



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

Monday, June 18, 2018 - 6:00 p.m.

Sam D. Cobb, Mayor

Marshall R. Newman
Commissioner - District 1

Christopher R. Mills
Commissioner - District 2

Patricia A. Taylor
Commissioner - District 3

Joseph D. Calderón
Commissioner - District 4

Dwayne Penick
Commissioner - District 5

Don R. Gerth
Commissioner - District 6

A G E N D A

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

CALL TO ORDER AND ROLL CALL

INVOCATION AND PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

1. Minutes of the June 4, 2018, Regular Commission Meeting

PROCLAMATIONS AND AWARDS OF MERIT

2. Recognition of Employee Milestone Service Awards for June, 2018:
 - ▶ 5 years - Lucinda Evans, Environmental
 - ▶ 5 years - Eric Berdoza, Hobbs Police Department
 - ▶ 5 years - Alvin Mattocks, Hobbs Police Department
 - ▶ 5 years - Crystal Marin, Hobbs Police Department
 - ▶ 10 years - Monica Garcia-Heidelberg, Hobbs Express
 - ▶ 10 years - Bryan Generotzky, Hobbs Police Department
 - ▶ 20 years - Brian Dunlap, Hobbs Police Department

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.)

3. Resolution No. 6674 - Authorizing Participation in Cooperative Project Agreement Number SP-2-19(962) with the New Mexico Department of Transportation for Crosswalk Improvements and Additional ADA Ramps (Todd Randall, City Engineer)
4. Resolution No. 6675 - Authorizing the Removal of Accounts Receivable for Water, Garbage and Sewer Services that have been Determined to be Uncollectible for the Period of July 1, 2013 through June 30, 2014, in the Amount of \$30,685.58 (Tim Woomeer, Utilities Director)

DISCUSSION

ACTION ITEMS (Ordinances, Resolutions, Public Hearings)

5. Resolution No. 6676 - Approving a Memorandum of Understanding Amending a Collective Bargaining Agreement with the Hobbs Police Officers' Association (Chris McCall, Police Chief)
6. Consideration of Approval of Bid No. 1571-18 to Furnish and Install Air Conditioner Filters in All City Buildings and the CORE and Recommendation to Accept the Bid of Gary's Heating & Air Conditioning in the Amount of \$60,200.00 (Shelia Baker, General Services Director)
7. FINAL ADOPTION: Ordinance No. 1116 - Adopting Right-of-Way Management Regulations (Kevin Robinson, Development Director)
8. FINAL ADOPTION: Ordinance No. 1117 - Amending Chapter 5.04 and Chapter 5.20 of the Hobbs Municipal Code Relating to Mobile Vendors (Kevin Robinson, Development Director)
9. Resolution No. 6677 - Approving a Development Agreement with ABS Homes Concerning the Development of Market Rate Single-Family Housing Located Within the Zia Crossing Subdivision (Kevin Robinson, Development Director)

10. Resolution No. 6678 - Approving a Development Agreement with French Brothers, Inc., Concerning the Development of Market Rate Single-Family Housing Located Within the Zia Crossing Subdivision (*Kevin Robinson, Development Director*)
11. Resolution No. 6679 - Approving a Development Agreement with Habitat for Humanity Concerning the Development of Low Income Single-Family Housing Located Within Block 1 of the Albertson Subdivision (*Kevin Robinson, Development Director*)
12. Resolution No. 6680 - Approving Development Agreements with Property Owners (Hobbs Diesel, Inc., and Big Guns Rat Hole & Foundation Drilling, LLC) Concerning the Projection and Assessment of Public Infrastructures Within the French Drive Right-of-Way Located South of Bender Blvd. (*Kevin Robinson, Development Director*)

COMMENTS BY CITY COMMISSIONERS, CITY MANAGER

13. Next Meeting Date:
 - ▶ City Commission Regular Meeting
Monday, July 2, 2018, at 6:00 p.m.

ADJOURNMENT

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



CITY OF HOBBS

COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 18, 2018

SUBJECT: City Commission Meeting Minutes

DEPT. OF ORIGIN: City Clerk's Office
DATE SUBMITTED: June 13, 2018
SUBMITTED BY: Jan Fletcher, City Clerk

Summary:

The following minutes are submitted for approval:

- ▶ Regular Commission Meeting of June 4, 2018

Fiscal Impact:

Reviewed By: _____
Finance Department

N/A

Attachments:

Minutes as referenced under "Summary".

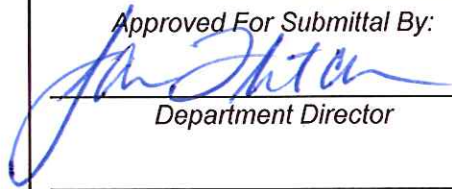
Legal Review:

Approved As To Form: _____
City Attorney

Recommendation:

Motion to approve the minutes as presented.

Approved For Submittal By:



Department Director

City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

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

Minutes of the regular meeting of the Hobbs City Commission held on Monday, June 4, 2018, 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 Joseph D. Calderón
Commissioner Dwayne Penick
Commissioner Don Gerth

Absent: Commissioner Christopher Mills
Commissioner Patricia A. Taylor

Also present: Manny Gomez, Acting City Manager/Fire Chief
Mike Stone, City Attorney
Efren Cortez, Deputy City Attorney
Chris McCall, Police Chief
Brian Dunlap, Deputy Police Chief
Chad Wright, Police Captain
Shane Blevins, Police Captain
Barry Young, Deputy Fire Chief
Mark Ray, Battalion Chief
Chris Davis, Battalion Chief
Ron Roberts, Information Technology Director
Todd Randall, City Engineer
Kevin Robinson, Development Director
Shelia Baker, General Services Director
Tim Woomer, Utilities Director
Toby Spears, Finance Director
Raymond Bonilla, Community Services Director
Doug McDaniel, Parks and Recreation Director
Matt Hughes, Golf Superintendent
Wade Whitehead, Parks Superintendent
Nicholas Goulet, Human Resources Director
Tracy South, Assistant Human Resources Director
Shannon Carter-Arguello, Municipal Court Clerk
Sandy Farrell, Library Director
Ann Betzen, Risk Manager/Executive Assistant
Mollie Maldonado, Deputy City Clerk
Jan Fletcher, City Clerk
23 citizens

Invocation and Pledge of Allegiance

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

Mayor Cobb stated Item No. 4 *Consideration of Approval of Bid No. 1571-18 to Furnish and Install Air Conditioner Filters* and Item No. 11, *Resolution No. 6673 - Approving a Development Agreement with Habitat for Humanity Concerning the Development of Low Income Single-Family Housing Units Located Within the Albertson Block 1 Subdivision* are being removed from tonight's agenda.

Approval of Minutes

Commissioner Calderón moved that the minutes of the regular meeting and work session held on May 21, 2018, be approved as presented. Commissioner Newman seconded the motion and the vote was recorded as follows: Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried.

Proclamations and Awards of Merit

Recognition of Maddox Leadership Institute Graduates: Todd Randall, Barry Young, Chris Davis, Brandon Roberts.

Acting City Manager/Fire Chief Manny Gomez recognized Mr. Todd Randall, City Engineer, Mr. Barry Young, Deputy Fire Chief, and Mr. Brandon Roberts, Fire Captain, Mr. Chris Davis, Battalion Chief, as Maddox Leadership Institute (Institute) Graduates. Acting City Manager/Fire Chief Gomez stated the Maddox Leadership Institute is administered through the University of Georgia.

Mr. Bob Reid of the J. F Maddox Foundation (Foundation) stated the Institute is a grant program provided by the Foundation. Ms. Jennifer Grassham, also with the Foundation, thanked the Commission for recognizing the graduates.

Mr. Randall, Mr. Young, Mr. Roberts and Mr. Davis highlighted the benefits and knowledge learned while attending the Institute and thanked the Commission and Acting City Manager for allowing them to attend.

Public Comments

Ms. Helen Houston invited the Commission and the audience to the Miss Black New Mexico Pageant on Saturday, June 30, 2018, at 6:00 p.m. at the Lea County Event Center.

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

Resolution No. 6668 - Approving the Involvement of the City of Hobbs with the Lea County Legislative Coalition.

Commissioner Gerth seconded the motion and the vote was recorded as follows: Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried. A copy of the resolution and supporting documentation are attached and made a part of these minutes.

Discussion

There were no items for discussion presented at this meeting.

Action Items

Consideration of Approval of RFP No. 501-18 for Municipal Corrosion and Odor Control Services and Recommendation to Accept the Proposal of Evoqua Water Technologies.

Mr. Tim Woomeer, Utilities Director, explained the RFP for Municipal Corrosion and Odor Control Services. He stated the proposal is for performing specialized testing, providing bulk chemical(s), including storage and pumping systems that will effectively control the formation of hydrogen sulfide within the sanitary sewer system. Mr. Woomeer stated an evaluation team has reviewed the proposals and has recommended to award the RFP to Evoqua Water Technologies, LLC, of Sarasota, Florida, being the highest rated proposer. He stated chemicals for odor control are a monthly operating expense and are budgeted from the Enterprise Fund in the amount of \$182,000.000 at an average monthly cost of \$13,333.00.

Commissioner Newman moved to approve the RPF to Evoqua Water Technologies for municipal corrosion and odor control services in the amount of \$182,000.00 (NMGRT included). Commissioner Penick seconded the motion and the vote was recorded as follows: Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried. Copies of the supporting documentation are attached and made a part of these minutes.

Resolution No. 6669 - Authorizing the Purchase of a 2016 Smeal Rescue Pumper from Smeal Fire Apparatus in the Amount of \$480,000 Utilizing an HGAC Contract.

Deputy Fire Chief Barry Young stated the Hobbs Fire Department (HFD) is requesting authorization to purchase a 2016 Smeal Rescue Pumper utilizing an HGAC Contract. He stated this unit would replace a 1997 Pierce Pumper which is currently out-of-service due to mechanical issues and has met the National Fire Protection Association (NFPA) recommendation of 15 years of a front line apparatus and five years as a reserve apparatus. Mr. Young stated with the 1997 Pierce pumper being out-of-service, HFD does not have a reserve apparatus in place which could affect the ISO rating. He stated the purchase cost of the pumper is \$480,000.00 and will be purchased from the Fire Protection Fund which is funding received from the State of New Mexico Fire Marshal's Office.

Following a brief discussion, Commissioner Penick moved to approve Resolution No. 6669 as presented. Commissioner Newman seconded the motion and the vote was recorded as follows: Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and documentation are attached and included herewith.

Resolution No. 6670 - Authorizing an Inter-Governmental Agreement Between the State of New Mexico Motor Vehicle Division and the City of Hobbs for Operation of the Local Motor Vehicle Department.

Mr. Toby Spears, Finance Director, explained the agreement with State of New Mexico Motor Vehicle Division to operate the local Motor Vehicle Department (MVD). He stated the City of Hobbs works as an agent for the State of New Mexico Taxation Revenue Department - State DMV. He stated the total trust funds collected for the State MVD is \$4.25 million. He stated the expenditure for the operational budget for the local MVD is approximately \$576,580.00 with a local revenue offset of approximately \$537,000.00.

A lengthy discussion was held regarding the numbering system for MVD customers and creation of a press release or flyer to better educate the public about the process. Commissioner Calderón moved to approve Resolution No. 6670 as presented. Commissioner Penick seconded the motion and the vote was recorded as follows: Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried. Copies of the supporting documentation are attached and made a part of these minutes.

Resolution No. 6671 - Authorizing FY 18-19 Funding Appropriations for Economic Development and Marketing Entities.

Mr. Mike Stone, City Attorney, explained the funding appropriations for the Economic Development and Marketing Entities for the following agencies for FY 18-19: Economic Development Corporation of Lea County for operations and special projects; Hobbs Chamber of Commerce; Hobbs Hispano Chamber of Commerce; and the New Mexico National Black Chamber of Commerce.

In response to Mayor Cobb's question, Ms. Helen Houston stated the City awarded \$45,000.00 to the New National Black Chamber of Commerce last year which included \$20,000.00 for the Juneteenth Celebration. Commissioner Calderón stated \$45,000.00 is a big increase compared to the \$25,000.00 awarded last year.

Mayor Cobb recommended a separate motion and vote be made for each agency.

Commissioner Calderón moved to approve funding for Economic Development Corporation of Lea County for operations in the amount of \$200,000.00 and special project in the amount of \$50,000.00. Commissioner Newman seconded the motion and the vote was recorded as follows: Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried.

Commissioner Calderón moved to approve funding for the Hobbs Chamber of Commerce in the amount of \$75,000.00. Commissioner Penick seconded the motion and the vote was recorded as follows: Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried.

Commissioner Calderón moved to approve funding for Hobbs Hispano Chamber of Commerce in the amount of \$64,000.00. Commissioner Penick seconded the motion and the vote was recorded as follows: Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. *The motion carried.*

Commissioner Newman moved to approve funding for New National Black Chamber of Commerce in the amount of \$25,000.00 which does not include the Juneteenth Celebration. Commissioner Penick seconded the motion and the vote was recorded as follows: Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried.

Resolution No. 6672 - Authorizing FY 18-19 Funding Appropriation for the Juneteenth Celebration.

Mr. Stone stated that Juneteenth is requesting funds in the amount of \$25,000.00. As earlier discussed, Juneteenth previously requested and was awarded funds last year in the amount of \$20,000.00 under the New Mexico National Black Chamber of Commerce. Mr. Stone stated next year, Juneteenth needs to request funding through

the social service agency process since they are now recognized as a 501(c)(3) organization.

Commissioner Gerth moved to approve Resolution No. 6672 in the funding amount of \$20,000.00 for Juneteenth. Commissioner Newman seconded the motion and the vote was recorded as follows: Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried.

Comments by City Commissioners, City Manager

Mayor Cobb stated the next Commission meeting will be held on Monday, June 18, 2018.

Mr. Stone read his letter of resignation effective June 22, 2018. He thanked the City and staff for their professionalism, friendship and the opportunity to serve the City for the past 10 years. Mr. Stone stated he will continue to serve Lea County as the District Judge in the Fifth District Court.

Commissioner Newman reminded participants at the CORE and the Health Walking Trail to keep the area clean and not litter.

Commissioner Penick wished Mr. Stone success in his new endeavor as District Judge.

Commissioner Calderón expressed appreciation to Mr. Stone for doing a great job as the City Attorney for the City of Hobbs.

Commissioner Gerth stated the CORE is now open. He stated there is a lot of quality of life activities going on in Hobbs. It is a tremendous gift the City offers to make others happy.

Acting City Manager/Fire Chief Gomez presented a two-minute video of the CORE Grand Opening. He thanked the Mayor for the speech given at the Grand Opening. Acting City Manager/Fire Chief Gomez thanked the Department Heads and CORE staff for an outstanding job on the Grand Opening.

Mayor Cobb thanked Mr. Stone for his service with the City and stated he will do a great job as District Judge.

Mayor Cobb stated it was a unique experience attending the CORE Grand Opening. He stated he was very impressed with the CORE staff and the Department Heads in organization of the event. Mayor Cobb stated the CORE will be a great economic development opportunity for the community. He said he heard a lot of kids and happy laughter.

Mayor Cobb reminded everyone to vote tomorrow, June 5, 2018, for the Primary Election.

Adjournment

There being no further discussion or business, Commissioner Calderón moved that the meeting adjourn. Commissioner Newman seconded the motion the vote was recorded as follows: Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried The motion carried. The meeting adjourned at 7:50 p.m.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 18th, 2018

SUBJECT: PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND (COOP) GRANT ADMINISTERED BY NMDOT FOR TRAFFIC SIGNAL IMPROVEMENTS

DEPT. OF ORIGIN: Engineering Department
DATE SUBMITTED: 6-11-18
SUBMITTED BY: Todd Randall, City Engineer

Summary:

The City of Hobbs has received preliminary award of COOP Grant. The grant application was presented to City Commission on March 5th of 2018. The scope of work includes improvements to existing crosswalks located at 1) Dal Paso/Texas and 2) Dal Paso/Sunset, which includes the installation of a Pedestrian Hybrid Beacon to replace existing School Zone crosswalks. The HAWK system (High intensity Activated cross Walk) is used to assist in pedestrian crossings at major arterials with minor street intersections at all times of day rather than only flashing during school zone times.

