation solutions provider offering transportation, mechanical, terminal and port, and supply chain services for Customers throughout the nation. Watco is the owner of Watco Transportation Services, L.L.C., (WTS), one of the largest short line railroad holding companies in the U.S., with 33 short line railroads and 28 contract switching locations. The Terminal and Port Services division currently manages transload facilities, warehouses, port locations, and Greens Port Industrial Park. The mechanical services division, through the joint venture, GBW Railcar Services, offers railcar repair at 33 locations in the U.S. and Canada. World-class supply chain solutions are offered through the Supply Chain Services division. More information about Watco and its subsidiaries can be found at www.watcocompanies.com.

Iowa Pacific Holdings, LLC (Iowa Pacific) is a privately-held, Chicago-based operator of nine US railroads, and manages two UK rail lines and other rail-related businesses. Each of Austin & Northwestern Railroad Company, Inc. (d/b/a Texas New Mexico Railroad) and West Texas and Lubbock Railroad Company, Inc., is a wholly-owned indirect subsidiary of Iowa Pacific.

* * * *

Advisors:

Stinson Leonard Street served as legal advisor to Watco. Barclays served as exclusive financial advisor to Iowa Pacific. Lewis & Gellen served as legal advisor to Iowa Pacific.



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 15, 2015

SUBJECT: Proposed Hobbs Police Association Agreement

DEPT. OF ORIGIN: City Manager
DATE SUBMITTED: June 10, 2015
SUBMITTED BY: J.J. Murphy, City Manager

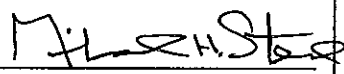
Summary: This proposal constitutes the fourth complete Collective Bargaining Agreement ("CBA") negotiated between the City of Hobbs and the Hobbs Police Association. Staff negotiated on behalf of the City. The City and Union recently began negotiations and the proposed CBA was ratified by the Hobbs Police Association. This is a five (5) year agreement. A complete CBA is attached

Fiscal Impact: Total anticipated recurring fiscal impact for budget year 2016 is approximately \$508,382.22. (9% initial plus 1.625% PERA pickup.)

Reviewed By: 
Finance Department

Attachments: Proposed Resolution
New CBA and PTO cost spreadsheet

Legal Review:

Approved As To Form: 
City Attorney

Recommendation: Approve new CBA and corresponding Resolution.

Approved For Submittal By:

Department Director

City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 6313

A RESOLUTION APPROVING A PROPOSED
COLLECTIVE BARGAINING AGREEMENT
WITH THE HOBBS POLICE DEPARTMENT

WHEREAS, the City of Hobbs and the Hobbs Police Association ("Union") have entered into and participated in negotiations regarding a new Collective Bargaining Agreement (CBA"); and

WHEREAS, the City of Hobbs and the Union finalized negotiations and the proposed CBA was ratified by the Union and is attached hereto; and

WHEREAS, the proposed CBA term is five (5) years;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be and hereby is authorized and directed to execute the attached Collective Bargaining Agreement with the Hobbs Police Association.

PASSED, AOPTED AND APPROVED this 15th day of June, 2015.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

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PREAMBLE

This Agreement is entered into by and between the CITY OF HOBBS ("CITY") and the HOBBS POLICE ASSOCIATION ("UNION"). This Agreement has as its purpose the promotion of harmonious relations between the CITY and the UNION, the establishment of an equitable and peaceful procedure for the resolution of differences, as well as the establishment of rates of pay, hours of work, and other conditions of employment. It is the goal of the City and Union to provide a high standard for the performance of law enforcement to the citizens of the City of Hobbs.

ARTICLE 1 UNION RECOGNITION

- A. The City recognizes the Union as the sole and exclusive collective bargaining representative for the employees employed by the City in the Hobbs Police Department. The bargaining unit will consist of nonprobationary detention officers, police officers, and detectives.
- B. The City extends to the Union representing the bargaining unit of employees the following rights:
 - 1. To represent the Employees in negotiations, issues regarding wages and working conditions, and in settlement of grievances, and
 - 2. To exclusive representation status.

ARTICLE 2 UNION AND EMPLOYEE RIGHTS

Section 2.01: The parties agree that the Union has the right and duty to represent the interest of employees in the bargaining unit, regardless of membership, so long as that representation does not interfere with the operation of the department. In exercising those rights the following provisions shall apply:

- A. The Union shall not use the City's or department's e-mail for the dissemination of Union literature or correspondence.
- B. The Union shall not use City time, equipment, property, or materials for Union business.
- C. The City shall make available to the Union, upon its written request, any public information in accordance with applicable law.

Section 2.02: Employees have the right to form, join, or assist the Union. Employees also have the right not to form, join, or assist the Union. Membership or non-membership in the Union is strictly voluntary and may be terminated by the employee at any time. The parties recognize that the exercise of these rights shall not interfere with the delivery of services.

Section 2.03: Employees and the Union shall be entitled to all the rights and benefits specifically delineated in this agreement. There shall be no implied or inferred rights to the Union or any employees. If this Agreement is silent regarding a particular issue, it shall be considered a retained management right to exercise discretion on such issue.

ARTICLE 3 UNION MEMBERSHIP

The City recognizes the right of the Union to charge a membership fee to members of the union. Such membership or dues deduction shall not include any fines or assessments. The City will deduct the membership/dues fee from the employee's paycheck for any employee who has voluntarily completed and signed a membership/dues deduction authorization card. The deduction will begin on the first full pay period following the employee's submittal of the authorization to the City's Finance/Payroll Department. The employee may cease such deductions at any time by providing written notice to the Finance/Payroll Department at least one pay period prior to the date the employee wishes to cease the deductions.

The City will remit the membership/dues amount collected to the Union monthly within ten (10) working days following the end of the month. The City will provide a list of bargaining unit employees remitting membership/dues deductions upon written request of the Union President. The Union, its members, and the bargaining unit employees agree to hold the City harmless and pay for the defense of any claim against the City with regard to the deduction of membership dues.

