



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: May 6, 2024

**SUBJECT:** PUBLICATION OF ORDINANCE ADOPTING A LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) PROJECT APPROVING AND ADOPTING A LOCAL ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY OF HOBBS AND HTEAO/ HOLVAY LLC

**DEPT. OF ORIGIN:** Legal  
**DATE SUBMITTED:** April 29, 2024  
**SUBMITTED BY:** Valerie S. Chacon

**Summary:**

The City of Hobbs Commission passed a Resolution to support changes to the State of New Mexico's Municipal Local Economic Development Act funding that starts on July 1, 2021, and ends on June 30, 2030. Whereas the LEDA special revenue fund for the fiscal year 2024 has approximately \$3,361,696. This proposed ordinance is up for publication for the allocation of \$70,000.00 to HTEAO/ HOLVAY LLC. HTeaO/Holvay LLC brings a franchise drive-thru and walk-in beverage restaurant offering 26 flavors of fresh brewed broad-leaf ice tea, coffee, premium water, and ice, as well as retail products such as branded apparel.

**Fiscal Impact:**

**Reviewed By:** Valerie S. Chacon  
*Finance Department*

LEDA special revenue fund expenditure of \$70,000.00.

**Attachments:**

**Legal Review:**

**Approved As To Form:** Valerie S. Chacon  
*City Attorney*

**Recommendation:**

The Commission should approve this ordinance for publication.

**Approved For Submittal By:**

Valerie S.  
Chacon

*Department Director*

*City Manager*

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

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

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

CITY OF HOBBS

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ADOPTING A LOCAL ECONOMIC DEVELOPMENT ACT (LEDA)  
PROJECT APPROVING AND ADOPTING A LOCAL ECONOMIC DEVELOPMENT  
PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY OF HOBBS AND  
HTEAO/HOLVAY LLC

WHEREAS, The City of Hobbs Commission passed a Resolution to support changes to the State of New Mexico's Municipal Local Economic Development Act funding that starting on July 1, 2021, and ending on June 30, 2030, providing that all municipalities may use up to twenty-five percent of municipal Local Economic Development Act funding for expansion of existing retail businesses or recruitment of new retail businesses if the economic development project is not funded or financed with state government revenues; provided that no funding shall be provided to an existing retail business to relocate from another location in New Mexico if the business does not remain in its previous location in New Mexico; and

WHEREAS the City of Hobbs City Commissioners adopted the amended LEDA Ordinance on July 1, 2022; and

WHEREAS, HTeaO/Holvay LLC brings a franchise drive-thru and walk-in beverage restaurant offering 26 flavors of fresh brewed broad-leaf ice tea, coffee, premium water, and ice, as well as retail products such as branded apparel.; and

WHEREAS, the City of Hobbs City Commissioners approves the LEDA Funding in the amount of \$70,000.00 to HTeaO/Holvay LLC and agree to enter into a participation agreement with HTeaO/Holvay LLC.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, that the Commission approves and adopts Local Economic Development Act funding to HTeaO/Holvay LLC in the amount of \$70,000.00.

PASSED, ADOPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2024.

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

ATTEST:

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

**PROJECT PARTICIPATION AGREEMENT  
CITY OF HOBBS AND HTEAO/HOLVAY LLC  
LOCAL ECONOMIC DEVELOPMENT ACT PROJECT**

This Project Participation Agreement (the "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between the CITY OF HOBBS, NEW MEXICO (the "City"), and HTEaO/Holvay LLC a New Mexico, LLC, with a place of business at 2319 N. Grimes St., Hobbs, New Mexico, 88240. Together, the City and HTEaO/Holvay LLC are called the "Parties," and individually, each a "Party."

WHEREAS, it is the policy of the City to aid and encourage the location of desirable business enterprises in the City and to facilitate a favorable governmental atmosphere for enriching the lives of its citizens by supporting the development of a healthy economy; and

WHEREAS, pursuant to the Local Economic Development Act, Sections 5-10-1 to 5-10-13 NMSA 1978 ("LEDA"), the City has adopted Ordinance No. \_\_\_\_\_ (the "LEDA Ordinance"), approving an economic development plan for the City and authorizing the City to consider applications for economic development assistance; and

WHEREAS, HTEaO/Holvay LLC has submitted to the City an application in the form attached to this Agreement as Exhibit A proposing that, in exchange for certain LEDA assistance described below, HTEaO/Holvay LLC will undertake and complete a certain project, which is defined to include the following elements (the "Project"):

**Project:**

HTEaO/Holvay LLC brings a franchise drive-thru and walk-in beverage restaurant offering 26 flavors of fresh brewed broad-leaf ice tea, coffee, premium water, and ice, as well as retail products such as branded apparel.