The received funding is larger than the requested amount and will be used for additional ADA ramps near the intersection and minimal roadway rehabilitation, as needed.

Fiscal Impact:

Reviewed By: 

Finance Department

Local Match: \$ 52,333.33 (25%)
State Grant: \$157,000.00 (75%)
Total Project: \$209,333.33

The award is larger than requested (\$160,000 Total project)

Attachments:

Resolution / Supporting docs / Location Map

Legal Review:

Approved As To Form: 

City Attorney

Recommendation:

Consideration to approve the Resolution for the Mayor to submit participation resolution for 2018/2019 COOP funding to the NMDOT

Approved For Submittal By:



Department Director



City Manager

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COMMISSION ACTION TAKEN**

Resolution No. _____

Continued To: _____

Ordinance No. _____

Referred To: _____

Approved _____

Denied

Other _____

File No. _____

RESOLUTION NO. 6674
CITY OF HOBBS

PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM
ADMINISTERED BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, the City of Hobbs and the New Mexico Department of Transportation enter into a Cooperative Agreement; and

WHEREAS, the total cost of the project will be \$209,333.33 to be funded in proportional share by the parties hereto as follows:

a. New Mexico Department of Transportation's share shall be 75% or \$157,000.00

and

b. The City of Hobbs proportional matching share shall be 25% or \$52,333.33

TOTAL PROJECT COST IS \$209,333.33

The City of Hobbs shall pay all costs, which exceed the total amount of \$209,333.33

Now therefore, be it resolved in official session that the City of Hobbs determines, resolves and orders as follows:

That the project for this Cooperative agreement is adopted and has priority standing.

The agreement terminates on December 31, 2019 and the City of Hobbs 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 the written agreements.

NOW, THEREFORE, BE IT RESOLVED BY GOVERNING BODY OF THE CITY OF HOBBS to enter into Cooperative Agreement Project Number SP-2-19(962), Control Number L200409 with the New Mexico Department of

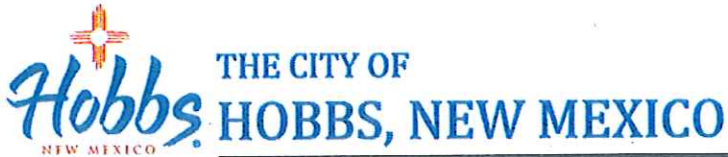
Transportation for LGRF Project for year 2018-2019 to improve the intersections located at 1) Dal Paso / Texas, 2) Dal Paso from Highland to Sunset, including but not limited to the design, reconstruction, pavement rehabilitation and improvement, blading and shaping, drainage improvements, signage, sidewalk / ADA improvements, HAWK system installation within the City of Hobbs in Hobbs, Lea County, New Mexico.

PASSED, ADOPTED AND APPROVED this 18th day of June, 2018.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



Office of the City Manager
200 East Broadway
(575) 397-9206

Hobbs, New Mexico 88240-8302
FAX (575) 397-9227

April 19, 2018

NMDOT – District Two
Sigrid Webb, LGRF Coordinator
4505 W. Second St.
Roswell, NM 88202

RE: Acceptance of funding offered for (FY18/19) Local Government Road Fund Cooperative Program

Dear Ms. Webb:

This letter constitutes acceptance of the funding offer from the Local Government Road Fund (LGRF) FY 18/19. The funding offer is:

| | Entity Share (25%) | State Share (75%) | Project Total |
|-----------------------|--------------------|-------------------|---------------|
| Municipal Cooperative | \$52,333.33 | \$157,000.00 | \$209,333.33 |

The project scope is as follows:

Design, reconstruction, pavement rehabilitation and improvements, blading and shaping, drainage improvements, traffic signal improvements, misc.

Upon approval of funding by the State Transportation Commission, the City of Hobbs City Commissioners will approve the agreement through a resolution committing the matching funds and establishing the priority of this project for construction.

Thank you for your assistance in developing these important public works projects. We look forward to working with you.

Sincerely,
CITY OF HOBBS, NEW MEXICO

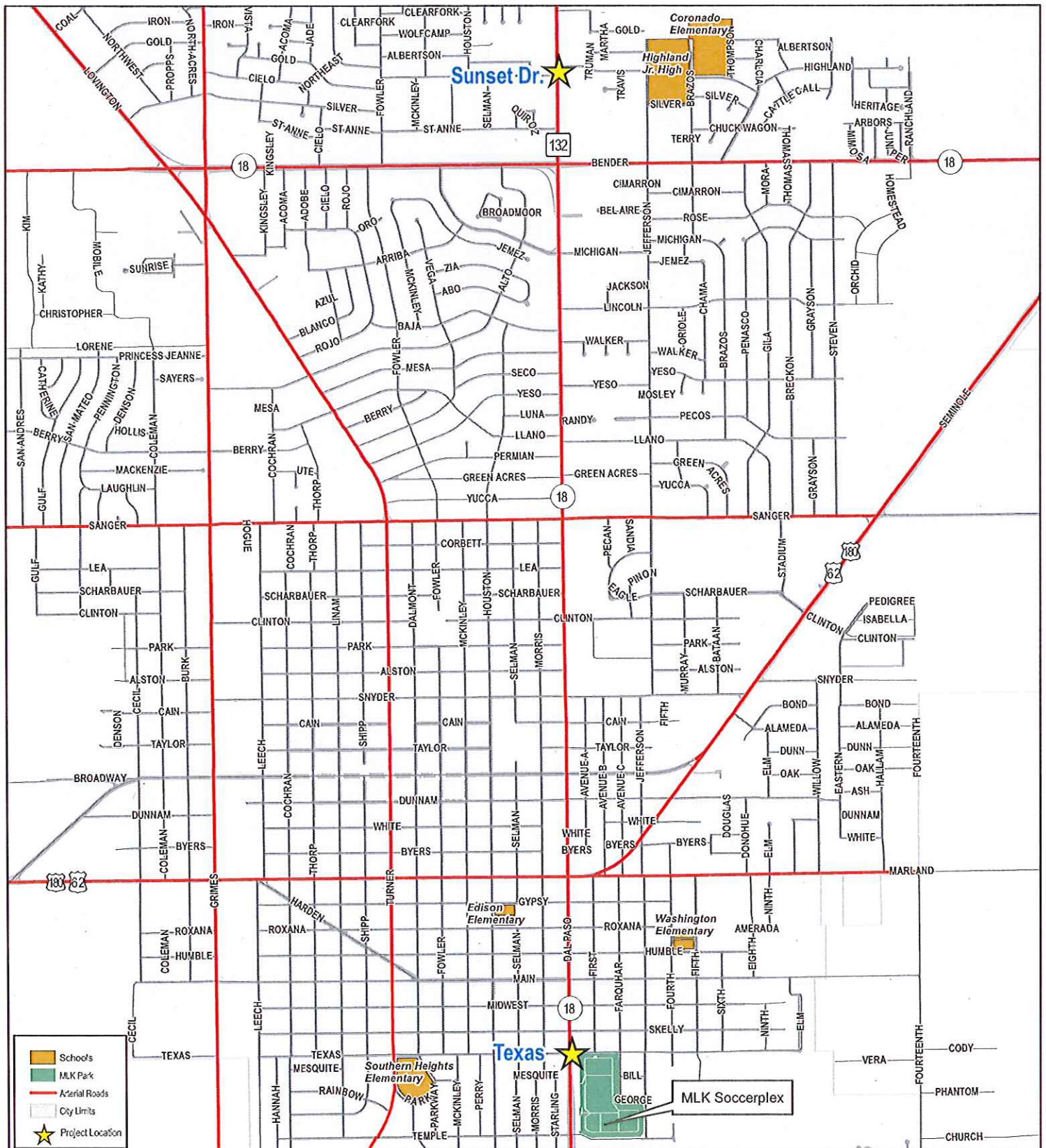


Manny Gomez, Acting City Manager

2018-2019 Local Government Road Fund Program (COOP)

Traffic Signal Improvements Application

Location Map



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CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 18, 2018

SUBJECT: Removal of accounts receivable determined to be uncollectable.

DEPT. OF ORIGIN: Finance Department
DATE SUBMITTED: June 12, 2018
SUBMITTED BY: Tim Woomer, Utilities Director

Summary:
Accounts receivable for the period of July 1, 2013 through June 30, 2014 resulting from water, garbage, and sewer services totaling \$30,685.58 are deemed uncollectable based on efforts made to collect on the account and locate the debtor. In accordance with 3-37-7, NMSA 1978 accounts with balances resulting from activity four years or older are to be removed from the list of accounts receivable to the City of Hobbs.

Fiscal Impact: Reviewed By: [Signature] Finance Department
There would be no fiscal impact on a cash basis of accounting.

Attachments:
Resolution

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

Recommendation:
Approve the resolution to remove the uncollectable accounts from the list of accounts receivable.

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. 6675

A RESOLUTION AUTHORIZING THE REMOVAL OF ACCOUNTS RECEIVABLE
FOR WATER, GARBAGE AND SEWER SERVICES THAT HAVE BEEN
DETERMINED TO BE UNCOLLECTABLE FOR THE PERIOD OF
JULY 1, 2013 THROUGH JUNE 30, 2014

WHEREAS, the City of Hobbs Water Department has determined that certain accounts have been deemed uncollectable based on efforts to collect on accounts and to locate the debtor; and

WHEREAS, according to 3-37-7, NMSA 1978 that accounts with balances resulting from activity that is four years old or older be removed from the list of accounts receivable; and

WHEREAS, for the period of July 1, 2013 through June 30, 2014 the amount of uncollectable accounts total \$30,685.58;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor is hereby authorized and directed to approve the removal of uncollectable accounts for water, garbage and sewer in the amount of \$30,685.58

PASSED, ADOPTED AND APPROVED this 18th day of June 2018.

SAM D. COBB, MAYOR

ATTEST:

JAN FLETCHER, City Clerk

| WRITE OFF DATES | | WRITE OFF |
|----------------------------------|----|------------------|
| 2010 Through 03/31/2006 | \$ | 463,942.24 |
| 2011 Through 03/31/2007 | \$ | 94,781.81 |
| 2012 Through 03/31/2008 | \$ | 103,086.25 |
| 2013 Through 03/31/2009 | \$ | 75,956.97 |
| 2014 Through 12/31/2010 | \$ | 128,840.13 |
| 2015 Through 12/31/2011 | \$ | 51,211.98 |
| 2016 Through 06/30/2012 | \$ | 13,189.16 |
| 2017 Through 06/30/2013 | \$ | 35,252.01 |
| 2018 Through 06/30/2014(pending) | \$ | 30,685.58 |

TOTAL \$ **996,946.13**

| PAYMENTS COLLECTED | YEARLY PAYMENTS | TOTAL PAYMENTS |
|---------------------------|------------------------|-----------------------|
| BEGINNING BALANCE | \$ 996,946.13 | |
| 2009-2010 | \$ (687.94) | |
| 2010-2011 | \$ (7,418.23) | \$ (8,106.17) |
| 2011-2012 | \$ (11,569.09) | \$ (18,987.32) |
| 2012-2013 | \$ (11,124.69) | \$ (30,112.01) |
| 2013-2014 | \$ (5,250.10) | \$ (35,362.11) |
| 2014-2015 | \$ (9,389.92) | \$ (44,752.03) |
| 2015-2016 | \$ (8,362.35) | \$ (53,114.38) |
| 2016-2017 | \$ (11,274.85) | \$ (64,389.23) |
| 2017-2018 | \$ (9,914.50) | \$ (74,303.73) |
| ENDING BALANCE | \$ 921,954.46 | \$ (74,991.67) |



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 18, 2018

SUBJECT: Resolution Approving a Memorandum of Understanding with the Hobbs Police Association

DEPT. OF ORIGIN: Police Department
DATE SUBMITTED: June 14, 2018
SUBMITTED BY: Chris McCall, Chief of Police

Summary:

On June, 15, 2015, The City of Hobbs Commission adopted Resolution No. 6313, which approved the Collective Bargaining Agreement (CBA) between the City of Hobbs and the Hobbs Police Association (Union). The CBA, in part, establishes the rates of pay, hours of work, and other conditions of employment for Union members. The CBA does not contemplate any increases to compensation for bargaining unit employees outside of those specifically outlined in Article 6. An increase to compensation would be a "retained management right" pursuant to Article 2 of the CBA. The City of Hobbs seeks to offer a one-time 5% increase to the current wage of each bargaining unit employee.

Fiscal Impact:

The total cost for the proposed 5% increase for current and open positions is \$338,339.00. If approved this will affect approximately 85 bargaining unit positions. This amount is currently in the Hobbs Police Department budget. No additional funds will be allotted to the budget to accommodate this increase.

Reviewed By: 
Finance Department

Attachments:

Resolution and Contract Addendum

Legal Review:

Approved As To Form: 
City Attorney

Recommendation:

Approve the Resolution approving the Memorandum of Understanding with the Hobbs Police Association.

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. 6676

A RESOLUTION AUTHORIZING THE MAYOR TO
RATIFY A MEMORANDUM OF UNDERSTANDING AMENDING
AN AGREEMENT BETWEEN THE CITY OF HOBBS
AND THE HOBBS POLICE OFFICERS' ASSOCIATION

WHEREAS, the City of Hobbs and the Hobbs Police Officers' Association currently have a collective bargaining agreement valid through June 12, 2020;

WHEREAS, the parties have agreed to modify the collective bargaining agreement to institute a one-time 5% salary increase to the bargaining employee's regular rate of pay effective the first full pay period following ratification of a Memorandum of Understanding;

WHEREAS, the Mayor should execute the Memorandum of Understanding to modify the collective bargaining agreement to institute a one-time 5% salary increase to the bargaining employee's regular rate of pay effective the first full pay period following approval of a Memorandum of Understanding.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be and hereby is authorized to ratify on behalf of the City of Hobbs a Memorandum of Understanding to modify the current collective bargaining agreement. A copy of the Memorandum of Understanding is attached hereto and incorporated herein by reference.

PASSED, ADOPTED AND APPROVED this 18 day of June, 2018.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF HOBBS AND THE
HOBBS POLICE OFFICERS' ASSOCIATION**

This Memorandum of Understanding is made this _____ day of June, 2018, by and between the City of Hobbs (hereinafter "HOBBS") and the Hobbs Police Officers' Association (hereinafter "UNION").

PURPOSE

The purpose of this agreement is to institute a one-time 5% salary increase to the bargaining employee's regular rate of pay effective the first full pay period following ratification of this Memorandum of Understanding. This Memorandum of Understanding shall amend the current collective bargaining agreement ("CBA") between HOBBS and UNION only to the extent as specifically outlined herein. All other provisions of the current CBA shall continue in full force and effect. The parties agree this increase in compensation is a retained management right pursuant to Article 2 of the current CBA.

AMENDMENT

The parties agree HOBBS shall institute a one-time 5% salary increase to the bargaining employee's regular rate of pay effective the first full pay period following ratification of this Memorandum of Understanding. All other terms and conditions in the current CBA shall continue in full force and effect. Should there exist a conflict between the terms of this Memorandum of Understanding and the current CBA, the CBA shall control over any issue not specifically addressed herein.

BY: _____
CITY OF HOBBS
SAM D. COBB, Mayor

Date: _____

Manny Gomez, Acting City Manager

Date: _____

BY: _____
Hobbs Police Officers' Association
Mark Munro, President

Date: _____

Approved as to Form:

By: _____
Michael H. Stone
City Attorney

Date: _____

By: _____
W. T. "Tom" Martin
Attorney for Hobbs Police Officers' Association

Date: _____



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 18, 2018

SUBJECT: AWARD BID No 1571-18 TO FURNISH AND INSTALL AIR CONDITIONER FILTERS IN ALL CITY BUILDINGS AND THE CORE

DEPT. OF ORIGIN: General Services
DATE SUBMITTED: 6-12-18
SUBMITTED BY: Shelia Baker, General Services Director

Summary:

Bids were opened at 3:00 PM on Thursday, May 24, 2018 for the Air Conditioner Filter Replacements for the City of Hobbs. The contract consists of purchasing and replacing filters for thirty-three City owned buildings/facilities. The filters are to be replaced at either quarterly or six-week intervals, as listed in the bid.