ARTICLE 4 MANAGEMENT RIGHTS

Both parties recognize that except as specifically limited, abridged, or relinquished by the terms and provisions of this Agreement, all rights to manage, direct, or supervise the operations of the City and employees are vested solely in the City and not subject to Union action or arbitration. The City shall have the right to make such reasonable rules and regulations respecting the conduct of employees, not in conflict with this Agreement, as it may from time to time deem best for the purpose of maintaining order, safety, and/or efficient operations.

The City Manager has and retains all rights to administer the affairs of the Police Department, either personally or through his subordinate, the Police Chief, subject to: applicable state law; charter provisions specifically, but not limited to, the City of Hobbs Charter; ordinances; and resolutions for regulations and policies of the City Commission. Except as limited in this Agreement, management rights shall include, but shall not be limited to:

1. hiring, promotion, reclassification, transfer, assignment, lay off, and recall of employees;
2. reprimand, suspension, demotion, discharge, or other discipline of employees;
3. evaluation of employees;
4. revision, elimination, combination, or establishment of new jobs and job classifications;
5. establishment, organization, reorganization, close down, expansion, or otherwise change the operation of any city facility, division, or department;

6. reduce, increase, alter, combine, transfer, or cease any department's operation, equipment, or service;
7. establishment of size and composition of work forces, shifts, or units, and otherwise determine staffing requirements;
8. determine insurance programs and carriers for all City employees;
9. determine the methods or means by which operations and services are to be delivered, made, or purchased;
10. maintaining the efficiency of City government and take actions as may be necessary to carry out the mission of the City government in emergencies; and
11. manage and exercise judgment on all matters not specifically prohibited by this collective bargaining agreement.

ARTICLE 5 HOURS OF WORK

Section 5.01: Developing the work schedule for employees is a right and responsibility of the City. The goal of scheduling work is to best and most effectively meet the demands of service to the citizens of the City of Hobbs. An employee's normal hours of work may vary. All work schedules are subject to the approval of the Chief and may be changed at the Chief's discretion. Except for unforeseen situations, employees shift assignments or days off will not be changed unless the employee receives at least a five (5) working day advance notice. Should it become necessary to move an employee from one shift to another, the employee with the highest seniority shall have the option to accept or reject the assignment from one shift to another. If the employee rejects the assignment, then the next most senior employee shall be afforded the opportunity to accept or reject the assignment. The process based on seniority, shall continue until an employee agrees to accept the assignment. Unless other compelling reasons exist, officers shall be afforded shift changes based upon seniority.

Section 5.02: The standard workweek shall equal forty (40) hours for all employees, regardless of their particular work schedule, unless otherwise designated by the City Commission. The standard workweek shall begin Sunday at midnight and end on Saturday at 11:59 PM.

ARTICLE 6 COMPENSATION AND BENEFITS

Effective the first full pay period following ratification of this Agreement, bargaining unit employees (Police Officer, Police FTO, Police Detective) will be granted a 9% increase to their current rate of pay. In addition, their PERA employer pick-up will increase by 1.625% effective upon approval by PERA. Effective the first full pay period following ratification of this Agreement, bargaining unit employees (Detention Officer and Detention Officer Supervisor) will be granted a 10.625% increase to their current rate of pay. Bargaining employees will be moved from a step plan pay system to a merit based pay system.

Effective Date of Contract After Approval Through 07/05/2015						
	MIN	MID	MAX	MIN	MID	MAX
300-Police Officer (Non Certified)	\$ 24.29	-	-	\$ 50,523.20	-	-
300-Police Officer (Certified)/ Temp FTO	\$ 24.29	\$ 27.76	\$ 31.22	\$ 50,523.20	\$ 57,730.40	\$ 64,937.60
305-Police Field Training Officer (FTO) Permanent	\$ 25.50	\$ 29.14	\$ 32.78	\$ 53,049.36	\$ 60,616.92	\$ 68,184.48
307-Police Detective	\$ 25.50	\$ 29.14	\$ 32.78	\$ 53,049.36	\$ 60,616.92	\$ 68,184.48
113U-Detention Officer	\$ 18.00	\$ 20.43	\$ 22.86	\$ 37,440.00	\$ 42,494.40	\$ 47,548.80
114U-Detention Officer Supervisor	\$ 20.25	\$ 22.98	\$ 25.72	\$ 42,120.00	\$ 47,806.20	\$ 53,492.40

Year 1 – July 5th, 2015 – June 30th, 2016:

- Bargaining unit employees will not be eligible for a COLA increase.
- Bargaining unit employees will not be eligible for a merit increase based on their annual evaluation.

07/05/2015 - 07/02/2016						
	MIN	MID	MAX	MIN	MID	MAX
300-Police Officer (Non Certified)	\$ 24.29	-	-	\$ 50,523.20	-	-
300-Police Officer (Certified)/ Temp FTO	\$ 24.29	\$ 27.76	\$ 31.22	\$ 50,523.20	\$ 57,730.40	\$ 64,937.60
305-Police Field Training Officer (FTO) Permanent	\$ 25.50	\$ 29.14	\$ 32.78	\$ 53,049.36	\$ 60,616.92	\$ 68,184.48
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113U-Detention Officer	\$ 18.00	\$ 20.43	\$ 22.86	\$ 37,440.00	\$ 42,494.40	\$ 47,548.80
114U-Detention Officer Supervisor	\$ 20.25	\$ 22.98	\$ 25.72	\$ 42,120.00	\$ 47,806.20	\$ 53,492.40

Year 2 – July 1st, 2016 – June 30th, 2017:

- Effective the first full pay period after July 1, 2016, bargaining unit employees will receive a 2% Cost of Living Adjustment (COLA).
- The maximum rates for each classification will be adjusted by a 2% increase effective July 1st, 2016.
- Bargaining unit employees will also be eligible for a merit increase based on their annual evaluation. Merit limits for bargaining unit employees each fiscal year shall be equal to all City of Hobbs employee merit limits as determined by the City Commission.
- A minimum of 50% of bargaining unit employees will receive the maximum merit limit as approved by the City Commission.
- The maximum rates for each classification will be adjusted by the maximum merit limit as approved by the City Commission effective July 1st, 2016.