WHEREAS, the HTEaO/Holvay LLC Application proposes that in exchange for HTEaO/Holvay LLC undertaking and completing the Project, the City funds and/or land/infrastructure contribution obtained from the City of Hobbs' LEDA Fund, pursuant to LEDA, will be used to reimburse a portion of HTEaO/Holvay LLC's expenses related to the Project, on the terms set forth herein; and

WHEREAS, the HTEaO/Holvay LLC's Application clearly demonstrates that HTEaO/Holvay LLC, by completing the Project, will be making a substantive contribution to the community, as required by the LEDA Ordinance; and

WHEREAS, LEDA and the LEDA Ordinance require the parties to enter into a Project Participation Agreement meeting the requirements of LEDA and the LEDA Ordinance; and

WHEREAS, the total amount of public money expended and the value of credit pledged in each fiscal year in which that money is expended by the City for economic development projects pursuant to LEDA does not and will not exceed ten percent of the general fund expenditures of the City in that fiscal year; and

WHEREAS, the City adopted Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 2024 (the “\_\_\_\_\_ Ordinance”) (i) finding that HTeaO/Holvay LLC is a qualifying entity as defined in Section 5-10-3(G) NMSA, (ii) approving HTeaO/Holvay LLC’s Application for assistance with the Project pursuant to the LEDA Ordinance, which Application proposed that the City direct up to \$70,000.00 or the amount approved by the City of Hobbs Commission in funds to be committed by the City (the “City Contribution”), all to finance certain statutorily eligible expenses of the Project consisting of reimbursement for the leasing, renovation and improvement of the Facility, and (iii) approving this Agreement.

NOW, THEREFORE, in consideration of these premises and the agreements by the parties set forth herein, HTeaO/Holvay LLC, and the City further agree as follows:

1. Goals and Objectives. The goals and objectives of the Project are to create and support an economic development project that fosters, promotes, and enhances local economic development efforts. The goal is that the Project will provide job growth and career opportunities for Hobbs-area residents and otherwise make a substantive contribution to the community as set forth in this Agreement and in the HTeaO/Holvay LLC’s Application.

2. The City Contribution. Pursuant to the Project Ordinance and the LEDA Ordinance, the City has committed the amount of \$70,000.00, or the amount approved by the City of Hobbs Commission in connection with the Project. As required by the LEDA Ordinance, the City will deposit the proceeds of the City Contribution into a clearly identified separate account, which account will be subject to an annual independent audit. The term of this agreement is for two (2) years.

City funds will be dispensed in year one: November 10, 2024, upon proper filing of the months July through September Gross Receipt Tax, dispensed on February 10, 2025, upon proper filing for months October through December Gross Receipt Tax, dispensed on May 10, 2025, upon proper filings for months January through March, dispensed on August 10, 2025, upon proper filing for months April through June Gross Receipt Tax.

City funds will be dispensed in year two: dispensed on November 10, 2025, upon proper filing for months July through September Gross Receipt Tax, dispensed on February 10, 2026, upon

proper filings for months October through December, dispensed on May 10, 2026, upon proper filing for months January through March Gross Receipt Tax and dispensed on August 10, 2026, upon the proper filings for April through June Gross Receipt Tax.

3. Annual Revenue.

A. HTeaO/Holvay LLC, must produce an annual revenue of \$1,314,554.00 a year for two years, starting in July 2024 through June 2026. (year measurement is from July 1<sup>st</sup> to June 30<sup>th</sup>)

4. Job Creation and Growth.

A. Job creation and growth. HTeaO/Holvay LLC shall create new jobs and grow its workforce annually or, in the alternative, increase salary and benefits annually. The City of Hobbs is invested in new job creation and growth and will monitor HTeaO/Holvay LLC on an annual basis. Employee's quarterly wage and contribution report ES903A must be filed and provided to the City 10 days after filing.

5. Performance.

A. On August 10, 2025, if HTeaO/Holvay LLC does not meet the requirement of annual revenue of \$1,314,554.00 in the first year (year measurement is from July 1<sup>st</sup> to June 30<sup>th</sup>) the agreement will terminate. If HTeaO/Holvay LLC does not meet the requirement in the following years, the agreement will terminate in that proposed year. HTeaO/Holvay LLC must submit its quarterly New Mexico Gross Receipt Tax Return to the City on the first of every month before disbursement.