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

Table with 2 columns: Company, Total Bid Price. Rows include Jim's Electrical Heat & Air, Gary's Heating & Air Conditioning, and A.G. Custom Sheet Metal, Inc.

Gary's Heating & Air Conditioning is the lowest responsible bidder. In accordance with the above narrative, it is the recommendation of the General Services Department that the bid for furnish and install of air conditioner filters in all City Buildings and the CORE be awarded to Gary's Heating & Air Conditioning, as low bidder in the amount of \$60,200.00 (not including GRT).

Fiscal Impact:

Reviewed By: [Signature] Finance Department

Table with 2 columns: Fiscal Item, Amount. Rows include Contract Amount, NMGRT, Estimated Total Cost, and FY 19 Budget.

The FY 19 budget is for all City of Hobbs HVAC Maintenance, which did not take into consideration the CORE filter replacements, and will require a budget adjustment to increase the budget during the final preliminary budget adjustment.

Attachments: Bid Summary

Legal Review:

Approved As To Form: [Signature] Michael H. Stone City Attorney

Recommendation: Award Bid No. 1571-18 To Furnish and Install Air Conditioner Filters in All City Buildings and the CORE to Gary's Heating & Air Conditioning

Approved For Submittal By:

[Signature] Shelia Baker 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.

Bid Summary

BID/PROPOSAL NO. 1571-18

FURNISH A/C Filter Replacement

| Bidder | <u>Time Electrical</u> | <u>Darry's Heating & A/C</u> | <u>AG Custom Sheet Metal</u> | |
|-------------------------------|----------------------------|----------------------------------|---|--|
| NM Contractors License No. | | | | |
| Bid Bond | | | | |
| Addendum(s) | ✓ | ✓ | ✓ | |
| Bid Form | ✓ | ✓ | ✓ | |
| List of Subcontractors | | | | |
| Resident Bidders Pref No. | ✓ | ✓ | ✓ | |
| Veterans Preference | ✓ | ✓ | ✓ | |
| Campaign Cont. Dis. Form | ✓ | ✓ | ✓ | |
| Non-Collusion Affidavit | ✓ | ✓ | ✓ | |
| Related Party Disclosure Form | ✓ | ✓ | ✓ | |
| Non-Debarment Cert | ✓ | ✓ | ✓ | |
| Alternate 1 | | | | |
| Alternate 2 | | | | |
| Alternate 3 | | | | |
| Alternate 4 | | | | |
| TOTAL | <u>72,225⁴²</u> | <u>60,200⁰⁰</u> | <u>22,109¹²</u> <u>112,923⁴⁰</u> | |



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 18, 2018

SUBJECT: ADOPTION OF AN ORDINANCE TO ADOPT RIGHT OF WAY MANAGEMENT REGULATIONS.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: June 11, 2018
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: The City of Hobbs Planning Board has been reviewing the Codes, rules and regulations in place and needed to allow the City to manage those properties we hold in public trust. Currently Municipal Code Title 12, enacted in 1950 and most recently amended in 2001, allows some authority for the City to manage the public properties so dedicated through the development process. However, as technologies change there is an increasing demand to locate private facilities within, upon, under, and over the public's property. The proposed Ordinance prioritizes placement of facilities within the public's properties being 1) those facilities being owned by the public (street, curb, gutter, water and sewer), 2) those facilities being owned by a franchisee of the public (electric, gas, telephone and cable) and 3) those facilities owned by private entities that are not franchisees of the public. The City of Hobbs Planning Board has been reviewing the proposed Ordinance since October of 2017, the Planning Board held a special meeting on April 25, 2018 and voted 5 to 0 to recommend publication of the proposed Ordinance, the City Commission voted to publish the Ordinance on May 7, 2018.

Fiscal Impact:

Reviewed By: [Signature] Finance Department

No Fiscal impact.

Attachments: Ordinance.

Legal Review:

Approved As To Form: [Signature] City Attorney

Recommendation:

Staff recommends consideration of the Adoption of the Ordinance.

Approved For Submittal By:

[Signature] Department Director
[Signature] City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

ORDINANCE NO. 1116.

AN ORDINANCE TO ADOPT RIGHT OF WAY MANAGEMENT REGULATIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the following Chapter be added to the Hobbs Municipal Code.

Proposed Ordinance

City of Hobbs Municipal Code entitled "Right of Way Management Regulations"

RIGHT OF WAY MANAGEMENT REGULATIONS

| | |
|---|----|
| 12.01.010 Title | 3 |
| 12.01.020 Purpose | 3 |
| 12.01.030 Definitions | 3 |
| 12.01.040 Authority..... | 6 |
| 12.01.050 Reservation of rights; police power..... | 6 |
| 12.01.060 Permit required | 6 |
| 12.01.070 Construction standards | 7 |
| 12.01.080 Placement of facilities | 8 |
| 12.01.090 Relocation of facilities | 10 |
| 12.01.100 Restoration | 10 |
| 12.01.110 ROW Work Permits..... | 11 |
| 12.01.120 Business license | 11 |
| 12.01.160 Administration and permitting to use space within the right of way..... | 11 |
| 12.01.170 Reports and records | 19 |
| 12.01.180 Bond or letter of credit..... | 20 |
| 12.01.190 Insurance | 21 |

| | |
|--------------------------------|----|
| 12.01.200 Enforcement | 21 |
| 12.01.210 Indemnification..... | 22 |
| 12.01.220 Severability | 23 |

12.01.010 Title

This chapter is known and may be cited as the CITY OF HOBBS RIGHT OF WAY MANAGEMENT ORDINANCE.

12.01.020 Purpose

The city commission adopts this chapter to better:

- A. Manage a limited resource to the long term benefit of the public;

- B. Minimize inconvenience to the public occasioned by the emplacement and maintenance of facilities in the public right of ways;

- C. Establish clear and consistent rules governing work performed within and occupations of the public's right of ways.

- D. It is the intent of this ordinance to only address and/or allow the placement of facilities and work within public right of ways not addressed within other sections of the Hobbs Municipal Code.

12.01.030 Definitions

For the purposes of this chapter the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Unless otherwise expressly stated, words not defined herein shall be given the meanings set forth in title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

AFFILIATE: When used in relation to any person, means another person who de facto or de jure owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

CITY: City of Hobbs, New Mexico, and any agency, department, or agent thereof.

CITY MANAGER: The person appointed pursuant to section 6.2 of the City Charter or his/her designee.

CITY ENGINEER: The city engineer or the city engineer's designee.

COMMUNICATIONS FACILITY OR COMMUNICATIONS SYSTEM: Facilities for the provision of "communications services", as that term is defined herein.

COMMUNICATIONS SERVICES: Telecommunications services, interactive computer services, and any other services involving the transmission of information by electronic or optical signals, except that it shall not include cable service as that term is used in the cable communications policy act of 1984, as amended.

COMMISSION: The principal governmental body of the city of Hobbs, New Mexico, its officers, or a representative person or entity as may be designated to act on its behalf.

FACILITY OR FACILITIES: Any tangible asset in the public right of way used to provide drainage, sanitary or storm sewer, gas, electric, water, oil/gas pipelines or communication/information services.

FEDERAL COMMUNICATIONS COMMISSION OR FCC: The federal communications commission or any successor.

FRANCHISE: An authorization granted by the city to an entity to construct, maintain, or emplace facilities generally upon, across, beneath, and over the public rights of way in the city, subject to the terms and conditions specified in a franchise agreement. The term also includes an authorization by the New Mexico PRC or other appropriate authority or as otherwise authorized by law.

FRANCHISE AGREEMENT: The contract entered into between the city and a grantee that sets forth the terms and conditions under which the franchise may be exercised.

GRANTEE: A person that has been granted a franchise by the city or right to operate within Hobbs or such other parties that wish to locate facilities in the right of way.

INFRASTRUCTURE OR INFRASTRUCTURES: to have the same meaning as FACILITY OR FACILITIES.

LICENSEE: A person who has received a license to locate a facility or facilities within the right of way.

OWNER OR OPERATOR OF A FACILITY: Any person which has a possessory interest in such facility or which controls or is responsible for, through any arrangement, the management and operation of such facility.

PERMITTEE: A person who has received a permit to work within the right of way.

PERSON: Any individual, corporation, partnership, association, joint stock company, trust, governmental entity, or any other legal entity, but not the city.

PUBLIC IMPROVEMENT: means, by way of illustration and without limitation, any improvements for roadways and pavements, sidewalks, curbs and gutters, landscaping, street lights, foundations, poles and traffic signal conduits, water mains, sanitary and storm sewers, tunnels, subways, people movers, viaducts, bridges, underpasses, overpasses, public buildings or public structures, or other public installations or improvements which are to be used by the general public.

PUBLIC RIGHT OF WAY: The surface and space above, on, and below any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel, park, parkway, public easement, or right of way within the city in which the city now or hereafter holds any property interest which, consistent with the purposes for which it was dedicated or otherwise acquired, may be used for the purpose of constructing, operating, and maintaining a facility.

TELECOMMUNICATIONS: This term has the meaning ascribed to it in 47 USC section 153(43). **TELECOMMUNICATIONS SERVICE:** This term has the meaning ascribed to it in 47 USC section 153(46).

ROW WORK PERMIT: A permit issued by the city to enter upon the public rights of way at specified times and places to erect, construct, emplace, or otherwise work on facilities.

ROW OCCUPANCY LICENSE: A license granted to a person, outside of a franchise agreement, specifying the location and terms allowing facilities within public right of ways.

12.01.040 Authority

The City Commission, pursuant to the general powers; body politic and corporate powers, Section 3-18-1 NMSA 1978, specifically, to protect generally the property of its municipality and its inhabitants and to preserve peace and order within the municipality, enacts the ordinance codified in this chapter.

12.01.050 Reservation of rights; police power

All rights and privileges granted in a franchise agreement are subject to the police powers of the city and its rights under applicable laws and regulations to exercise its governmental powers to their full extent and to regulate a grantee and the construction, operation and maintenance of the grantee's infrastructures, including, but not limited to, the right to adopt, amend, and enforce ordinances and regulations as the city shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations concerning right of way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions.

Further, nothing in this chapter shall prevent the City from constructing, repairing or replacing sewers; grading, paving, repairing, or replacing any right of way; or constructing, repairing, or replacing any other public work or facility, or from performing work pursuant to weather related activities or response to natural disasters. Nothing shall prevent the City from altering the layout or design of a right of way for public safety reasons.

12.01.060 Permit required

- A. No person shall install, erect, hang, lay, bury, draw, emplace, construct, reconstruct, maintain, or operate any facility upon, across, beneath, or over any public right of way in the city or other city property without first obtaining from the city the necessary permit(s)\license(s) required under local, state or federal law.
- B. An owner or operator of facilities may be required to hold different permits\licenses for its use of the public rights of way to provide different services. For example, and without limitation, the owner or operator of facilities that provides both cable service and wireless internet service must obtain both a franchise agreement and any permit(s)\license(s) required for facilities to provide wireless internet service.

12.01.070 Construction standards

- A. Compliance with Regulations; Safety Practices: Construction, operation, maintenance, and repair of facilities shall be in accordance with all applicable law and regulation, and with sound industry practice. All safety practices required by law shall be used during construction, maintenance, and repair of facilities.
- B. Excavations: No holder of any work permit for any facility shall dig, trench, or otherwise excavate in the public right of way without complying with the provisions of the New Mexico one call system.
- C. Prevention Of Failures And Accidents: An owner or operator shall at all times employ at least ordinary care and shall install and maintain using commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.
- D. Most Stringent Standards Apply: In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as that standard, if followed, would result in a system that could not meet requirements of federal, state or local law, or is expressly preempted by other such standards).
- E. Construction Schedule: Every owner or operator shall, at least thirty (30) days prior to commencing significant construction activity (including a significant rebuild, upgrade, or repair to existing facilities)—emergencies excepted - upon, across, beneath, or over any public right of way in the city or other city property, strive to provide to the city in writing the date on which the owner or operator anticipates it will begin construction and the approximate length of time required for such construction. This timeframe represents a preference only.
- F. Coordination Of Construction With City: Prior to the erection, construction, upgrade, or rebuild of any facilities in the public right of way, the owner or operator of such facilities shall first submit to the city for written approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required by the city, together with maps and plans indicating the proposed location of all such facilities. The owner or operator shall provide the best information it has in such reasonable format as may be specified by the city engineer for the city's planning function. No such erection or construction shall be commenced by any person until approval therefor has been received from the city. At the time of such approval, the city shall inform the

grantee whether the reports and other information described by subsection 12.01.170 of this chapter shall be required with respect to the approved construction.

- G. **Coordination of Construction With Third Parties:** Developers or other parties planning the construction or opening of streets in the city shall provide reasonable notice to the city and to the owners or operators of facilities subject to this chapter so that joint trenching and joint emplacement of facilities may be conducted wherever practicable. Such owners and operators shall similarly provide notice to each other and to any relevant developers, for the same purpose. The city shall maintain a list of owners and operators of facilities subject to this chapter for reference by other parties.
- H. **City Engineer Stakeholder Meetings:** The city engineer may establish recurring meetings of businesses who make use of the right of way for their facilities and contractors who perform such work to discuss ongoing and upcoming projects to further the efforts of coordinating projects within the right of way.
- I. **Contractors and Subcontractors:** Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of facilities in the public right of way must be properly licensed and insured under laws of the state and all applicable local ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as an owner or operator of the facility would have if the work were performed by the owner operator. An owner or operator shall be responsible for all activities carried out by its contractors, subcontractors and employees at the owner's or operator's request.
- J. **Publicizing Proposed Construction Work:** Except in the case of an emergency, before commencing a project (for which Franchisee, or its contractor, has pulled the applicable permit) in Right of way upon which residential property is located or is abutting thereto, Franchisee shall notify such abutting residents at least two (2) days prior to the date that Franchisee proposes to commence construction. Notice shall be in writing by one of the following methods: in person, by posted notice on the Right of way where the proposed project is scheduled to be built (which notice is to be capable of being read by passing motorists), by door hanger, or by mail, with a description of the proposed project and the name of Franchisee and its telephone number.

12.01.080 Placement of facilities

- A. All facilities shall be installed and located to minimize interference with the rights and

convenience of other property owners.

- B. An owner or operator of a facility shall not place facilities, equipment, or fixtures where they will interfere with any other facilities, or obstruct or hinder in any manner the various utilities serving the residents of the city or their use of any public right of ways.
- C. The city may reasonably require the placement of facilities to ensure that users of the public right of ways do not interfere with each other and that the public right of ways are used safely and efficiently. For example, in the case of an owner or operator of a fiber optic network that is not a franchisee, the city engineer may order extra ducts for fiber optic cable be installed for use by the city or other grantees or permittees when, in the opinion of the city engineer, the subject right of way is too congested due to existing facilities and space limitations or will likely be used by at least four other entities including the city for running fiber optic cable. Such company shall then certify to the city engineer the additional cost of said installation per linear foot which the city shall pay. Other future users of the surplus duct will be charged an upfront, one-time fee to locate in said duct to recover a proportional share of the city's upfront and carrying costs as calculated by the city engineer. This fee will be in addition to, and not in lieu of, any recurring, or one-time fee charged by city for location within the right of way.
- D. Every grantee or licensee that ceases operating or maintaining any facility shall, upon written request of the city within one (1) year of the cessation of maintenance of such facility, promptly remove it. Should the grantee or permittee neglect, refuse, or fail to remove such facility, the city may remove the facility at the expense of the grantee or licensee. The obligation to remove shall survive the termination of the franchise or permit for a period of two (2) years and shall be bonded. The city engineer may determine that it is in the best interests of the city to allow the facility to be wholly or partially abandoned in place.
- E. No owner or operator of a facility shall erect new aerial facilities, other than to repair existing facilities, in or on a public right of way in which both electric and telephone service providers have placed their lines underground, or within a subdivision which was originally developed to provide underground services.
- F. A grantee or licensee shall use, with the owner's permission, existing poles, conduits and other facilities whenever feasible. A grantee or licensee may not erect poles, conduits, or other facilities in public right of way without the express permission of the city. Copies of agreements for use of conduits or other facilities shall be filed with the city upon city request.
- G. The city engineer may develop and institute a standardized cross-section location protocol for new or reconstructed right of way.