Year 3 - July 1st, 2017 – June 30th, 2018:

- Effective the first full pay period after July 1, 2017, bargaining unit employees will receive a 2% Cost of Living Adjustment (COLA).
- The maximum rates for each classification will be adjusted by a 2% increase effective July 1st, 2017.
- Bargaining unit employees will also be eligible for a merit increase based on their annual evaluation. Merit limits for bargaining unit employees each fiscal year shall be equal to all City of Hobbs employee merit limits as determined by the City Commission.
- A minimum of 50% of bargaining unit employees will receive the maximum merit limit as approved by the City Commission.
- The maximum rates for each classification will be adjusted by the maximum merit limit as approved by the City Commission effective July 1st, 2017.

Year 4 - July 1st, 2018 – June 30th, 2019:

- Effective the first full pay period after July 1, 2018, bargaining unit employees will receive a 2% Cost of Living Adjustment (COLA).
- The maximum rates for each classification will be adjusted by a 2% increase effective July 1st, 2018.
- Bargaining unit employees will also be eligible for a merit increase based on their annual evaluation. Merit limits for bargaining unit employees each fiscal year shall be equal to all City of Hobbs employee merit limits as determined by the City Commission.
- A minimum of 50% of bargaining unit employees will receive the maximum merit limit as approved by the City Commission.
- The maximum rates for each classification will be adjusted by the maximum merit limit as approved by the City Commission effective July 1st, 2018.

Year 5 - July 1st, 2019 – June 30th, 2020:

- Effective the first full pay period after July 1, 2019, bargaining unit employees will receive a 2% Cost of Living Adjustment (COLA).
- The maximum rates for each classification will be adjusted by a 2% increase effective July 1st, 2019.
- Bargaining unit employees will also be eligible for a merit increase based on their annual evaluation. Merit limits for bargaining unit employees each fiscal year shall be equal to all City of Hobbs employee merit limits as determined by the City Commission.
- A minimum of 50% of bargaining unit employees will receive the maximum merit limit as approved by the City Commission.
- The maximum rates for each classification will be adjusted by the maximum merit limit as approved by the City Commission effective July 1st, 2019.

Assignment to FTO will result in a 5% salary increase during the assignment.

Promotion to Detective will result in a 5% salary increase or increase to the classification minimum, whichever is higher.

Promotion to Detention Officer Supervisor will result in a 12.5% salary increase or increase to the classification minimum, whichever is higher.

In order to govern initial pay rate determination of Police Officers, Detention Officers and Detention Officer Supervisor, credit may be granted at the time of hire for education and/or previous job related experience in accordance with AR 05-02 "An Administrative Regulation Concerning New Employee Appointments Above The Pay Plan Minimum Rates".

Bargaining unit employees will receive longevity pay in accordance with the City of Hobbs Administrative Resolution #11-05; however, longevity pay shall begin at ten (10) years of service with HPD as opposed to fifteen (15) years in the City policy. See AR 11-05, attached hereto and incorporated herein.

Bargaining unit employees assigned to the classification of Detective will receive an on-call incentive payment on the pay period following their anniversary date in the amount of \$1500.00.

All money paid under this incentive is taxable income and shall be subject to all appropriate taxation and wage withholding including but not limited to state taxes and federal taxes.

Both parties agree and recognize that bargaining unit employees assigned to the classification of Detective are mandated to be on call. In the event that the employee is called in for duty, the employee will be a minimum of two (2) hours irrespective of the amount of time the employee is on duty. If the employee expends more than two (2) hours on duty, the employee shall be paid for those hours in addition to the two (2) hour minimum. Employees' time begins upon arrival for duty. A bargaining unit employee may be subject to discipline for failing to report for mandatory on-call.

Bargaining unit employees assigned to the SWAT will receive an incentive payment on the pay period following their anniversary date in the amount of \$1500.00. All money paid under this incentive is taxable income and shall be subject to all appropriate taxation and wage withholding including but not limited to state taxes and federal taxes.

ARTICLE 7 TRAVEL TIME

Bargaining unit employees required to travel outside of the City of Hobbs for work related business will be paid in accordance with the Fair Labor Standards Act for any time that crosses the employee's normal work day schedule.

ARTICLE 8 OVERTIME

The City will pay overtime at the rate of time and one half the employee's regular hourly rate of pay for all hours worked over eighty (80) hours in a pay period. When determining overtime, PTO, holiday and/or military leave shall be considered hours worked. PTO hours may only be used to supplement holiday hours up to the normally scheduled work hours. For example, an employee may be paid for 8 hours of holiday leave and supplement with 4 hours of PTO to maintain their scheduled 12 hour shift. No employee may be paid for more than one type of pay code at any one time. For example, an employee may not be paid for 8 hours of holiday leave and supplement with 12 hours of PTO based on a scheduled 12 hours shift.

Overtime is considered a condition of employment and will be assigned to bargaining unit employees by the Chief of Police or designee. Overtime must be approved in writing by the employee's immediate supervisor. An employee who fails or refuses to work overtime will be considered to have provided just cause for disciplinary action, including possible termination.

ARTICLE 9 PAID TIME OFF

All bargaining unit employees shall receive Paid Time Off ("PTO") in accordance with the Hobbs Municipal Code.

Bargaining unit employees shall submit a leave request form to the employee's immediate supervisor with sufficient notice prior to the first date of the requested leave as determined by the supervisor. When an employee is on scheduled PTO, and is called back to duty, the employee shall not be docked the unused PTO hours.

ARTICLE 10 LEAVES

Section 10:01: Military Leave

Military leave shall be granted in accordance with State and Federal law.

Section 10:02: Family Medical Leave

Family Medical leave shall be granted in accordance with the Family Medical Leave Act.

Section 10:03: Leave Without Pay

A bargaining unit employee may request a leave of absence without pay for a period not to exceed one (1) year. Such request shall be directed to the City Manager for approval, subject to the City Manager's discretion.

Section 10:04: Leave for Jury Duty

An employee receiving an order to appear for jury duty will be granted leave to serve as a juror in accordance with City Policy.

Section 10:05: Injury/Disability Leave

An employee who is injured on the job will be provided leave in accordance with the Workers' Compensation Act.