B. The "Clawback Penalty"; a Clawback Penalty will not be warranted. The City and HTeaO/Holvay LLC, are entering into an agreement in which HTeaO/Holvay LLC will only receive the portion paid into local gross receipt taxes. At the year mark on August 2025 (year measurement is from July 1<sup>st</sup> to June 30<sup>th</sup>) and on this month every year until 2026, if HTeaO/Holvay LLC, does not meet the minimum qualification of the minimum annual revenue of \$1,314,554.00, the agreement will terminate, and the next quarter of Gross Receipt Taxes will not be dispersed to HTeaO/Holvay LLC.

If the City determines that Business Climate Changes affect HTeaO/Holvay LLC's ability to maintain employment levels, it may waive or modify this agreement, but only related to the City Contribution, and the City shall determine as to any potential waiver.

6. Security. To secure the performance of its obligations under this Agreement, HTeaO/Holvay LLC will not need to submit a security bond to the City, for the City will only disperse and allocate funds to HTeaO/Holvay LLC, after local Gross Receipt Taxes have been received.

7. Events of Default and Remedies.

A. Failure to Comply with Obligations. HTeaO/Holvay LLC's failure to comply with any obligation under this Agreement, such as failure to meet annual revenue, shall be an Event of Default. Notwithstanding the foregoing, failure to meet employee projections or wage and benefit projections shall not be considered an Event of Default.

B. Notice of Event of Default. If any Event of Default occurs, the City Finance Department shall notify HTeaO/Holvay LLC in writing, specifying the alleged failure's nature and, where appropriate, how the alleged failure may be cured. HTeaO/Holvay LLC shall have thirty (30) days after notice to cure said Default. If the Default is not cured, this agreement shall terminate.

8. Annual Reporting Requirement, Performance Review and Termination.

Annually (beginning in 2025), on or before August 10th or other date specified by the City, Space Jump, LLC will provide to the City data for the previous calendar year regarding its workforce and such other information necessary for the City or its independent contractor to determine whether Space Jump, LLC has met its obligations under this Agreement. The Project will be subject to an annual performance review conducted by City staff, which will evaluate whether the Project is attaining the goals and objectives set forth in Section 1, 3 or 5 of this Agreement.

A. If the performance goals of section 1, 3 or 5 are not being attained, the City Manager is granted the authority by the City Commission to terminate the agreement, as described in Section 7 B of this agreement.

B. In addition, pursuant to LEDA, the City may enact an ordinance terminating the LEDA Ordinance and dissolving or terminating any or all projects. In the event that the City terminates the LEDA Ordinance or this Agreement, the City will specify the disposition of all assets and obligations of the Project after satisfying this Agreement and all rights of the parties arising under this Agreement through the date of such termination.

9. Dispute Resolution. The parties will work in good faith to resolve any disputes that arise hereunder. In the event of a dispute between the parties, the Chief Executive Officer of HTeaO/Holvay LLC, or his/her designee, and the Director or Deputy Director of the City's Finance Department shall meet and attempt in good faith to resolve the dispute. If they are unable to resolve the dispute, the President of HTeaO/Holvay LLC and the City Manager shall meet and attempt in good faith to resolve the dispute. Nothing contained in this Agreement constitutes a waiver of any Party's right to seek judicial relief.

10. Discrimination Prohibited. In performing the Services required hereunder, the parties hereto shall not discriminate against any person on the basis of race, color,

religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.

11. ADA Compliance. In performing the Services required hereunder, HTeaO/Holvay LLC agrees to meet all the requirements of the Americans with Disabilities Act of 1990, and all applicable rules and regulations (ADA), which are imposed directly on HTeaO/Holvay LLC or which would be imposed on the City as a public entity. HTeaO/Holvay LLC agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of HTeaO/Holvay LLC or its agents in violation of the ADA.

12. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of HTeaO/Holvay LLC's records with respect to all matters covered by this Agreement. HTeaO/Holvay LLC shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

13. Indemnity. HTeaO/Holvay LLC agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the Services performed by HTeaO/Holvay LLC or HTeaO/Holvay LLC's agents under this Agreement or by reason of any asserted act or omission, neglect or misconduct of HTeaO/Holvay LLC or its agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

14. No Collusion. HTeaO/Holvay LLC represents that this Agreement is entered into by HTeaO/Holvay LLC without collusion on the part of HTeaO/Holvay LLC with any person or firm, without fraud and in good faith. HTeaO/Holvay LLC also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by HTeaO/Holvay LLC or any agent or representative of HTeaO/Holvay LLC to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

15. Applicable Law and Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the



laws, rules and regulations of the City of Hobbs. The venue for actions arising out of this Agreement is Lea County, New Mexico.