12.01.090 Relocation of facilities

The owner or operator of a facility on or within the public right of way shall, at its own expense, upon written notice from the city reasonably in advance, promptly relocate any facility located on or within the public right of way as the city may deem necessary or appropriate to facilitate the realignment, reconstruction, improvement or repair of public streets, sidewalks, curbs, drains, sewers, and public improvements of any sort; provided, however, that an operator may be permitted to abandon any property in place with the written consent of the city. This subsection does not apply to relocations covered by 12.01.100(C).

12.01.100 Restoration

- A. Unless governed contractually between the owner or operator and its customer, if an owner or operator of a facility disturbs a pavement, sidewalk, driveway or other surfacing, or landscaping, or other structure, either on private property or in public right of way, the owner or operator shall replace and restore all pavement, sidewalk, driveway or other surfacing, or landscaping disturbed, in substantially the same condition and in a good, workmanlike, timely manner, in accordance with any standards for such work set by the city. Such restoration shall be undertaken within no more than ten (10) days after the damage is incurred, weather permitting, and shall be completed as soon as reasonably possible thereafter. The owner or operator shall guarantee and maintain restoration of a public improvement for at least one year against defective materials or workmanship.

- B. In the event an owner or operator of a facility fails to complete any work required for the protection or restoration of the public right of way, or any other work required by city law or ordinance, within the time specified by and to the reasonable satisfaction of the city, the city, following notice and an opportunity to cure, may cause such work to be done, and the owner or operator of a facility shall reimburse the city the cost thereof within thirty (30) days after receipt of an itemized list of such costs; or the city may recover such costs through the security fund provided by an owner or operator of a facility, pursuant to the procedures for recovery from the security fund specified in the owner's or operator's franchise agreement or license.

- C. Any and all public right of way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or reconstruction of a system shall be promptly repaired by the owner or operator of a facility.

12.01.110 ROW Work Permits

- A. Unless otherwise provided by law, franchise, city authorization or emergency circumstances, no person shall install, erect, hang, lay, excavate, bury, draw, emplace, construct, or reconstruct any facility upon, across, beneath, or over any public right of way in the city, or enter into the public right of way to work on a facility, without first obtaining a ROW Work Permit therefor from the city. Notwithstanding the foregoing, under no provision in this chapter shall any ROW Work Permit or other approval from the city be required to install, construct, repair, maintain or replace any Franchisee service drop.
- B. Denial. The city engineer may deny a ROW Work Permit for failure to meet the requirements of this chapter, failure to meet monetary obligations to the city or if such denial is necessary to protect the health, safety and welfare or the right of way and its current use. Failure to meet the requirements includes, but is not limited to, striking or damaging another facility within the right of way.
- C. Large Capital Programs. The city engineer may develop and institute a special streamlined permit and inspection process for large capital programs by mutual agreement with the applicant or applicants in the case of a joint project after receiving authorization from the city manager.
- D. The city engineer may issue a stop work order to anyone failing to secure the proper permit or for not following the ordinances or city standards.

12.01.120 Business license

A Franchise or ROW Occupancy License under this chapter does not render unnecessary or take the place of any generally applicable business license that may be required by the city for the privilege of transacting and carrying on a business within the city generally.

12.01.160 Administration and permitting to use space within the right of way

The city engineer shall oversee the following administrative functions:

- A. Collect, or cause to be collected, any applicable fees from all owners or operators of facilities using public right of way in the city;
- B. The City Commission shall approve by resolution the amount and formula for a

right of way occupancy fees;

- C. Be responsible for the continuing enforcement of all terms and conditions of city-granted franchises as such pertains to the occupation of public right of ways.

The city engineer shall oversee permitting as follows:

- A. The city shall not grant, issue, or enter into any franchise or occupation license that grants or allows exclusive use or occupancy of the right of way.
- B. The city shall not grant or issue a ROW Occupation License for any new non-franchisee facility, proposed to be emplaced after the adoption of this code, having a height in excess of 40' as measured vertically from the adjacent roadway centerline.
- C. An application for a Franchise, ROW Occupation License or ROW Work Permit shall be filed with the city engineer on a form developed and provided by the city engineer.

Authority to issue Permits\Licenses; form of Permits\Licenses and term.

- A. Permits\Licenses required by this chapter shall be issued by the city engineer. The city engineer shall review each application and shall issue each permit\license which he or she determines to be in compliance with the requirements of this chapter and any other applicable local, state, or federal requirements. In issuing a permit, the city engineer may require a change in the proposed location of the licensee's infrastructures where necessary to avoid interference with other infrastructures within the public right of way.
- B. Permits\Licenses issued pursuant to this chapter shall be in writing and shall be executed by the permittee\licensee. The form of permits\licenses to be issued shall be uniform, but shall be subject to periodic review and modification. When available, the city engineer may implement an electronic or digital permit\license system.
- C. Limit on term of franchises; limit on initial or renewal term of licenses.
 - (1) No franchise for use of the public right of way shall be granted for a term in excess of 10 years.
 - (2) No ROW Occupation License granted by the city engineer shall be issued or renewed for a term in excess of 10 years.

D. Existing Facilities. Non-franchisee facilities emplaced and existing prior to the adoption of this Ordinance located within a previously granted easement are exempt from the issuance of a license.

E. Application for initial issuance of a license; registration required.

A person desiring to obtain a ROW Occupancy License as required in this code shall make application for a license for such use and occupancy as provided in this chapter, and shall pay an application fee for initial issuance of the license. The application fee for initial issuance of a license and any future changes thereto shall be effective upon its inclusion in a schedule of fees adopted by the city commission by resolution such fee shall be based in part upon the administrative costs of processing the license. The application for initial issuance of a ROW Occupancy License shall be filed with the city engineer not less than 60 days prior to the proposed effective date of the license and shall be filed upon a form provided by the city for that purpose. The application shall include, at a minimum, the following information:

- (1) The name, address and telephone number of the applicant.
- (2) The name, address and telephone number of a responsible person whom the city may notify or contact at any time or in case of emergency concerning the infrastructures.
- (3) A statement of the purpose for the infrastructures proposed for installation in the public right of way, the type of service it will provide, and the intended customers\person which it will serve.
- (4) Any additional information which the city engineer in his or her discretion may require.

F. Issuance and renewal of license; license revocation and cancellation.

To obtain renewal of a ROW Occupancy License, the licensee shall file a renewal application with the city engineer on the form provided by the city and pay an application fee for renewal of the license. The renewal application fee and any future changes thereto shall be effective upon its inclusion in a schedule of fees adopted by the city commission by resolution. The renewal application shall be filed with the city engineer not less than 180 days prior to the expiration of the initial or any renewal term of the license. Upon receipt of the renewal application, the city engineer shall conduct a review of the licensee and the licensee's prior use of the public right of way to determine the licensee's continued compliance with the requirements as stated herein. If

on the basis of such review the city engineer determines that the licensee and the licensee's prior use of the public right of way complies with all requirements, the city engineer may renew the permit for an additional term of up to 10 years.

If on the basis of such review the city engineer determines that the licensee and the licensee's use of public right of way do not comply with one or more of the requirements as herein stated, the city engineer shall give notice of intent not to renew the license. If a licensee holds multiple licenses for use or occupancy of various right of ways within the city for the same or similar purpose, the licensee shall be required to renew all such licenses under a single license at such time as the earliest issued license expires.

In determining the length of the term of an initial or a renewal license, the city engineer shall take into consideration the likelihood that the city will require the use of the specific portion of the subject right of way for municipal purposes or that such use of the subject right of way will unduly burden the city or the public in its use of the subject right of way during the proposed term of the license and the life cycle of the facilities to be deployed. A license shall not be issued or renewed if the city engineer determines that any of the following conditions exist in the right of way proposed for permitting:

- (1) There is insufficient space in the right of way to accommodate the proposed use, given the other existing uses thereof;
- (2) The proposed facilities would interfere with or conflict with existing or planned city infrastructures or Franchisees infrastructures located or planned to be located in the right-of- way;
- (3) Such use is incompatible with adjacent public or private uses of that right of way;
- (4) Such use would involve an unacceptably high frequency of repair or maintenance to the facility thereby requiring excessive excavation in or obstruction of the right of way; or
- (5) The construction or installation of such facility would interfere with a public improvement undertaken or to be undertaken by the city or with an

economic development project in which the city has an interest or investment.

If during the term of any license the city engineer determines that the license should be revoked due to the licensee's failure to comply with any of the requirements herein stated, the city engineer shall give notice of intent to revoke such license.

- G. The following shall constitute grounds for refusal to issue or renew a ROW Occpancy License, or for denial or revocation of a ROW Work Permit:

The licensee's\permittee's failure to observe or comply with any of the following:

- (1) The licensee's\permittee's use or prior use of public right of way has been conducted in full and timely compliance with all laws and regulations applicable thereto, and the licensee\permittee has complied fully and in a timely manner with the requirements of any previously issued license\permit, and with the orders or instructions of city officials issued pursuant to this chapter; or
- (2) The licensee\permittee is current in the payment of license\permit fees, if applicable, and the licensee\permittee has made such payments fully and when due.
- (3) The licensee's\permittee's commission of any of the following acts:
 - (4) The licensee\permittee has made a misleading statement or a material misrepresentation in connection with an application for initial issuance or renewal of a license\permit, in connection with its registration of its use of the public right of way or in connection with its use of public right of ways.
 - (5) The licensee\permittee has transferred its equipment, its business, or its permit to another person or has made a change in use of its equipment, without giving the city notice thereof and obtaining city consent thereto.
 - (6) Striking or damaging another facility within the right of way.
 - (7) The city engineer shall give notice of intent to cancel such license\permit if during the term of any license\permit the city engineer determines that:

- a. The licensee's\permittee's continued use of the public right of way will unduly burden the city or the public in its use of that property;
- b. The public right of way for which the license\permit was issued will be required for municipal purposes during the term of the license\permit;
- c. The licensee's\permittee's equipment at a particular location will interfere with:
 - i. A present or future city use of the right of way;
 - ii. A public improvement undertaken or to be undertaken by the city;
 - iii. An economic development project in which the city has an interest or investment; or
 - iv. The public's safety or convenience in using the right of way for ordinary travel; or
 - v. The public health, safety and welfare requires it.

Notice of intent not to renew a license\permit for use of the public right of way shall be given to the licensee\permittee, either by certified mail, return receipt requested, or by actual service or delivery thereof, which notice shall be given not more than 90 days after submission of the renewal application. Notice of intent to revoke or cancel a license\permit shall also be given to the licensee\permittee in the manner provided above. The notice shall set forth the grounds for refusal to issue or renew or for revocation or cancellation and shall inform the licensee\permittee of the right to an appeal hearing upon request. Such request for hearing shall be filed in writing with the Planning Department, and the hearing shall be scheduled and held by the Planning Board at their next regularly scheduled public meeting. At the hearing, the licensee\permittee shall have the burden of establishing that the grounds asserted in the notice do not exist. Upon the effective date of revocation or cancellation as provided in the city engineer's notice thereof, or upon the effective date specified in the city engineer's written

decision upon the licensee's\permittee's appeal, the licensee\permittee shall be required to cease its use and occupancy of the right of way or to remove or relocate its equipment therefrom, as provided in the notice or decision. Equipment not removed or relocated from the right of way as required in such notice or order shall be considered a nuisance and may be removed, relocated, or taken possession of by the city, at the licensee's\permittee's expense. Except in emergency circumstances, the requirement to relocate, remove, or cease use of equipment shall be suspended during the pendency of any appeal taken by a licensee\permittee.

If a license\permit is refused or cancelled upon the basis that the subject right of way is or will be required for municipal purposes, the applicant or licensee\permittee shall not be entitled to an appeal. However, in that event, the licensee shall be entitled to a partial refund of the annual fee already paid, such refund to be computed on the basis of 1/12 of the required annual fee multiplied by the number of unexpired whole months of the year remaining in the license term. In all other cases where a license is not issued or renewed or is revoked, no refund of any portion of the required annual fee shall be paid to the licensee.

Notwithstanding the notice and hearing requirements above, the city engineer may, in emergency circumstances, order the immediate relocation or removal of equipment from the right of way.

Regardless of any other provision, a refusal, cancellation or revocation may be appealed under the applicable processes specified in local, state or federal law.

Failure to secure, renew or comply. Any person who fails to secure or renew a franchise or license\permit required under this chapter or any franchisee or licensee who fails to comply with the requirements of the respective franchise or license, or this chapter, or with any other applicable legal requirements shall, upon notification of such violation by the city engineer, immediately act either to abate the violation or to cease its use and occupancy of the right of way and remove its equipment or system from the right of way.

- H. Transfer of franchise, license, lease, business, or equipment without city's consent; change in use of equipment without city's consent.

A license issued pursuant to this chapter shall not be transferred to any other person without the prior written notice to the city engineer. A licensee shall not transfer the license, the business, or the equipment in the right of way to another person without giving the city engineer 90 days' prior written notice of such proposed transfer. In such notice, the licensee shall clearly identify the proposed transferee, giving the name and address of a representative of the transferee who is authorized to discuss and provide information to the city regarding the transfer.

A franchisee or licensee shall not change the use of its equipment without giving the city 90 days' prior written notice of such proposed change in use. In such notice, the franchisee or licensee shall clearly and completely set forth the proposed change in use of equipment, how it would be accomplished, including any excavations required to accomplish such change, and projections as to the future maintenance implications of such change in use. Any proposed change in use of franchisee's or licensee's equipment shall require the prior approval of the city engineer. Such approval may be withheld if the city engineer determines that the proposed use of the equipment at that location would be incompatible with or would likely damage or endanger other uses of the right of way, would involve a higher level of maintenance activities than the present use, would involve more street excavation or greater traffic disruption than the present use, or would be otherwise inappropriate.

I. Amendment to license\permit.

If a licensee\permittee with a current license\permit issued pursuant to this chapter proposes to expand, reduce, relocate or modify any portion of its facilities or scope of work within public right of way, the licensee\permittee shall file an application for an amendment to the current license\permit with the city engineer, shall pay the administrative application fee, and shall further comply with all other applicable requirements of this chapter. An application for an amendment to a current license\permit shall include relevant new information of the type required in connection with the initial application for a license\permit. If approved, the amended license\permit shall be issued by the city engineer in the same manner as the original license\permit. However, if the amendment involves only one or more new hook-on connections to the permitted utility system and if the new connections will be made entirely through the permittee's existing underground utility conduit or ducts so as not to require any excavation in the public right of way or by means of overhead wires or cables between existing utility poles, the licensee shall not be required to pay an additional administrative fee as part of the application for amendment.

J. Duties of licensee\permittee.

The licensee\permittee shall be responsible for repairing or reimbursing other licensed or franchised utilities or other persons or entities lawfully using the right of way for any damage to their property caused by negligence of the licensee\permittee or its agents, employees or contractors in connection with the installation, construction, reconstruction, repair, operation, disconnection or removal of the licensee's\permittee's equipment or system.

12.01.170 Reports and records

Upon request, the city shall have the right to inspect and analyze at any time during normal business hours at the nearest office of an owner or operator of facilities, or, if such office is not in the city, then at such other location in the city as the city may reasonably designate, all books, receipts, maps, records, codes, programs, and disks or other storage media and other like material reasonably appropriate in order to monitor compliance with the terms of this chapter or applicable law. This includes not only the books and records directly relevant to enforcement of this chapter or the owner's or operator's franchise agreement that are held by the operator, but any books and records held by an affiliate, or any contractor, subcontractor or any person holding any form of management contract for the facilities in the public right of way to the extent such books or records relate to the facilities. An owner or operator is responsible for collecting the information and producing it at a location as specified above. The city shall provide the owner or operator with advance notice stating the types of records sought to be reviewed and the reason for such review.