ARTICLE 11 NON DISCRIMINATION

- A. The parties agree that neither the Union's nor the City's respective policies or activities will discriminate against any employee based upon race, age, religion, color, national origin, ancestry, gender, physical or mental disability, serious medical condition, sex (including pregnancy, childbirth, and related medical conditions), disability, citizenship status, genetic information, marital status, sexual orientation, gender identity, Union or non-Union affiliation/membership, or any other federal, state or local protected class.
- B. The Union agrees with the City that it will cooperate and support the City's efforts to assure a fair day's work on the part of its Members; that it will combat absenteeism and other practices that will hinder such. The Union further agrees that its Members will abide by the rules of the City and the Union in their efforts to prevent accidents,

eliminate waste, conserve materials and supplies, improve the quality of workmanship, and to strengthen good will between the City, the Union, and the Employee.

- C. All references to Employees in this Agreement designate both sexes, and where the male gender is used, it shall be construed to include male and female genders.
- D. The Union and the City agree not to interfere with the rights of Employees to become Members of the Union. There shall be no discrimination, interference, restraint, or coercion by the City or Union or any City representative or Union representative against any eligible Employee because of Union Membership or non-Union Membership.
- E. The Union recognizes its responsibility as the Bargaining Agent for all such Employees employed within the Bargaining Unit, and agrees to represent all such Employees in the Bargaining Unit without discrimination, interference, restraint, or coercion. The Union agrees that it shall inform its membership of all modifications, amendments, or changes in the provisions of this Agreement in a timely manner.

ARTICLE 12 SENIORITY & PROBATION

Section 12.01: Probationary Employees

For newly hired Police Officers, the probationary period shall be 2080 field hours as a police officer. Time spent in the academy for New Mexico Law Enforcement Certification shall not be credited against the 2080 field hours. For newly hired Detention Officers the probationary period shall be 2080 hours. Time spent on unpaid leave of absence shall not be credited for completion of the probationary period.

During the probationary period, the Employee will accrue seniority. The City shall have the right to discharge a probationary Employee with or without cause and that Employee shall not have recourse to the grievance or arbitration procedure.

Section 12.02: Employee Department Seniority Calculation

For issues pertaining to the entire department, seniority shall be established as follows:

- A. Length of service within the department;
- B. When two or more certified Employees are hired on the same date, their seniority shall be established as follows:
 - 1. If the new hire has prior experience as an Employee of a police department, then that Employee shall be entitled to seniority.

2. If all the new hires have prior experience as an Employee of a police department, their seniority shall be determined by length of their prior experience within State of New Mexico, out of state certified police experience.
3. If none of the new hires have any experience as an Employee of a police department or military police experience, then seniority shall be determined by length of service with the City in other departments or if none have prior service with the City, by a flip of a coin

Section 12.03: Effect of Departmental Seniority

- A. Departmental seniority shall be the length of service with the Hobbs Police Department and shall be used for the purpose of promotions, demotions, transfers and vacation rights, and layoffs and recalls within the Hobbs Police Department in accordance with any applicable bidding procedure.
- B. Department seniority shall be terminated:
 1. When an Employee is discharged for just cause;
 2. When an Employee quits;
 3. When an Employee fails to report for work after a lay off, when properly notified in accordance with Article 24;
 4. When the recall list has expired.
- C. If, for any reason, an Employee voluntarily terminates employment with the Hobbs Police Department and is later rehired, the seniority of such Employee shall be placed at the bottom of the departmental seniority list.

Section 12.04: Seniority List

When requested in writing, the City shall provide a seniority list to the Union President.

Section 12.05: Police Cars

Police cars shall be issued in a manner deemed appropriate by the Chief or his designee. Take home vehicles will be provided for officers who permanently reside within the 5 mile planning radius of the City. Employees hired after the ratification date of this agreement who reside outside of the 5 mile planning radius of the City will not be provided a take home vehicle.

Employees provided a take home vehicle residing outside of the 5 mile planning radius of the City prior to ratification of this agreement will continue to utilize said vehicle as per HPD policy.

Section 12.06: Vacation Seniority

Christmas and Thanksgiving shall be taken by seniority, provided however, an employee who has taken the previous holiday shall not be granted a holiday vacation request if that employee is scheduled to work that holiday.

ARTICLE 13 INTERNAL AFFAIRS INVESTIGATIONS

- A. Internal affairs investigations will be conducted pursuant to the Peace Officers Employer-Employee Relations Act, NMSA Section 29-14-1 et. seq. (1978).
- B. Internal Affairs investigations and reports are the confidential property of the Police Department for internal use only and will not be released from the custody of the department to anyone. An employee who is the subject of an internal investigation will be allowed access to the entire investigative file for purposes of review. In cases resulting in disciplinary recommendations by the Chief for suspensions, demotions, or terminations, the employee and/or their attorney shall be allowed access to the entire file for the necessary use in preparation for defense of the employee.
- C. It is understood by the parties that any harassment or retaliation by the employee against any person who participated in the investigation shall be considered just cause for termination.

ARTICLE 14 DISCIPLINE AND DISCHARGE

Section 14.01: Disciplinary actions for bargaining unit employees will be based on just cause. The degree of discipline will be based on the severity of the offense, the employee's work history and any mitigating or aggravating circumstances. Disciplinary actions shall be consistent with governing laws and regulations and shall be taken without regard to race, age, religion, color, national origin, ancestry, gender, physical or mental disability, serious medical condition, sex (including pregnancy, childbirth, and related medical conditions), disability, citizenship status, genetic information, marital status, sexual orientation, gender identity, or any other federal, state or local protected class. No employee shall be disciplined for refusing to perform an unlawful act.

Section 14.02: Any department supervisor may take disciplinary action against an employee pursuant to the department supervisor's authority and consistent with departmental policies and this Agreement. Any discipline reduced to writing shall be subject to the grievance process. Copies of any disciplinary action involving written reprimands, demotions, suspensions, or discharge shall be furnished to the Personnel Department for placement in the employee's file

with the signature of the recipient acknowledging receipt of the action, or indication that the employee refused to sign. Demotions, suspensions, and discharge are grievable through the grievance procedure and arbitration procedure contained in this Agreement.