Contacts and maps: Unless this requirement is waived in whole or in part in writing by the city each owner or operator of facilities in the public right of way shall maintain and produce or allow access upon request the following items:

An organizational chart with contact information for the portion of the organization most relevant to its operations within the right of way.

Detailed, updated electronic maps, in a format specified by the city, depicting the location of all facilities located in public right of way.

Construction Updates: Unless this requirement is waived in whole or in part by the city, the owner or operator of facilities in the public right of way shall deliver or make available upon request the following updates to the city:

Monthly construction reports to the city for any major construction undertaken in the public right of way until such construction is complete. The owner or operator must submit updated as built system design maps to the city, or make them available for inspection, with notice of their availability, within thirty (30) days of the completion of system construction in any geographic area. These maps shall be developed on the basis of post-construction inspection by the owner or operator and construction personnel. Any departures from design must be indicated on the as built maps.

Records Required: An owner or operator of facilities in the public right of way shall at all times maintain:

A full and complete set of plans, records, and "as built" maps showing the exact location of all equipment installed or in use in the city, exclusive of customer service drops.

A file showing its plan and timetable for future major construction of the facilities.

Remote Site Visit: If any requested records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then an owner or operator of facilities in the public right of way may request that the inspection take place at some other location; provided, that the owner or operator must pay reasonable travel expenses incurred by the city in inspecting those documents or having those documents inspected by its designee, as charges incidental to the enforcing of the owner's or operator's franchise or other authorization for use of the public right of way.

12.01.180 Bond or letter of credit

No person shall install, erect, hang, lay, bury, draw, emplace, construct, reconstruct, maintain, or operate any facility upon, across, beneath, or over any public right of way in the city or other city property until the owner or operator shall have filed with the City Clerk a bond and/or letter of credit, in a form acceptable to the city, running in favor of the city, to guarantee the obligations of the owner or operator under this chapter and applicable law. The amount of the bond or letter of credit shall be as specified by the City Manager. Cost factors to be considered will be the scope of services provided by the contractor, the impact on the public right of way,

the reasonable cost of removal of the facilities and the cost of restoration of any affected public right of way or other property.

12.01.190 Insurance

An owner or operator shall maintain insurance covering its facilities and operations in the public right of way, naming the City as additionally insured, as specified in a specific provision of this chapter or in its franchise agreement or license. Upon request, proof of such insurance shall be submitted to the city engineer prior to beginning any work.

12.01.200 Enforcement

Penalties: For violation of provisions of this chapter the city may seek fines in the amounts of \$100 for a first offense within a year, \$200 for a second offense within a year, and \$300 for a third or subsequent offense within a year. The penalties shall be assessable against an owner or operator and shall be chargeable to its performance bond and/or letter of credit, at the city's discretion.

Injunctive Relief: In addition to any other remedies hereunder, the city may seek an injunction to mitigate or terminate a violation, or employ any other remedy available at law or equity, including, but not limited to, imposition of penalties.

Timely Performance or Compliance: Any failure of the city to insist on timely performance or compliance by any person shall not constitute a waiver of the city's right to later insist on timely performance or compliance by that person or any other person.

Termination On Account Of Certain Assignments or Appointments:

To the extent not prohibited by the United States bankruptcy code, a franchise under this chapter shall terminate automatically by force of law one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee (including a debtor in possession in a reorganization) to take over the business of the owner or operator, whether in bankruptcy or under a state law proceeding; provided, however, that such franchise shall not so terminate if, within that one hundred twenty (120) day period:

Such assignment, receivership or trusteeship has been vacated; or

Such assignee, receiver, or trustee has cured any defaults and has fully complied with the terms and conditions of this chapter and any applicable agreement and has executed an agreement, approved by any court having jurisdiction, under which it assumes and agrees to be bound by

the terms and conditions of this chapter and any applicable agreement.

In the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of an owner or operator of facilities in the public right of way, its franchise under this chapter shall automatically terminate thirty (30) calendar days after such foreclosure or sale, unless:

The city has approved a transfer to the successful bidder; and

The successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions binding its predecessor. Any mortgage, pledge or lease of facilities in the public right of way shall be subject and subordinate to the rights of the city under this chapter any applicable agreement, and other applicable law.

If a franchise under this chapter is terminated for any reason, the city may, at its discretion, require the grantee or permittee to remove its facilities from the public right of way and to restore the public right of way to their prior condition at the owner's or operator's expense, or that of their sureties. If an owner or operator whose franchise has been terminated fails, after reasonable notice from the city, to remove its facilities from the public right of way, such facilities shall be deemed abandoned and ownership forfeited to the city.

Remedies Cumulative: All remedies specified in this chapter are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve an operator of its obligations to comply with this chapter. In exercising any remedy specified in this chapter, the city shall comply with any substantive and procedural requirements for exercising such remedies in an owner's or operator's franchise agreement, license or other authorization.

Reduce or Waive Penalties: The City Manager may reduce or waive any of the above listed penalties for good cause shown.

12.01.210 Indemnification

Any indemnity provided shall include, but not be limited to, the city's reasonable attorney fees incurred in defending against any such claim, suit, or proceeding. Recovery by the city of any amounts under insurance, the performance bond or letter of credit, or otherwise shall not limit in any way a person's duty to indemnify the city, nor shall such recovery relieve a person of its obligations pursuant to a franchise or in any respect prevent the city from exercising any other right or remedy it may have.

12.01.220 Severability

If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the city and shall thereafter be binding on owners and operators.

SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason illegal or void, then the lawful provisions of this ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

EFFECTIVE DATE. This ordinance shall be in full force and effective after its final passage and publication as by law provided.

PASSED, ADOPTED AND APPROVED this 18 day of JUNE 2018

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 18, 2018

SUBJECT: ADOPTION OF AN ORDINANCE TO AMEND CHAPTER 5.04 AND CHAPTER 5.20 OF THE CITY OF HOBBS MUNICIPAL CODE IN THEIR ENTIRETY.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: June 11, 2018
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: The City of Hobbs Planning Board has been reviewing the implementation of policy, procedures and regulations in regard to the Mobile Vending Industry since May of 2015. Currently there are municipal codes in place governing the permitting of these types of businesses but upon review the Planning Board determined that additional regulations were required to protect the health and safety of the public. A proposed Ordinance was approved by the City of Hobbs Planning Board on June 16, 2015 and presented to the Commission as a discussion item on July 6, 2015. The Commission requested additional public meetings to be held regarding this issue. An additional 8 public meetings were held on this issue including special meetings held after 5:00 p.m. to allow for public input from Mobile Vendors. While a more comprehensive Ordinance was originally proposed offering specificity on location and basic operation of a Mobile Vendor business, the Planning Board ultimately determined that a more concise alternative would be to amend our current municipal code to better reflect the community's desires. The addition of 2 paragraphs within MC Chapter 5.04 (Business Registration Ordinance) and 2 paragraphs within MC Chapter 5.20 (Temporary Vendors) offers the most basic guidance to Mobile Vendors as to locations. The attached Amendment to MC Chapter 5.04 & 5.20 was recommended for adoption by the City of Hobbs Planning Board at the regular meeting held on December 15, 2015 by a vote of 6 to 0, and was also a discussion item on the March 15, 2016 regular meeting and the March 20, 2018 regular meeting, the City Commission voted to publish the Ordinance on May 7, 2018.

Fiscal Impact:

Reviewed By: [Signature] Finance Department

No Fiscal impact.

Attachments: Ordinance.

Legal Review:

Approved As To Form: [Signature] City Attorney

Recommendation:

Staff recommends consideration of the Adoption of the Ordinance Amending Chapter 5.04 and Chapter 5.20 of the Municipal Code in their entirety.

Approved For Submittal By:

[Signature] Department Director
[Signature] City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

ORDINANCE NO. 1117.

AN ORDINANCE TO AMEND CHAPTER 5.04 AND CHAPTER 5.20 OF THE HOBBS MUNICIPAL CODE IN THEIR ENTIRETY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the following Chapters of the Hobbs Municipal Code be and is hereby amended in their entirety.

Chapter 5.04 - BUSINESS REGISTRATION

FOOTNOTE(S):

--- (1) ---

Note—Prior history: Prior code §§ 14-11—14-19, 21—21.1 and Ord. 899.

5.04.010 - Short title.

This chapter may be cited as the "Business Registration Ordinance." It is declared that the registration of each place of business conducted within the City as set out in this chapter and as authorized by Section 3-38-3 of the New Mexico Statutes Annotated is conducive to the promotion of the health and general welfare of the City.

(Ord. 930 (part), 2004)

5.04.020 - Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Engaging in business" means persons operating, conducting, doing, carrying on, causing to be carried on or pursuing any business, profession, occupation, trade or pursuit for the purpose of profit and who are required to obtain a State taxpayer identification number.

"Mobile business activity" means a person possessing a valid business registration engaging in business within the City but at a location which is not their place of business.

"Mobile business activity unit" Any publicly or privately owned vending stand, vending trailer, mobile food vehicle, or any other device designed for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise.

"Person" means any individual, male or female, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity engaging in a business, profession, occupation, trade or pursuit.

"Place of business" means a location where business is primarily conducted in a non-temporary structure within the City.

(Ord. 930 (part), 2004)

5.04.030 - Imposition of business registration fee.

There is imposed on each place of business located in the City an annual business registration fee of twenty-five dollars (\$25.00) for each calendar year. The fee is imposed pursuant to Section 3-38-3 of the New Mexico Statutes Annotated as it now exists or is amended, and shall be known as the "business registration fee." Proof of place of business, as defined in this chapter, may be required by the City Clerk at the City Clerk's discretion as a condition of issuance of a business registration. The required proof may include production of a utility bill or a New Mexico driver's license. The business registration fee may not be prorated for business conducted for a portion of the year.

(Ord. 930 (part), 2004)

5.04.031 - Imposition of mobile business activity fee.

In addition to the business registration fee, there is imposed an annual mobile business activity fee of one hundred dollars (\$100.00) for each calendar year for those persons who engage in mobile business activity. The mobile business activity fee may not be prorated for mobile business activity that occurs only once in any calendar year and/or for only a limited number of days in any calendar year.

(Ord. 930 (part), 2004)

5.04.040 - Exemption.

No business registration fee or mobile business activity fee shall be imposed on any business which is licensed under City ordinance or otherwise exempted by law.

(Ord. 930 (part), 2004)

5.04.050 – Locations of mobile business activity units.

Mobile business activity units shall be allowed on private property wherein 75% of property within the block is either vacant or utilized for commercial, providing no unit shall occupy a lot occupied by a residential structure. The unit shall be compliant with the required setback of the thoroughfare it is accessed from. Mobile business activity units, excluding ice cream/snow cone trucks and/or pushcarts, are prohibited in primarily residential areas. A permanent connection to Municipal or Franchisee utilities negates the mobile status of the unit and is not allowed. Temporary connections may be permitted providing the site and any structure or unit located thereon are in full compliance with all commercial development rules, regulations and permitting requirements.

5.04.060 - Application to do business.

All persons proposing to engage in business within the municipal limits of the City shall apply for and pay a business registration fee for each outlet, branch or location within the municipal limits of the City prior to engaging in business.

(Ord. 930 (part), 2004)

5.04.070 - Renewal.

Prior to January 31st of each year, any person with a place of business in the City and subject to this chapter shall apply and pay the fee for renewal of business registration with the City Clerk.

(Ord. 930 (part), 2004)

5.04.080 - Late fee.

There shall be imposed upon each delinquent registration fee a late fee in the amount of ten dollars (\$10.00) in the event a new business does not pay the registration fee before it commences business or the annual renewal fee is not paid prior to January 31st.

(Ord. 930 (part), 2004)

5.04.090 - Required information.

Any person filing an application for issuance or renewal of any business registration shall include in the application a current taxpayer identification number or evidence of application for such current revenue division taxpayer identification number as issued by the revenue division of the State Department of Taxation and Revenue and any other information required by the City Clerk.

(Ord. 930 (part), 2004)

5.04.100 - City Clerk to keep register.

The City Clerk shall keep a register in which shall be entered the date of each registration, the date of expiration of the registration, name of the person to whom such registration certificate has been issued and the amount of the fee paid therefor. It shall be the duty of the City Clerk to also issue, sign and deliver to the person paying the registration fee an appropriate receipt and a certificate of registration showing date of registration, to whom issued, the date of expiration thereof, the purpose or occupation for which the certificate of registration was issued and the amount of the fee paid.

(Ord. 930 (part), 2004)

5.04.110 - Transfer—Authority of holder's agents.

A business registration and mobile business activity license issued under this chapter shall not be transferable nor given to any person nor an employee or agent of the holder, the authority to conduct business pursuant to the business registration or mobile business activity license.

(Ord. 930 (part), 2004)

5.04.120 - Enforcement.

This chapter may be enforced by appropriate legal or administrative action brought to prevent the conduct of business, restraining, correcting or abating the violation of this chapter, to prevent the occupancy of a building, structure or land on which the business is located, or to withhold the issuance of permits or inspections as appropriate.

(Ord. 930 (part), 2004)

5.04.130 - Penalties.

Any person convicted of a violation of any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(Ord. 930 (part), 2004)

Chapter 5.20 - TEMPORARY VENDORS

5.20.010 - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Mobile business activity unit" Any publicly or privately owned vending stand, vending trailer, mobile food vehicle, or any other device designed for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise.

"Temporary" means any such business transacted or conducted in the City for which definite arrangements have not been made for the hire, rental or lease of premises for a term of at least thirty (30) days in or upon which such business is to be operated or conducted.

"Temporary vendor" means all persons, as well as their agents or employees, who do not maintain a valid business registration with the City Clerk and who engage in the temporary or transient business in the City of selling, or offering for sale, any goods or merchandise, or exhibiting the same for sale or who for the purpose of taking orders for the sale thereof and who for the purpose of carrying on such business or conducting such exhibits, either hire, rent, lease or occupy any room or space in any building, tent, structure, motor vehicle or other enclosure in the City or any other place whether enclosed or not within the City, in, on, through or from which any goods or merchandise may be sold, offered for sale, or exhibited for sale for the purpose of taking orders for the sale thereof.

"Transient" means such business of any such temporary vendor as may be operated or conducted by persons or by their agents or employees who have their headquarters in places other than the City, or who move stocks of goods or merchandise or samples thereof into the City with the purpose or intention of removing them or the unsold portion thereof away from the City before the expiration of thirty (30) days.

(Ord. 931 (part), 2004)

5.20.020 - Required.

It is unlawful for any temporary vendor to sell, offer for sale, exhibit for sale or exhibit for the purpose of taking orders for the sale thereof, any goods or merchandise in the City without first obtaining a license therefor from the City. A person which falls within the definition of a temporary vendor as defined in this chapter shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or other person.

(Ord. 931 (part), 2004)

5.20.030 - Application.

- A. Any person desiring a license required by this chapter shall make application therefor to the City Clerk at least five (5) days prior to the date of contemplated sale or exhibit in the City, which application shall be in the form of an affidavit stating the full name and address of the applicant, the location of his or her principal office and place of business, the applicant's current State Revenue Division taxpayer identification number or evidence of an application for the same, and such other information as the City Clerk finds necessary for the administration of this chapter. If the applicant is a corporation, the application shall give the names and addresses of its officers and, if a partnership, the partnership name and the names and addresses of all partners.
- B. The application shall be accompanied by a statement showing the kind and character of the goods or merchandise to be sold, offered for sale or exhibited.

(Ord. 931 (part), 2004)

5.20.040 - Fee.

Before any license is issued under this chapter, the applicant therefor shall pay to the City Clerk a fee of five hundred dollars (\$500.00) which sum shall be compensation to the City for the services required of it by this chapter and to enable the City to partially defray the expenses of administering and enforcing the provisions of this chapter.

(Ord. 931 (part), 2004)

5.20.050 - Issuance.

The City Clerk shall issue to any applicant a temporary vendor's license authorizing him or her to sell and exhibit for sale his or her goods and merchandise if such applicant has fully complied with all provisions of this chapter.

(Ord. 931 (part), 2004)

5.20.060 - Display.

Each license issued under this chapter shall be prominently displayed in a conspicuous place on the premises where the sale or exhibit is being conducted and shall remain so displayed so long as any goods or merchandise are being sold or exhibited.

(Ord. 931 (part), 2004)

5.20.070 - Transfer—Authority of holder's agents.

A license issued under this chapter shall not be transferable nor given to any promoter or vendor not listed in the application for the license authority to sell or exhibit goods or merchandise as a temporary vendor, either by agent or clerk or in any other way than his or her own proper person, but any person having obtained such a license may have the assistance of one (1) or more persons in conducting the sale or exhibit, who shall have authority to aid the principal, but not to act for or without him or her.

(Ord. 931 (part), 2004)

5.20.080 - Term.

A temporary vendor's license issued under this chapter shall continue and be in force for a period not to exceed seven consecutive days for the sale of goods or merchandise between the hours of 8:00 a.m. and 8:00 p.m., which license shall expire at 8:00 p.m. on the seventh day. The fee required shall not be prorated or refunded.

5.20.090 – Locations of mobile business activity units.

Mobile business activity units shall be allowed on private property wherein 75% of property within the block is either vacant or utilized for commercial, providing no unit shall occupy a lot occupied by a residential structure. The unit shall be compliant with the required setback of the thoroughfare it is accessed from. Mobile business activity units, excluding ice cream\snow cone trucks and\or pushcarts, are prohibited in primarily residential areas. A permanent connection to Municipal or Franchisee utilities negates the mobile status of the unit and is not allowed. Temporary connections may be permitted providing the site and any structure or unit located thereon are in full compliance with all commercial development rules, regulations and permitting requirements.

(Ord. 931 (part), 2004)

5.20.100 - Exemptions.

This chapter shall not be applicable to:

- A. Ordinary commercial travelers who sell or exhibit for sale goods or merchandise to parties engaged in the business of buying, selling or utilizing such goods or merchandise;
- B. Vendors of farm produce, poultry, stock or agricultural products in their natural state, including Christmas trees;
- C. Sale of goods or merchandise donated by the owners thereof, the proceeds of which are to be applied to any charitable or philanthropic purpose;
- D. Hobby shows, including but not limited to gun, coin, rock, stamp and mineral shows, where such shows are sponsored by or associated with the corresponding local hobby organization;
- E. A person holding a valid business registration under Chapter 5.04, whose principal place of business is within the City, and who is subject to the business gross receipts tax under Chapter 5.08.

(Ord. 931 (part), 2004)

5.20.111 - Fee to be in lieu of occupation tax.

The license fee assessed in Section 5.20.050 shall be in lieu of, and shall excuse such temporary vendor from the payment of, any other license, occupation fees or taxes.

(Ord. 931 (part), 2004)

5.20.112 - Penalty.

Anyone found guilty of violating the provisions of this chapter shall be punished by a fine of up to five hundred dollars (\$500.00) or imprisonment of up to ninety (90) days, or by both such fine and imprisonment.

(Ord. 931 (part), 2004)

PASSED, ADOPTED AND APPROVED this 18 day of JUNE, 2018

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 18, 2018

SUBJECT: CONSIDERATION TO APPROVE A DEVELOPMENT AGREEMENT WITH ABS HOMES CONCERNING THE DEVELOPMENT OF MARKET RATE SINGLE-FAMILY HOUSING.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: June 11, 2018
SUBMITTED BY: Kevin Robinson - Planning Department

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

Fiscal Impact:

Reviewed By:

[Signature]

Finance Department

FY18 Budget \$327,800.00

Single Family Housing #010100-44901-170

Attachments: Developers Request and Development Agreement.

Legal Review:

Approved As To Form:

[Signature]
City Attorney

Recommendation:

Commission considers approval / denial of the attached Development Agreement.

Approved For Submittal By:

[Signature]
Department Director

[Signature]
City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 6677

A RESOLUTION TO APPROVE A DEVELOPMENT AGREEMENT WITH ABS HOMES CONCERNING THE DEVELOPMENT OF MARKET RATE SINGLE-FAMILY.

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

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

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

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

PASSED, ADOPTED AND APPROVED this 18th day of June, 2018.

Sam D. Cobb, Mayor

ATTEST:

Jan Fletcher, City Clerk

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

THIS AGREEMENT is entered into on this ____ day of ____ 2018 by and between the City Of Hobbs, New Mexico, a municipal corporation (hereinafter "City"); and ABS Homes, 1515 W. Calle Sur Ste 116, Hobbs, NM 88240, (hereinafter "Developer") for the purpose of delivering Housing Developer Services to be provided to the City.

RECITALS:

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

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

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

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

A. Work To Be Performed.

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

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

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

Incentives are available for installed public municipal infrastructure only. Development Agreement must be in place prior to Municipal Acceptance of infrastructure. Existing Developments that have received DA's prior to 2018 are eligible through 12/31/2018.

- a. Incentive not to exceed per square footage basis:
 - i. \$10.00 per sq. ft. north of Sanger

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

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

B. Payment For Services.

- 1) The City shall pay for said services at the rates agreed to and as specified above in the Infrastructure details and the Developer's proposal, as shown herein. Payment will not be made by the City for any unit until a certificate of occupancy is issued, based on this Agreement.
- 2) The total compensation to be paid to the Developer during the term of this Agreement shall not exceed One Hundred Thousand Dollars (\$100,000.00), unless the Agreement is amended by the City Commission.
- 3) City subsidy shall be paid when each individual single family unit is complete and certificate of occupancy is issued, provided the certificate of occupancy for the unit is issued after ratification of this agreement. Payment will be made within fifteen (15) days following a written request from the Developer and upon City inspection of project completion.

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

C. Construction Requirements.

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

D. Assignment of Agreement.

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

E. Insurance Requirements and Hold Harmless Provision.

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

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

F. Governing Law and Provisions.

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

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

incurred by another party in enforcing any covenant or provision of this Agreement, including the expenses of in house counsel.

G. Final Payment and Release of Claims.

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

H. Amendments.

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

I. Breach.

1. The following events constitute a breach of this Agreement by Developer:
 - a) Developer's failure to perform or comply with any of the terms, conditions or provisions of this Agreement.
2. The following events constitute a breach of this Agreement by City:
 - a) City's failure to perform or comply with any of the terms, conditions or provisions of this Agreement, including making timely and appropriate payments to the Developer.

J. Remedies Upon Breach.

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

K. Termination.

This Agreement shall be terminated upon the completion of all tenants herein specified or 180 days from date of ratification whichever comes first. A request for infrastructure reimbursement, for a qualified unit produced within the terms of this agreement, received after the Termination Date of this agreement will not eligible for payment.

L. Notice.

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City, ATTN: City Attorney, 200 E. Broadway, Hobbs, NM 88240; to Developer ATTN and ABS Homes, 1515 W. Calle Sur Ste 116, Hobbs, NM 88240 and to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

M. Entire Agreement.

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

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

City of Hobbs

Developer

By: Sam D. Cobb, Mayor



By:

ATTEST:

APPROVED AS TO FORM:

JAN FLETCHER, City Clerk

Mike H. Stone, City Attorney



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 18, 2018

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

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: June 11, 2018
SUBMITTED BY: Kevin Robinson - Planning Department

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

Fiscal Impact:

Reviewed By:

[Signature]
Finance Department

FY18 Budget \$327,800.00

Single Family Housing #010100-44901-170

Attachments: Developers Request and Development Agreement.

Legal Review:

Approved As To Form:

[Signature]
City Attorney

Recommendation:

Commission considers approval / denial of the attached Development Agreement.

Approved For Submittal By:

[Signature]
Department Director

[Signature]
City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 6678

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

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

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

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

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

PASSED, ADOPTED AND APPROVED this 18th day of June, 2018.

Sam D. Cobb, Mayor

ATTEST:

Jan Fletcher, City Clerk

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

THIS AGREEMENT is entered into on this ____ day of ____ 2018 by and between the City Of Hobbs, New Mexico, a municipal corporation (hereinafter "City"); and French Brothers, Inc., PO Box 593, Alamogordo, NM 88310, (hereinafter "Developer") for the purpose of delivering Housing Developer Services to be provided to the City.

RECITALS:

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

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

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

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

A. Work To Be Performed.

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

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

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

Incentives are available for installed public municipal infrastructure only. Development Agreement must be in place prior to Municipal Acceptance of infrastructure. Existing Developments that have received DA's prior to 2018 are eligible through 12/31/2018.

a. Incentive not to exceed per square footage basis:

i. \$10.00 per sq. ft. north of Sanger

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

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

B. Payment For Services.

- 1) The City shall pay for said services at the rates agreed to and as specified above in the Infrastructure details and the Developer's proposal, as shown herein. Payment will not be made by the City for any unit until a certificate of occupancy is issued, based on this Agreement.
- 2) The total compensation to be paid to the Developer during the term of this Agreement shall not exceed One Hundred Thousand Dollars (\$100,000.00), unless the Agreement is amended by the City Commission.
- 3) City subsidy shall be paid when each individual single family unit is complete and certificate of occupancy is issued, provided the certificate of occupancy for the unit is issued after ratification of this agreement. Payment will be made within fifteen (15) days following a written request from the Developer and upon City inspection of project completion.

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

C. Construction Requirements.

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

D. Assignment of Agreement.

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

E. Insurance Requirements and Hold Harmless Provision.

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

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

F. Governing Law and Provisions.

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

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

incurred by another party in enforcing any covenant or provision of this Agreement, including the expenses of in house counsel.

G. Final Payment and Release of Claims.

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

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

H. Amendments.

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

I. Breach.

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

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

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

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

J. Remedies Upon Breach.

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

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

K. Termination.

This Agreement shall be terminated upon the completion of all tenants herein specified or 180 days from date of ratification whichever comes first. A request for infrastructure reimbursement, for a qualified unit produced within the terms of this agreement, received after the Termination Date of this agreement will not eligible for payment.

L. Notice.

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

M. Entire Agreement.

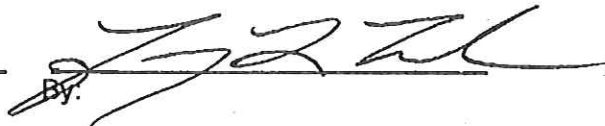
The foregoing constitutes the entire agreement between the parties hereto and may be modified only in writing by the parties hereto.

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

City of Hobbs

Developer

By: Sam D. Cobb, Mayor

By: 

ATTEST:

APPROVED AS TO FORM:

JAN FLETCHER, City Clerk

Mike H. Stone, City Attorney



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 18, 2018

SUBJECT: CONSIDERATION TO APPROVE A DEVELOPMENT AGREEMENT WITH HABITAT FOR HUMANITY CONCERNING THE DEVELOPMENT OF LOW INCOME SINGLE-FAMILY HOUSING.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: June 11, 2018
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: Habitat For Humanity has requested a Development Agreement concerning the development of single-family housing units located within the Albertson Block 1 Subdivision. The developer proposes to produce 20 low income single-family units and is requesting public infrastructure reimbursement incentives of \$105,000.00. The terms of the attached DA allows a reimbursement of public infrastructure installed for each unit that receives a Certificate of Occupancy within the Albertson Block 1 Subdivision prior to January 1, 2020.

Fiscal Impact:

Reviewed By: [Signature]
Finance Department

FY18 Budget \$335,000.00

Single Family Housing #010100-44901-169

Attachments: Developers Request and Development Agreement.

Legal Review:

Approved As To Form: [Signature]
for Michael A. Stone
City Attorney

Recommendation:

Commission considers approval / denial of the attached Development Agreement.

Approved For Submittal By:

[Signature]
Department Director

[Signature]
City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 6679

A RESOLUTION TO APPROVE A DEVELOPMENT AGREEMENT WITH HABITAT FOR HUMANITY CONCERNING THE DEVELOPMENT OF LOW INCOME SINGLE-FAMILY HOUSING.

WHEREAS, the City of Hobbs is proposing to enter into a Development Agreement with Habitat for Humanity concerning the development of low income single-family housing; and

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

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

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

PASSED, ADOPTED AND APPROVED this 18th day of June, 2018.

Sam D. Cobb, Mayor

ATTEST:

Jan Fletcher, City Clerk

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

THIS AGREEMENT is entered into on this _____ day of _____ 2018 by and between the City Of Hobbs, New Mexico, a municipal corporation (hereinafter "City"); and Habitat for Humanity of Hobbs, PO Box 5833, Hobbs, NM 88241, (hereinafter "Developer") for the purpose of delivering Housing Developer Services to be provided to the City.

RECITALS:

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

** Developer has submitted a proposal to the City to deliver the required Housing Developer Services for the development of low income single-family units, to be produced prior to July 1, 2020, located within the Municipal Boundaries.

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

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

A. Work To Be Performed.

1. The Developer shall furnish to the City its Professional Housing Developer Services for certain work regarding the Hobbs Single Family Housing Project. All single family structures completed under this agreement shall be located within the Municipal Boundaries and shall have received a certificate of occupancy after ratification of this agreement and prior to July 1, 2020.

2. Developer shall furnish to City its professional Housing Developer Services as provided by this Agreement. The specific duties include the production and delivering to the public Single Family Low Income Housing Units within the Municipal Boundaries. Produced Units receiving an infrastructure incentive reimbursement shall not now or in the future be utilized in a pecuniary manner by renting, leasing, exchanging or bartering habitation privileges to the property for a period of no less than 30 days at a time.

3. Specific activities required are to develop privately owned real property in the City including designing, building and transferring to the public individual low income single family housing units.

Incentives are available for installed public municipal infrastructure only. The City's infrastructure incentive may include any or all of the following funding assistance from the City:

- a. Incentive not to exceed per square footage basis:
 - i. \$10.00 per sq. ft. north of Sanger
 - ii. \$20.00 per sq. ft. south of Sanger
 - iii. Calculation based on living area only
- b. Incentive not to exceed per unit basis:
 - i. \$10,000.00 per single family unit
 - ii. \$5,000.00 per multi-family unit
- c. Incentive not to exceed fair share per linear foot of infrastructure basis:

- i. \$180.00 per lineal front footage of complete public infrastructure installed, and further broken down as follows:
 1. Water (\$25 / lf):
 - a. Twenty Five (\$25) per equivalent front foot of lot to which water service is provided (8" minimum service single family & 10" minimum service for multi-family);
 2. Sewer (\$35 / lf):
 - a. Thirty Five (\$35) per equivalent front foot of lot to which sewer service is provided (8" minimum service single family & 10" minimum service for multi-family);
 3. Street (\$90/ lf):
 - a. Ninety (\$90) per equivalent front foot of lot to which street is provided (built to Minor Residential standards as promulgated within the City of Hobbs Major Thoroughfare Plan);
 4. Sidewalk:
 - a. Thirty (\$30) per equivalent front foot of lot to which sidewalk (includes driveway with ADA accessible path) is provided;

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

B. Payment For Services.

- 1) The City shall pay for said services at the rates agreed to and as specified above in the Infrastructure details. Payment will not be made by the City for any unit until a certificate of occupancy is issued, based on this Agreement.
- 2) The total compensation to be paid to the Developer during the term of this Agreement shall not exceed One Hundred Five Thousand Dollars (\$105,000.00), unless the Agreement is amended by the City Commission.
- 3) City subsidy shall be paid when each individual single family unit is complete and certificate of occupancy is issued, provided the certificate of occupancy for the unit is issued after ratification of this agreement. Payment will be made within fifteen (15) days following a written request from the Developer and upon City inspection of project completion.
- 4) Produced Units receiving an infrastructure incentive reimbursement shall not now or in the future be utilized in a pecuniary manner by renting, leasing, exchanging or bartering habitation privileges to the property for a period of no less than 30 days at a time. Such usage either now or in the future, for a period not to exceed 10 years from date of issuance of a C.O., shall require Developer to return any incentive funds received for any unit thus utilized, upon demand by the City. Developer shall record a "Declaration of Restrictive Covenants", attached hereto as Exhibit 2, to restrict such usage and to notify parties involved in future conveyances.