Any negative entry or adverse action shall be documented in the employee's official personnel file. The employee will be given a copy of the document that reflects any negative or adverse action. The employee may submit a written response to any document submitted to the employee's official personnel file. Such response shall be presented to the Human Resources Director within thirty (30) calendar days after the employee knew or should have known of the action in question. Responses submitted after thirty (30) calendar days shall be considered not timely and void and will be returned to the employee indicating the response was not timely.

Section 14.03: Non-probationary employees subject to this chapter or any administrative or departmental regulations duly promulgated may be disciplined for cause. Cause for disciplinary action includes, but is not limited to, the following:

- (1) Work performance that continues to be unsatisfactory after reasonable attempts to correct performance.
- (2) Misconduct on the job; conduct or language toward the public or toward employees, which discredits the public service.
- (3) Negligence in the performance of duty, including negligence in the operation of city vehicles or equipment or failure to adhere to established safety rules and procedures.
- (4) Incompetence or inefficiency; failure to perform job duties adequately.
- (5) Insubordination; failure to comply with the lawful orders of a supervisor, including refusal to work overtime.
- (6) Unauthorized absence from work, including tardiness.
- (7) Consumption, possession, or distribution of alcohol or drugs on the job, or reporting to work under the influence of alcohol or drugs.
- (8) Acceptance of money, gifts, privileges, or other valuable consideration, which was given with the expectation of influencing the employee in the performance of his duties.
- (9) Use of official position or authority for personal profit or advantage.
- (10) Misuse, theft, or destruction of city property.
- (11) Unauthorized disclosure of confidential information from city records or documents, as set forth by applicable state laws; falsification, destruction, or unauthorized use of city records, reports, or other data belonging to the city including city employment application, or any other document used in the employment process.
- (12) Unauthorized or fraudulent manipulation of time records or other city records.
- (13) For causes as defined in the Criminal Offender Employment Act, NMSA 1978, §28-2-1, et seq.
- (14) Violation of city or departmental rules or policies or a professional code of ethics accepted by those in the same profession as the employee.
- (15) Non-cooperation by an employee with fellow employees or other personal conduct, which substantially interferes with the performance of his or another employee's work.

- (16) Misuse of sick leave; the claim of sickness under false or misleading pretenses.
- (17) Distribution of literature, vending, or soliciting or collecting contributions on city time and in public areas or voluntary cooperation with parties doing such without prior authorization of the City Manager.
- (18) Violation of any federal or state law pertaining to employment, including all civil rights statutes.
- (19) Failure to adhere to the established work schedule; failure to obtain authorization for overtime prior to overtime worked as established by general written department policy.
- (20) Failure to meet or maintain established job qualifications, as set forth in the job description, including maintaining a valid driver's license.
- (21) Other acts or omissions that adversely affect the welfare of citizens, other employees, or the effective operation of the city.
- (22) Unauthorized possession of a weapon on the job site.
- (23) Fighting and/or disruptive behavior in the workplace.

The foregoing examples are in no way intended to provide an exhaustive listing of reasons for which an employee may be disciplined. The severity of the infraction and the employee's work and disciplinary record will determine the level of disciplinary action taken.

Section 14.04: The City shall discuss proposed or actual disciplinary action with an employee and not in the presence of co-workers, unless representing the City or the employee in a meeting.

Section 14.05: An employee will be afforded the opportunity to present his side of the story in a predetermination meeting for any contemplated disciplinary action involving suspension, demotion, or discharge prior to the action being taken. The City will provide notice to the employee of the date, time, and place of the predetermination meeting no later than 72 hours prior to the meeting. In no event will the predetermination meeting be scheduled with less than 72 hours notice. The employee may have a representative of his choice at the meeting as an observer only. An attorney may be allowed as an observer only, provided the employee notifies the Chief in writing at least 48 hours in advance of the meeting. An employee may waive, in writing, the right to a predetermination meeting. Failure on the part of the employee to appear and/or respond either orally or in writing shall also constitute a waiver of the right to a predetermination meeting.

Section 14.06: A supervisor or Department Head may immediately remove from the work environment any employee who poses a danger to himself or others; who is alleged to be committing or has allegedly committed a criminal act; or who otherwise is incapable of fulfilling the obligations of the job. In such cases, the employee will be placed on administrative leave with pay.

ARTICLE 15 GRIEVANCE PROCEDURE

- A. The purpose of this procedure is to secure at the lowest possible level, mutually satisfactory resolutions to grievances, which may arise during the term of this Agreement and are subject to resolution under this Agreement.

- B. A grievance is defined as a charge by either party to this Agreement that the other has violated one or more expressed provisions of this Agreement.
- C. As used in this Article, "days" shall mean work days (Monday through Friday) and shall not include holidays or time when the City Administrative Offices are closed.
- D. A written grievance must contain a statement of the grievance, the name of the employee(s), the circumstances and facts upon which it is based, the Section of this agreement allegedly violated, the remedy being sought, and the signature of the grievant and the date signed.
- E. Grievances concerning terminations shall be filed within ten (10) days of the date of notification of termination directly to Step Three of the grievance procedure.
- F. Grievances submitted on behalf of the Police Department shall be initiated by the Chief or designee by filing the grievance with the Union President or designee.
- G. Failure to submit a grievance within ten (10) days from the date the employee knew or should have known of the act that gave rise to the grievance, will constitute forfeiture of the right to file a grievance. Furthermore, any grievance determination not appealed to the succeeding level within the time limits expressed herein shall be considered as closed. When it is mutually agreed by the parties in writing, the time limits expressed herein may be extended. Either the Union, the City, or employee who have entered grievances on their own behalf, may drop the grievance at any Step.
- H. Should the City fail to respond to a grievance within the time limits expressed herein, the Union may appeal to the next level of the grievance procedure within the time limits set forth as if the City had timely responded.
- I. Nothing herein contained shall be considered as limiting the rights of an employee to discuss or process his/her grievance as an individual.
- J. Grievances shall be presented as outlined below:

Step One – A bargaining unit employee who believes that he/she may have a grievance or the employee's Union Representative, shall file a written grievance with the employee's immediate supervisor or the level at which the grievance occurred, that a potential grievance exists and shall schedule a meeting, during which the parties will attempt to resolve the grievance. For Detention Officer, grievances shall be submitted in writing with the Jail Administrator and a meeting scheduled. The meeting with the supervisor/administrator should be held within five (5) days of the filing of the grievance. If the matter is not resolved to the satisfaction of the employee within ten (10) days of the filing of the grievance, the employee or Union Representative may file a written grievance at Step Two.