C. Construction Requirements.

Construction shall be of energy-efficient design per New Mexico Energy Conservation Code 2009.

D. Assignment of Agreement.

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

E. Insurance Requirements and Hold Harmless Provision.

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

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

F. Governing Law and Provisions.

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

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

G. Final Payment and Release of Claims.

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

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

H. Amendments.

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

I. Breach.

1. The following events constitute a breach of this Agreement by Developer:
 - a) Developer's failure to perform or comply with any of the terms, conditions or provisions of this Agreement.
2. The following events constitute a breach of this Agreement by City:
 - a) City's failure to perform or comply with any of the terms, conditions or provisions of this Agreement, including making timely and appropriate payments to the Developer.

J. Remedies Upon Breach.

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

K. Termination.

This Agreement shall be terminated upon the completion of all tenants herein specified or July 1, 2020. A request for infrastructure reimbursement received after the Termination Date of this agreement will not be eligible for payment, regardless if the unit produced qualified within the terms of this agreement.

L. Notice.

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City, ATTN: City Attorney, 200 E. Broadway, Hobbs, NM 88240; to Developer: Habitat for Humanity of Hobbs, PO Box 5833, Hobbs, NM 88241 and to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

M. Entire Agreement.

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

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

City of Hobbs

Developer

By: Sam D. Cobb, Mayor

By:

ATTEST:

APPROVED AS TO FORM:

JAN FLETCHER, City Clerk

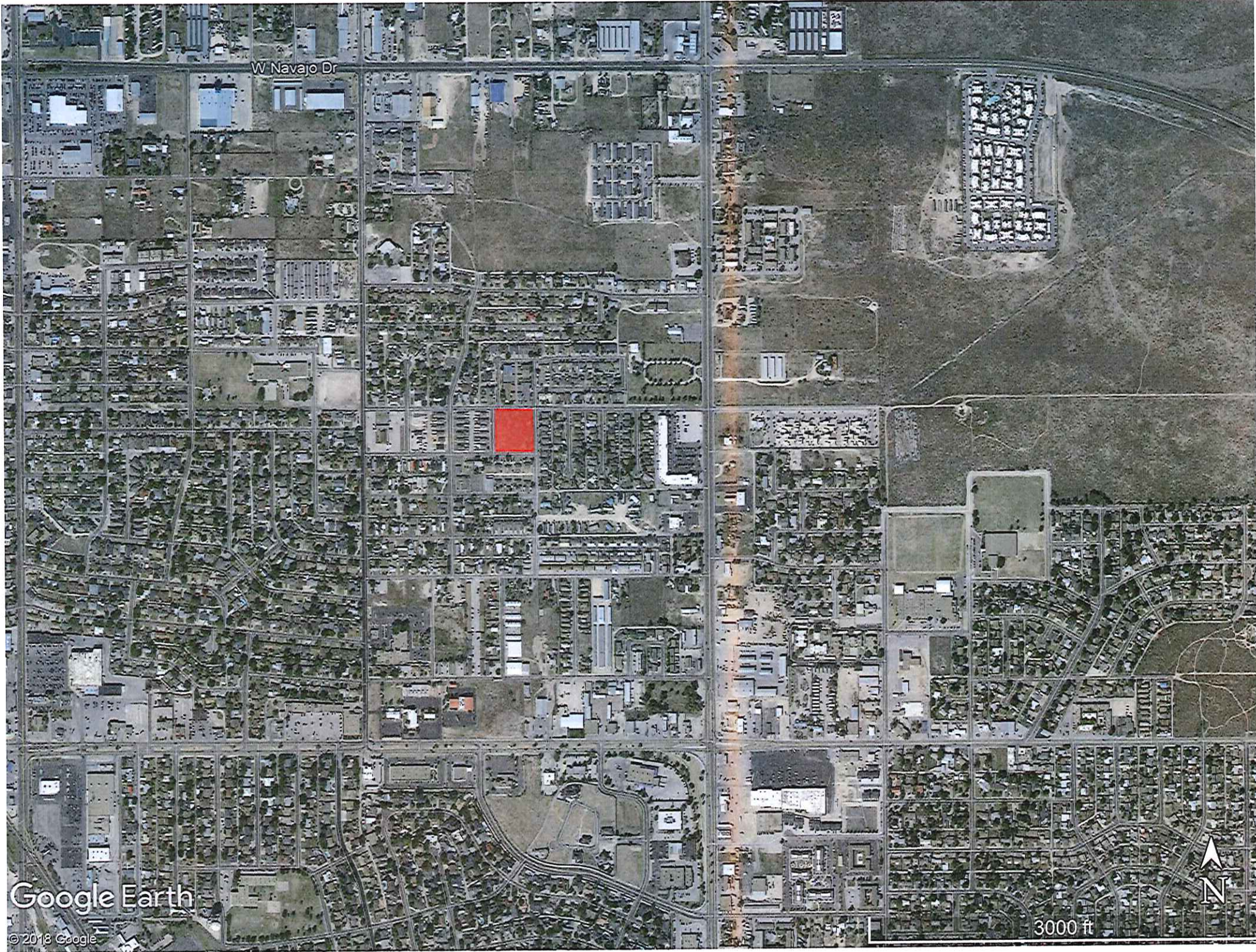
Mike H. Stone, City Attorney

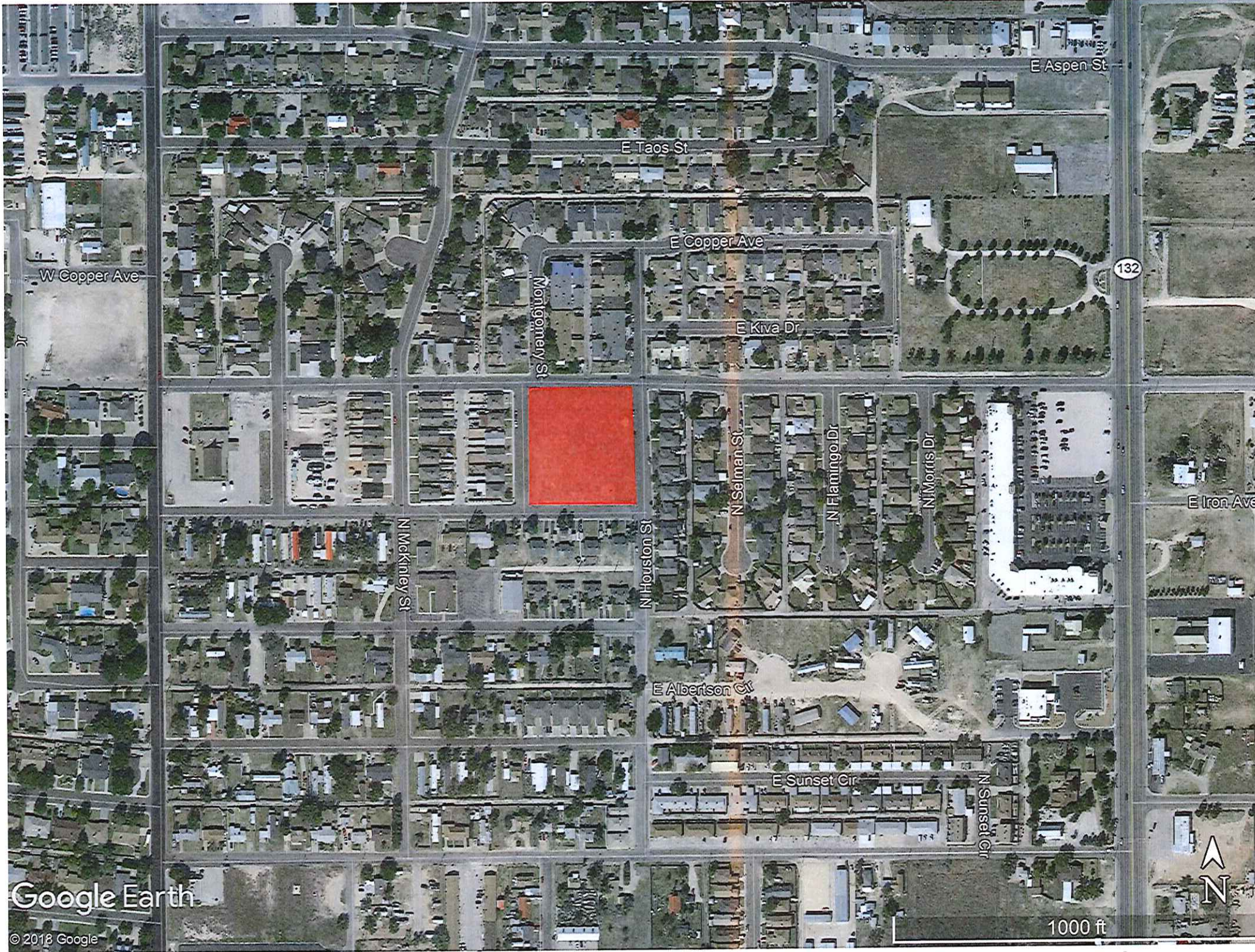
W Navajo Dr

Google Earth

© 2018 Google

3000 ft





E Aspen St

E Taos St

E Copper Ave

E Kiva Dr

W Copper Ave

Montgomery St

132

E Iron Ave

N McKinley St

N Houston St

N Selman St

N Flamingo Dr

N Morris Dr

E Albertson Ct

E Sunset Cir

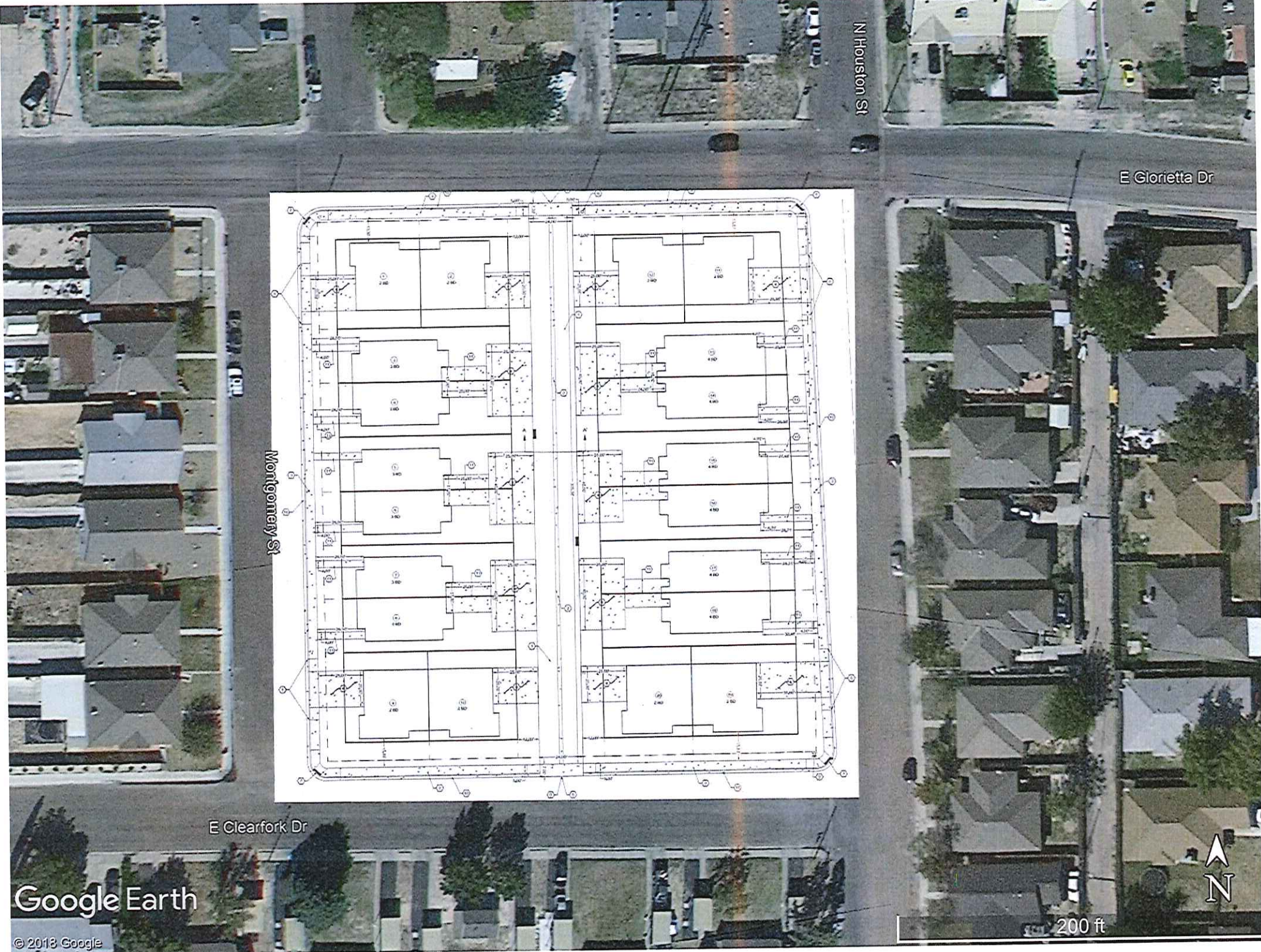
N Sunset Cir

Google Earth

© 2018 Google

1000 ft





N Houston St

E Glorietta Dr

Montgomery St

E Clearfork Dr



200 ft

Google Earth

© 2018 Google

NOT FOR CONSTRUCTION
DRAFT
 NOT FOR CONSTRUCTION

PROJECT ENGINEER: DAVID ROYAL, PE
 PROJECT DESIGNER: AMG
 DRAWN BY: AMG

LEGEND

| | |
|-----------|---------------------------|
| --- | FRESH GRADE 5/8" CONTOUR |
| - - - | FRESH GRADE 1/2" CONTOUR |
| - · - · - | EXIST. GRADE 5/8" CONTOUR |
| - · - · - | EXIST. GRADE 1/2" CONTOUR |
| --- | GRADING LINES |
| --- | CHANNEL FLOWLINE |
| EDA | EDGE OF ASPHALT |
| ED | EXISTING GRADE |
| FG | FRESH GRADE |
| FL | FLOORLINE |
| FW | FOOT OF RETAINING WALL |
| SW | SEWERLINE |
| THC | TOP BACK OF CURB |
| ○ | WALKING SURFACE |
| ○ | ASPHALT |
| ○ | CONCRETE |
| ○ | GRAVEL |

REVISIONS

| NO. | DATE | DESCRIPTION |
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CIVIL SITE PLAN