Step Two – Within ten (10) days of the meeting with the supervisor/administrator at step one, the written grievance must be filed with the Chief. At the time of personal service, the employee or Union Representative shall schedule a grievance meeting with the Chief or designee. This meeting should be held within five (5) days following receipt of the grievance, to discuss the grievance, and attempt a resolution. The Chief will provide a written response to the grievance within ten (10) days following the meeting to discuss the grievance. If, in the opinion of the employee or the Union

Representative a satisfactory settlement is not obtained within ten (10) days of the date of the Chief's response, the employee or Union Representative may file the written grievance at Step Three.

Step Three - Within ten (10) days of the date of the Chief's response, the written grievance must be filed with the City Manager. An employee grieving a termination may request an evidentiary hearing before the City Manager, who will be assisted by the City Attorney. The City Manager will respond to the grievance within ten (10) days of the filing of the grievance. The employee or Union Representative may appeal the City Manager's decision through arbitration by providing written notice to the Personnel Director within ten (10) work days of the date of the City Manager's decision.

- K. The Union shall provide the Chief a list of the union representatives that are authorized to file a grievance on behalf of the union and authorized to represent an employee on a grievance.

ARTICLE 16 ARBITRATION

- A. This procedure shall be the sole and exclusive method for resolving any and all claims arising from the suspension, demotion, or discharge of an employee or the alleged violation of this agreement.
 - 1. Prior to an appeal to binding arbitration the procedure for the settlement of the grievance, Article 15 Grievance Procedure, must have been exhausted.
 - 2. The appeal must be received by the Director of Personnel within fifteen (15) work days from the date of the City Manager's decision.
- B. An arbitrator shall be selected in the following manner:
 - 1. The City and the Union shall attempt to agree on an arbitrator within ten (10) working days of the filing of the request for arbitration. If the parties are unable to agree on an arbitrator, the parties will request a list of seven (7) names from the FMCS, provided the employee/Union complete the employee's portion of the FMCS form for arbitration and submit a check for half of the filing amount to the Director of Personnel within the ten (10) working days of filing the request for arbitration.
 - 2. Within ten (10) days of receipt of the arbitration list, the parties will meet to select the arbitrator. Should the parties fail to mutually agree upon an Arbitrator, then each party will strike one (1) name alternately until a single name remains and he or she shall be the Arbitrator. The party required to strike the first name will be determined by a flip of a coin.
- C. The Arbitrator will schedule the hearing within thirty (30) calendar days after notification of selection by the parties or as soon as practicable thereafter. The Arbitrator shall decide issues of arbitrability prior to hearing the merits of the case. If the Arbitrator determines the case is arbitrable, then the Arbitrator shall consider the facts of the grievance in arbitration and, following the hearing, shall prepare and submit to the parties, in writing, a report and decision as soon as possible after the conclusion of the hearing. The parties

may jointly agree to waive a written opinion and allow the Arbitrator to enter an award without analysis or explanation. Arbitration shall be conducted according to the rules established by the FMCS.

- D. The cost of services of the Arbitrator shall be shared equally by the parties. Each party will be responsible for compensating its own witnesses and representatives.
- E. The Arbitrator shall have the authority to determine if there was just cause for any disciplinary action. However, in no case shall he/she have the power to add to, nor subtract from, or modify this Agreement.
- F. The Arbitrator's award in disciplinary cases is limited to back pay and/or reinstatement, or reinstatement to a similar position at the parties' discretion if irreconcilable personality conflicts exist. The award shall be limited to the amount of wages and benefits the employee otherwise would have earned subject to discount based on any earnings or compensation received by the grievant including, but not limited to, unemployment insurance benefits. The employee has an obligation to mitigate his/her damages. The arbitrator may not award attorney's fees, punitive damages, general compensatory damages, or costs.
- G. Arbitration is subject to the provisions of the State's Uniform Arbitration Act and an award may be set aside in accordance with the Uniform Arbitration Act's provisions.

ARTICLE 17 WRITTEN EVALUATIONS AND APPEAL PROCESS

Section 17.01: Written Evaluations are used to provide feedback to bargaining unit employees and are not designed or intended to be used as disciplinary actions and will not be used in such a manner. Written Evaluations may, however, be used to support disciplinary actions. Within Written Evaluations, employees will be assessed in relation to the essential job functions of their position for the previous year. Written Evaluations may also be used to identify and establish specific, measureable goals for the employee for the upcoming year. An employee shall be shown his/her Written Evaluation. If the employee disagrees with the Written Evaluation, the employee shall abide by the following procedure to appeal the evaluation:

- A. Employee shall file, within five (5) calendar days, a written request to appeal the Written Evaluation to the Police Chief. The appeal must take place within five (5) calendar days from the date that the written request to appeal was filed.
- B. If the employee does not feel a satisfactory settlement has been reached after appeal to the Police Chief, the employee may file, within five (5) calendar days, a written request to appeal the Police Chief's appellate decision to the City Manager. The appeal must take place within five (5) calendar days from the date that the written request to appeal the Police Chief's appellate decision was filed.
- C. If the employee does not feel a satisfactory settlement has been reached after appeal to the City Manager, the employee may file, within five (5) calendar days, a written request to have the Board of the Union review the merits of the City Manager's appellate decision and make a determination as to whether or not to allow an appeal of the City Manager's decision to a two (2) party panel. The Board must issue a

- written decision to the employee, the Police Chief, and the City Manager within five (5) calendar days from the date that the written request for Board review was filed.
- D. If the Board supports appeal of the City Manager's decision to a two (2) party panel, the Board will coordinate with all parties as to time, date, and place for the City Manager's decision to be submitted to the two (2) party panel. The appeal must take place within five (5) calendar days from the date that the written decision by the Board was issued. The two (2) party panel shall consist of: one (1) representative selected by the Union; and one (1) representative selected by the City. In the event that an agreement cannot be reached by the two (2) party panel, a third party shall be selected to make a determination by agreement of Union and City.
- E. The conclusion of a three (3) party panel will be deemed final and unappealable with regard to that Written Evaluation. The final decision, whether it be the Police Chief's, City Manager's, two (2) party panel, or three (3) party panel will be made a part of the Written Evaluation and shall not be subject to the grievance process under Articles 15 and 16 herein.

It is strictly understood that Union shall only be afforded the opportunity to appeal no more than five (5) of the City Manager's appellate decisions annually as they relate to Written Evaluations. Additionally, Union shall be responsible for an accurate accounting of the appeals they submit to the two (2) party panel upon request by City.

If the employee, or Union, fails to meet the time limits imposed, the process will end and the employee will lose any rights that have not already been exercised in regard to the Written Evaluation. At any step in this progression up the chain, the employee may stop the process and prepare a written response to the evaluation. That response will be retained in the employee's personnel file, together with the original Written Evaluation. Nothing contained in this Article shall be construed so as to provide an employee the right to engage in adversarial proceedings, or have counsel argue on their behalf, during the appeal of any Written Evaluation.

Written Evaluations are to be completed on an annual basis during the anniversary month of the employee's most recent hire date. A minimum of 50% of bargaining unit employees must receive the maximum merit increase as approved by the City Commission during their annual evaluation subject to the provisions of Article 6 of this agreement. Other evaluations, incident evaluations, or special evaluations may be utilized in order to provide additional feedback to employees. These types of evaluations will generally be specific to one aspect of job performance and should remain in the employee's working file as identified in this Agreement. The Written Evaluation is a formal report that will become a part of the employee's personnel file.

ARTICLE 18

STRIKES, SLOWDOWNS, AND LOCKOUTS

Section 18:01: The parties acknowledge that the Hobbs Labor Management Relations

Ordinance makes strikes illegal. The Union agrees that it will not encourage, threaten, support, instigate, or participate in a strike or slowdown. The Union will not authorize, institute, aid, condone, threaten, or engage in a slowdown, work stoppage, "blue flu", or strike.

Section 18:02: The City, for any reason, shall not authorize, institute, aid, or promote any lockout of employees covered by this Agreement.

Section 18:03: In the event any employees covered by this Agreement, individually or collectively, violate the provisions of this Article and the Union fails to exercise good faith in halting the work interruption, the Union and the employees involved shall be deemed in violation of this section. If the City believes that employees are participating in such activity and it is not sanctioned by the Union, the Union President, or designee, may be relieved from duty, with pay, to take actions in an effort to resolve this issue. Prohibited practice charges regarding strikes, slowdowns, or lockouts may be filed with the City of Hobbs Labor Management Relations Board.

Section 18:04: The parties agree that in the event of a strike or a slowdown the employees who encouraged, supported, instigated, threatened, or participated in the strike or slowdown may be subject to termination of their employment with the City and will be deemed to have provided just cause for termination. The parties agree that a sick-out/blue flu is considered a strike or slowdown.

Section 18:05: The determination as to whether a strike, slowdown, or lockout occurred will be made by the City Labor Management Relations Board whose decision on this matter shall be final, provided however, that any decision of the City Labor Management Relations Board shall be appealable to District Court. A finding that the Union encouraged, threatened, supported, instigated, or participated in a strike or slowdown may result in decertification of the Union for a time period determined by the Board, but no less than one (1) year.

ARTICLE 19 BULLETIN BOARDS

The City agrees to allow the posting of Official Union notices and bulletins on the bulletin board in the police department main hallway, next to the training bulletin board. The City further agrees to allow circulation of official Union mail through the use of the interoffice mailboxes in the squad room. Postings and official interoffice union mail shall not be derogatory or inflammatory toward any City of Hobbs employee or elected official. Violations of this Article will result in loss of the access to the bulletin board and the mailboxes. Such distribution of union mail should be done by an off-duty bargaining unit employee.

ARTICLE 20 PERSONNEL FILES

An employee may review post-hire information in his own personnel file by scheduling an appointment with the Personnel Director for review during the Personnel Office's regular business hours. An employee may also authorize, in writing, another individual to review the

employee's file. Employees will receive a copy of all material prior to being placed in the personnel file, except for routine file maintenance material, pre-employment material, and training certificates.

ARTICLE 21 LEGAL PROTECTION

- A. Should an Employee be sued in a civil action for any allegations arising out of the scope of duties, the City will defend and indemnify that Employee pursuant to the requirements of the New Mexico Tort Claims Act, Section 41-4-1 et. seq., NMSA 1978, as amended.
- B. It is understood by the parties that it is against public policy for the City to defend an Employee in a criminal suit once the Employee is indicted for a criminal act.
- C. Any Employee receiving a summons or other notice of a threatened or pending job-related lawsuit shall, without unreasonable delay, notify the Chief of Police or in his absence, the Deputy Chief. The City shall, within a reasonable time after receipt of any summons or tort claim notice, notify each Employee named as a party in the summons or tort claim notice. This provision shall apply only to summons or tort claim notices filed or received after the effective date of this contract.
- D. Any Employee named in a job-related lawsuit shall have the right at all reasonable times to consult with the City Attorney and/or the Attorney-of-Record defending the City and Employee in order to be informed of the status of the litigation, any settlements offered or contemplated, and any other relevant information regarding the litigation. An Employee named in a lawsuit or tort claim notice shall cooperate fully with the City Attorney and/or the City's Attorney-of-Record in the defense of the City and Employee.
- E. Any Employee who is or may become a party in any job-related lawsuit pursuant to a summons or tort claim notice shall have the right to consult a personal attorney of the Employee's choice regarding such matter. The Employee's personal attorney may, at reasonable times, consult with the City Attorney and/or City's Attorney-of-Record to learn the status of the litigation, any settlements proposed or contemplated, and any other relevant facts of the litigation. Nothing in this section shall be construed as giving the Employee or his personal attorney any authority to act on behalf of the City or its insurer.