ALBERTOSN SUBDIVISION

HABITAT FOR HUMANITY

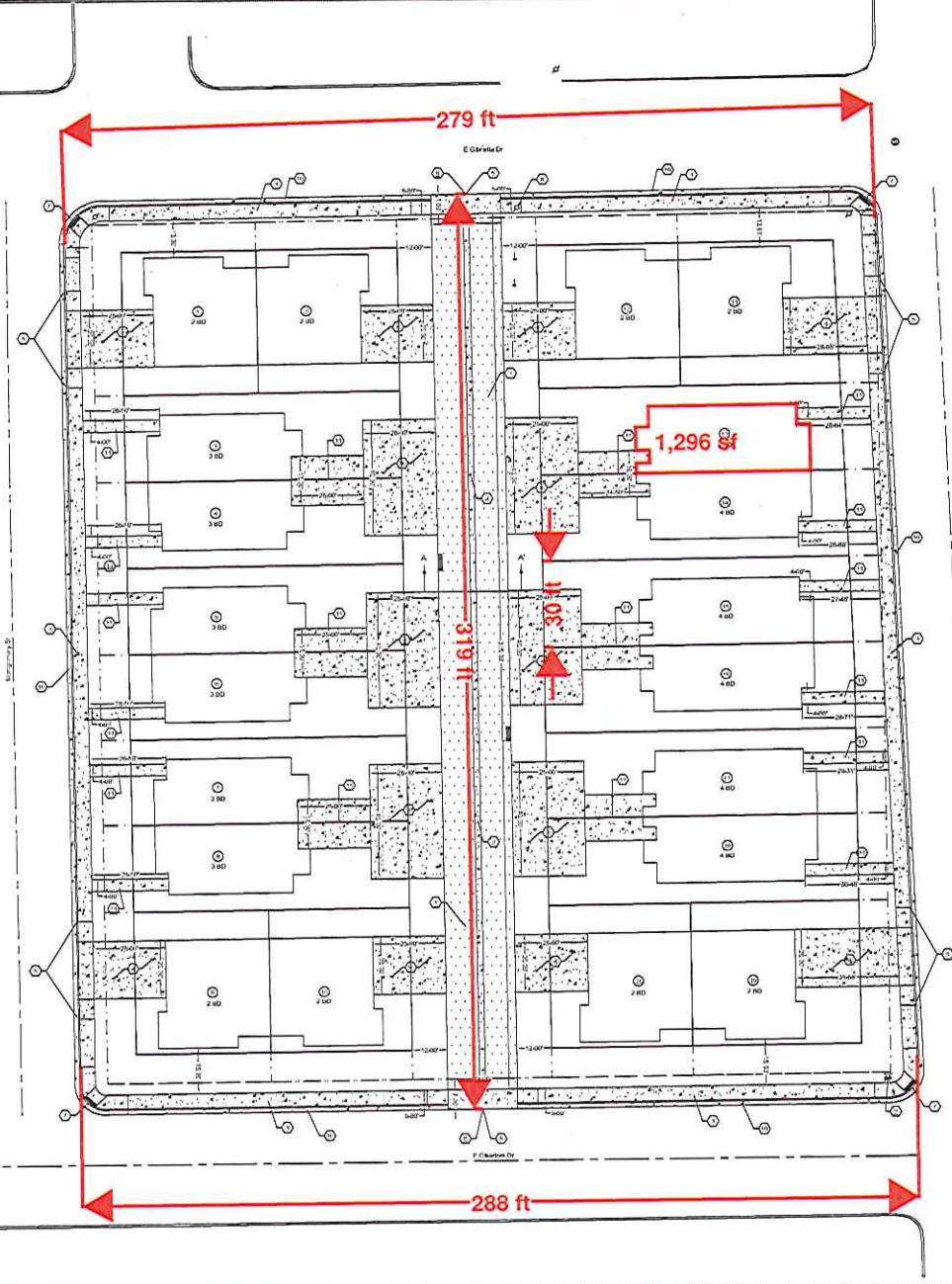
PROJECT NUMBER: 2017.1134

SHEET: CS-101

- KEY/D NOTE:**
- INSTALL ASPHALT PAVEMENT PER DETAIL 5 AND TYPICAL SECTION AM, SHEET CS901
 - INSTALL 2" VALLEY GUTTER PER DETAIL 2, SHEET CS901
 - TAKE NEW 8" SIDEWALK INTO EXISTING CURB AND GUTTER PER DETAIL 4, SHEET CS901
 - INSTALL 1/2" CONCRETE SLAB PER DETAIL 6, SHEET CS901
 - INSTALL DIMEPAD PER DETAIL 1, SHEET CS901
 - BANGCUT AND MATCH EXISTING PAVEMENT
 - INSTALL SINGLE DIAGONAL PARALLEL CURB RAMPS PER DETAIL 9, SHEET CS901
 - ELLECTRIC POWER POLE TO BE MOVED: REFERENCE SHEET CD-101
 - EXISTING WATER HYDRANT TO REMAIN IN PLACE
 - EXISTING CURB AND GUTTER TO REMAIN IN PLACE EXCEPT WHERE STATED OTHERWISE
 - INSTALL 4" CONCRETE SIDEWALK PER DETAIL 7, SHEET CS901

Staff Estimate of Public Infrastructure

Sewer 319' @ \$70 = \$22,330.00
 Water 319' @ \$50 = \$15,950.00
 Sidewalk 1,214' @ \$30 = \$36,420.00
 Rear Access Roadway w/concrete valley gutter
 & Ribbon Curb 319' @ \$94.98 = \$30,300
Total = \$105,000.00





CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 18, 2018

SUBJECT: CONSIDERATION TO APPROVE DEVELOPMENT AGREEMENTS CONCERNING THE PROJECTION AND ASSESSMENT OF PUBLIC INFRASTRUCTURES WITHIN THE FRENCH DRIVE ROW SOUTH OF BENDER.

DEPT. OF ORIGIN: Planning Department
DATE SUBMITTED: June 11, 2018
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: The City of Hobbs is proposing to enter into Development Agreements with property owners concerning the projection and assessment of public infrastructures. The subdivision of property, per MC Title 16, requires that all public infrastructures either be in place or surety given to the City that the cost for the same will be borne by the Subdivider prior to acceptance of the subdivision. The development agreements attached hereto and made part of this Resolution address the fair share costs of the infrastructures currently not in place (sewer) and the fair share assessments for the in place infrastructure (water). The DA's will act as surety for the public infrastructures and once ratified by all parties will allow the subdivision to occur in compliance with MC Title 16.

Fiscal Impact:

Reviewed By: [Signature] Finance Department

Budget Line: 44-4044-44901-00073 (JT UIL Extension)
Unencumbered: \$71,619.00
Estimated Project Cost: \$68,670.00 (Includes design and engineering to southern terminus)
Less Developer Fair Share: \$34,335.00 (As addition to monthly utility bill over a 3 year period)

Attachments: Resolution, Development Agreements and Proposed Subdivision Plat.

Legal Review:

Approved As To Form: [Signature] for Michael H. Stone City Attorney

Recommendation:

Staff recommends consideration of approval of the Development Agreements.

Approved For Submittal By:

[Signature] Department Director
[Signature] City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 6680

A RESOLUTION TO APPROVE DEVELOPMENT AGREEMENTS CONCERNING THE PROJECTION AND ASSESSMENT OF PUBLIC INFRASTRUCTURES WITHIN THE FRENCH DRIVE ROW SOUTH OF BENDER.

WHEREAS, the City of Hobbs is proposing to enter into Development Agreements with property owners concerning the projection and assessment of public infrastructures; and

WHEREAS, the aforementioned Development Agreements requires the property owners to pay the fair share development costs for public infrastructures not in place and fair share assessment in place public infrastructures adjacent to the Tracts created and within the French Drive ROW, said agreement being in the best interest of the City.

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

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

PASSED, ADOPTED AND APPROVED this 18th day of June, 2018.

Sam D. Cobb, Mayor

ATTEST:

Jan Fletcher, City Clerk

INFRASTRUCTURE DEVELOPMENT AGREEMENT
Southeast Corner of W. Bender & French Drive

THIS AGREEMENT, made and entered into this day of _____ 2018, between the City of Hobbs, New Mexico, a New Mexico Municipal Corporation, (hereafter called the "City"); and Hobbs Diesel, Inc., 2011 W. Bender, Hobbs, NM 88240, (hereafter called "Subdivider").

RECITALS:

WHEREAS, "Subdivider" desires to divided of an undivided parent parcel located southeast of the intersection of W. Bender and French Drive, within the City limits of the City of Hobbs; and

WHEREAS, the subdivision of property, per MC Title 16, requires that all public infrastructure either be in place or surety given to the City that the cost for the same will be borne by the Subdivider prior to acceptance of the subdivision or by the Developer prior to issuance of a Certificate of Occupancy; and

WHEREAS, infrastructure improvements would be required at the time of subdivision of the undivided parent parcels located adjacent to French Drive, therefore, it has been determined by City and agreed by Subdivider that in lieu of Subdivider installing the required infrastructure at the time of subdivision, Subdivider shall pay, or cause to be paid, a fair share assessment for the required infrastructure at time of subdivision.

NOW, THEREFORE, in consideration of the above premises, the parties hereby agree as follows:

LEGAL DESCRIPTION NEW LOT 1

A tract of land located in the NW1/4 of the NW/4 of Section 28, T18S, R38E, N.M.P.M., City of Hobbs, Lea County, New Mexico and being more particularly described by metes and bounds as follows:

Commencing at a found iron pin, being used as the NW corner of Section 28; thence N89°18'45"E 485.61 feet along the North line of Section 28 to a calculated point; then S00°40'35"E 50.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348" and being the Point of Beginning; thence S00°40'35"E 633.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348"; thence S89°18'45"W 455.61 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348" ; thence N00°40'35"W parallel to the West line of said section a distance of 633.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348"; thence N89°18'45"E 455.61 feet to the Point of Beginning and containing 6.62 acres, more or less.

1. The Subdivider shall pay to the City fair share infrastructure costs in the total amount of nineteen thousand five hundred three dollars (\$19,503.00), as monthly installments to be included in property owners City of Hobbs Utility Bill, of five hundred forty one dollars and seventy five cents (\$541.75) over the course of thirty six (36) months for public infrastructures located within French Drive adjacent to the Subdivider's west property line. Upon receipt of the total fair share infrastructure costs no assessment will be remaining upon the infrastructures within the French Drive Right-of-Way.
2. Upon connection to municipal water infrastructure Property Owner agrees to properly plug and abandon any existing water wells on the identified property in conformity with all Local, State and Federal laws and regulations.
3. Upon connection to municipal sewer infrastructure, when available, Property Owner agrees properly to abandon all septic tanks and/or septic systems pursuant to local, State and Federal laws and regulations.
4. The City shall design or cause to be designed construction plans for the extension of public sewer south of W. Bender and within the French Drive Right-of-Way in order to serve those lots created by the proposed subdivision, said infrastructure to be in place within thirty six (36) months of ratification of this agreement.
5. Responsibilities of the parties hereto are as follows:

A. The Subdivider shall:

- 1) Pay for all costs for development pursuant to City policies, including the payment of the fair share pro rata infrastructure improvements as per this agreement.
- 2) Comply with all City policies for building, landscaping, fire code, etc. for the remainder of development upon tracts created.

B. The City shall:

- 1) Design or cause to be designed construction plans for the extension of public sewer south of W. Bender and within the French Drive Right-of-Way.
- 2) Construct or cause to be constructed the extension of public sewer south of W. Bender and within the French Drive Right-of-Way.

6. All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City, ATTN: Planning Department, 200 E. Broadway, Hobbs, NM 88240; to Subdivider – Hobbs Diesel, Inc., 2011 W. Bender, Hobbs, NM 88240, or to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

7. This Agreement may be executed in one or more identical counterparts, and all counterparts so executed shall constitute one agreement which shall be binding on all of the parties.

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

9. Representations of City.

A. City is a duly organized and validly existing municipal corporation under the laws of the State of New Mexico with full municipal power to enter into this Agreement and to carry out the terms, conditions and provisions hereof.

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

10. Representations of Subdivider.

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

11. BREACH

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

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

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

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

12. REMEDIES UPON BREACH.

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

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

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

14. TERMINATION. This Agreement shall be terminated upon the completion of all installation and construction defined herein or the Subdivider's payment of the assessment thereto.

15. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among and between City and Subdivider and there are no other agreements or understandings, oral or otherwise, between the parties on the issues defined herein.

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

CITY OF HOBBS

SUBDIVIDER – Hobbs Diesel, Inc.

Sam D. Cobb - Mayor

Jesus Salazar, President

ATTEST:

Jan Fletcher, City Clerk

APPROVED AS TO FORM:

Michael Stone, City Attorney

INFRASTRUCTURE DEVELOPMENT AGREEMENT
Southeast Corner of W. Bender & French Drive

THIS AGREEMENT, made and entered into this _____ day of _____ 2018, between the City of Hobbs, New Mexico, a New Mexico Municipal Corporation, (hereafter called the "City"); and Big Guns Rat Hole & Foundation Drilling, LLC, 2521 Elfege Road NW, Albuquerque, NM 87107, (hereafter called "Subdivider").

RECITALS:

WHEREAS, "Subdivider" desires to divided of an undivided parent parcel located southeast of the intersection of W. Bender and French Drive, within the City limits of the City of Hobbs; and

WHEREAS, the subdivision of property, per MC Title 16, requires that all public infrastructure either be in place or surety given to the City that the cost for the same will be borne by the Subdivider prior to acceptance of the subdivision or by the Developer prior to issuance of a Certificate of Occupancy; and

WHEREAS, infrastructure improvements would be required at the time of subdivision of the undivided parent parcels located adjacent to French Drive, therefore, it has been determined by City and agreed by Subdivider that in lieu of Subdivider installing the required infrastructure at the time of subdivision, Subdivider shall pay, or cause to be paid, a fair share assessment for the required infrastructure at time of subdivision.

NOW, THEREFORE, in consideration of the above premises, the parties hereby agree as follows:

LEGAL DESCRIPTION NEW LOT 2

A tract of land located in the NW1/4 of the NW/4 of Section 28, T18S, R38E, N.M.P.M., City of Hobbs, Lea County, New Mexico and being more particularly described by metes and bounds as follows:

Commencing at a found iron pin, used as the NW corner of Section 28; then S00°40'35"W 683.00 feet along the West line of Section 28 to calculated point; then N89°18'45"E 30.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348" and being the Point of Beginning; thence N89°18'45"E 770.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348"; thence S00°40'35"E 267.00 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348"; thence S89°18'45"W 769.99 feet to a set 5/8" rebar with red plastic cap marked "HICKS NMPS 12348"; thence N00°40'35"W 267.00 feet to the Point of Beginning and containing 4.72 acres, more or less.

1. The Subdivider shall pay to the City fair share infrastructure costs in the total amount of thirty seven thousand nine hundred ninety six dollars (\$37,996.00), as monthly installments to be included in property owners City of Hobbs Utility Bill, of one thousand fifty five dollars and forty four cents (\$1,055.44) over the course of thirty six (36) months for public infrastructures located within French Drive adjacent to the Subdivider's west property line. Upon receipt of the total fair share infrastructure costs no assessment will be remaining upon the infrastructures within the French Drive Right-of-Way.
2. Upon connection to municipal water infrastructure Property Owner agrees to properly plug and abandon any existing water wells on the identified property in conformity with all Local, State and Federal laws and regulations.
3. Upon connection to municipal sewer infrastructure, when available, Property Owner agrees properly to abandon all septic tanks and/or septic systems pursuant to local, State and Federal laws and regulations.
4. The City shall design or cause to be designed construction plans for the extension of public sewer south of W. Bender and within the French Drive Right-of-Way in order to serve those lots created by the proposed subdivision, said infrastructure to be in place within thirty six (36) months of ratification of this agreement.
5. Responsibilities of the parties hereto are as follows:

A. The Subdivider shall:

- 1) Pay for all costs for development pursuant to City policies, including the payment of the fair share pro rata infrastructure improvements as per this agreement.
- 2) Comply with all City policies for building, landscaping, fire code, etc. for the remainder of development upon tracts created.

B. The City shall:

- 1) Design or cause to be designed construction plans for the extension of public sewer south of W. Bender and within the French Drive Right-of-Way.
- 2) Construct or cause to be constructed the extension of public sewer south of W. Bender and within the French Drive Right-of-Way.

6. All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City, ATTN: Planning Department, 200 E. Broadway, Hobbs, NM 88240; to Subdivider – Big Guns Rat Hole & Foundation Drilling, LLC, 2521 Elfego Road NW, Albuquerque, NM 87107, or to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

7. This Agreement may be executed in one or more identical counterparts, and all counterparts so executed shall constitute one agreement which shall be binding on all of the parties.

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

9. Representations of City.

A. City is a duly organized and validly existing municipal corporation under the laws of the State of New Mexico with full municipal power to enter into this Agreement and to carry out the terms, conditions and provisions hereof.

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

10. Representations of Subdivider.

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

11. BREACH

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

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

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

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

12. REMEDIES UPON BREACH.

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

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

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

14. TERMINATION. This Agreement shall be terminated upon the completion of all installation and construction defined herein or the Subdivider's payment of the assessment thereto.

15. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among and between City and Subdivider and there are no other agreements or understandings, oral or otherwise, between the parties on the issues defined herein.

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

CITY OF HOBBS

SUBDIVIDER – Big Guns Rat Hole & Foundation Drilling

Sam D. Cobb - Mayor

BY: _____

Its: _____

ATTEST:

Jan Fletcher, City Clerk

APPROVED AS TO FORM:

Michael Stone, City Attorney