ARTICLE 22 INVESTIGATIONS RELATING TO OFFICER INVOLVED SHOOTINGS

Officers will not be compelled to give an official interview as it relates to an officer involved shooting for a minimum of 48 hours from the time of the shooting. The intent of this section is to allow for ample time to secure representation, sleep, rest and reflection by the officer. The

time limit outlined herein is not controlling as to a reasonably necessary statement for initial investigative purposes.

ARTICLE 23 FILLING OF VACANCIES

- A. If the Police Department chooses to promote or transfer a bargaining unit employee from one classification to another classification within the bargaining unit, a notice of the opening shall be posted on the main department bulletin board for no less than ten (10) working days. Any employee who desires to fill the posted position shall submit a letter of intent to the employee's immediate supervisor. An employee of the Department who meets the job qualifications shall be given preference for filling the vacancy.
- B. In the event a qualified employee is on authorized leave of absence during the posting period, the employee may, at the City's discretion, be afforded an opportunity to file a bid for the vacancy upon that employee's return to work, provided the employee filed the bid within three (3) working days after his/her return and provided the position has not been filled.
- C. It is agreed that the City may set or determine the number of employees to be carried in each job classification. It is further agreed that the decision to fill a vacancy is strictly the decision of the City.
- D. Temporary Vacancies and Transfers
 1. Should the City choose to fill a temporary vacancy of a budgeted position within the bargaining unit, it shall be filled by first offering the position to the senior qualified departmental employee. If the senior qualified employee refuses the position, the process shall be repeated with the next senior qualified employee until the position is filled. If no qualified department employee accepts the temporary vacancy, the City may fill the position by assigning any qualified Department employee.
 2. Employees temporarily assigned or transferred to a lower paid job within their own Department or in a different department shall receive their regular rate of pay.
 3. Employees temporarily assigned or transferred to a higher paid job in their own department or in a different department shall be compensated at the higher rate of pay. This subsection shall not apply to an employee who is assigned to work in another classification due to injury, workers' compensation, or voluntary request.
 4. The City shall provide the necessary training to those employees offered the position who have not previously been trained in the assignment.
- E. In order to provide a better work force and inter-departmental working relationship, the City shall continue to provide and maintain selected employee training for the purpose of educating those employees promoted to a new job classification within the bargaining unit.

ARTICLE 24 PERSONNEL REDUCTION

Section 24:01: Lay Off

- A. The City Manager may, for the good of the service, reduce the work force and lay off employees. The order of layoff shall be determined by seniority within the department.
- B. When possible, Employees to be laid off shall be notified of their pending lay off at least ten (10) days in advance of the lay off. Under no circumstances shall an Employee be laid off without having received at least 48 hours prior notice. The Union shall also be notified at the same time.
- C. Employees on lay off may choose to continue to be carried in the group insurance program with the Employee paying the total premium during such periods of lay off.

Section 24:02: Recall

- A. All regular full-time employees laid off within a division shall be placed on a reemployment list for twelve (12) months and shall be returned to work if a vacancy exists within the division in reverse order of layoff, provided the employee is qualified to perform the job to be filled. Any employee so reemployed shall retain rates of accrual based upon previous seniority. Leave balances which were not paid at time of layoff shall be reinstated.
- B. The City shall notify an employee of the recall by registered mail at his last known address. Employees being recalled shall be allowed a maximum of ten (10) days to report to work after receiving notification. If the recalled Employee is not able to return within the ten (10) days because of legal or medical reasons, the City may consider to extend the time necessary for the return of the Employee, on a case-by-case basis. Failure to report for work within the ten (10) day time limit, or the extension thereof, shall be cause for termination.
- C. No Employee shall be denied recall if he is in substantially the same physical condition he was in at the time of lay off.

ARTICLE 25 EQUIPMENT AND UNIFORMS

- A. Equipment Sets
 - 1. All new police officer hires will be provided the following equipment: OC and Holder, holster, pistol, ballistic armor, magazine pouches, and three (3) magazines.
 - 2. All equipment furnished by the City shall be in a serviceable condition and shall be replaced on an as needed basis. A retention level II holster will be lowest level maintained by the City for distribution to employees.
 - 3. Employees who have lost, damaged, or have had City property stolen in the line of duty, regardless of cost, will not be required to reimburse the City unless intent or negligence is proven to the satisfaction of the Police Chief. Employees who have been determined to have intentionally or been contributorily negligent for the lost, damaged, or stolen property may be subject to appropriate disciplinary action and/or replacement of the property.
- B. Ammunition

1. The City shall furnish all qualifying and duty ammunition for all calibers of weapons that each officer is authorized to carry, except for backup weapons and off-duty weapons.
 2. The City will furnish ammunition for qualification practice conducted by the Firearms Training Coordinator.
- C. Clothing Allowance and Uniforms. The City will furnish complete uniform sets to police officers and detention officers and shall reissue all clothing replacements as needed. Detectives will continue to receive a clothing allowance of \$500.00 per year.

ARTICLE 26 COMPLETE AND ENTIRE AGREEMENT

This Agreement specifically describes the entire agreement between the City and the Union. There are no other agreements between the parties and the parties have had the opportunity to negotiate on all items. Any matters not addressed in this Agreement are subject to the City of Hobbs Police Department's Standard Operating Procedures and City of Hobbs Rules and Regulations. Should there exist any conflict between the terms of this Agreement and the Standard Operating Procedures or the City's Rules and Regulations, this Agreement shall control. If a court of competent jurisdiction finds a provision of this Agreement invalid, the remainder of the Agreement shall continue in full force and effect.


All amendments to or modifications of this Agreement must be by written mutual agreement and shall be of no force or effect until ratified and approved by the City of Hobbs and the Union. It is understood and agreed that none of the foregoing rights and responsibilities will be exercised in a manner that is in violation with the provisions of this Agreement.

ARTICLE 27 COPIES OF THE AGREEMENT

The City will publish the Agreement on its website. Bargaining unit employees may request a hardcopy of the Agreement from the Union. It is the responsibility of the City to explain the agreement to the supervisory and management staff. It is the responsibility of the Union to explain the agreement to the bargaining unit employees.

ARTICLE 28 TERM OF AGREEMENT

The term of this Agreement shall continue in full force and effect through June 12, 2020.



Mark Munro, President
Hobbs Police Association

Sam D. Cobb, Mayor
City of Hobbs