16. Enforcement. HTeaO/Holvay LLC, agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

17. Electronic Signatures. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

18. Further Assurances and Mutual Cooperation. Each Party agrees to deliver and execute any and all notices, certificates, instruments and other such documents and take any and all actions as any Party hereto reasonably may require to carry out this Agreement and such transactions hereby contemplated, and no Party will take any action that may deprive the other Party of the enjoyment of the rights this Agreement secures. Each Party further agrees to select its own legal counsel and to retain such legal counsel at that Party's expense.

19. Severability. If any part or provision of this Agreement is found to be or becomes unenforceable or illegal for any reason, such part or provision may be modified as necessary to render this Agreement enforceable and legal. If such part or provision cannot be modified as such, the part or provision shall be severed from this Agreement, and the remaining parts and provisions of this Agreement shall remain in full force and effect.

20. Force Majeure. Neither Party shall be liable to the other Party for any failure to perform any provisions or obligations of this Agreement if such failure to perform is caused by or results directly or indirectly from Force Majeure. "Force Majeure" means any cause beyond the reasonable control of a Party affected, including but not limited to, any acts of God, fire, flood, storm, strike, riot or civil disturbance, war, earthquake, lightning, epidemic, labor disturbance, sabotage, or restraint by court or public authority, or any other cause beyond the reasonable control of a Party affected whether similar or dissimilar to the ones listed, which makes it impossible or unreasonably difficult for a Party to perform its obligations under this Agreement. Nothing contained in this paragraph shall be construed to require either Party to prevent or settle a strike against its will. The Party unable to perform its obligations due to Force Majeure will provide notice to the other Party within five (5) days of it becoming aware of the Force Majeure of its inability to perform and its expectations as to when, if ever, it will be able to resume its obligations.

21. Notice. All notices or other written communications, including requests for

disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown in the signature block of this Agreement. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other party to this Agreement.

22. Assignment by HTeaO/Holvay LLC. Generally, this Agreement may not be assigned without the prior, written consent of the non-assigning Parties, and the City retains the right to determine whether any assignee is a qualifying entity pursuant to LEDA and the LEDA Ordinance. Regardless of any other provision herein, this Agreement may be assigned by HTeaO/Holvay LLC as part of a sale of all, or substantially all, of HTeaO/Holvay LLC's assets. (i) the assignee assumes, in writing, HTeaO/Holvay LLC's obligations under this Agreement, which will include (a) confirmation that the commitment of HTeaO/Holvay LLC remains in place through August 2027 (ii) HTeaO/Holvay LLC provides to the City, at least five (5) days prior to such assignment's effective date, a copy of the assignment and such confirmation of HTeaO/Holvay LLC's commitment to the City. Notwithstanding any of the foregoing, HTeaO/Holvay LLC may terminate this Agreement in the event that HTeaO/Holvay LLC sells all, or substantially all, of HTeaO/Holvay LLC's assets.

23. Miscellaneous. This Agreement binds and inures to the benefit of the City and HTeaO/Holvay LLC and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning Party. This Agreement, together with the Application, represents the entire agreement of the Parties on the subject hereof and supersedes all prior agreements or understandings between the parties, whether written or verbal. This Agreement may be amended or modified, and the performance by any Party of its obligations under this Agreement may be waived, only in a written instrument duly executed by both Parties. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument. This Agreement is governed by and is to be construed in accordance with the laws of New Mexico applicable to agreements made and to be performed in New Mexico.

24. Effective Date. This Agreement will be effective on \_\_\_\_\_ 2024. (the "Effective Date").

[Signature Page Follows]

CITY OF HOBBS:

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

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

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

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

Address for notice:

City of Hobbs

200 E. Broadway

Hobbs, NM 88240

Attention: \_\_\_\_\_

Tel: \_\_\_\_\_

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

PROJECT:

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

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

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

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

Address for notice:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Tel: \_\_\_\_\_

Email \_\_\_\_\_

With a copy to:

City Attorney

200 E. Broadway

Tel: (575) 397-9226

Email: [vchacon@hobbsnm.org](mailto:vchacon@hobbsnm.org)



## CITY OF HOBBS

### QUALIFYING PROJECT APPLICATION

The purpose of the City of Hobbs Economic Development Strategic Plan Ordinance ("EDSP Ordinance") is to allow public support of economic projects to foster, promote, and enhance local economic development efforts while continuing to protect against unauthorized use of public money and other resources. As such, the City of Hobbs reserves the right to take any and all measures deemed necessary to ensure the contents of this application are accurately stated. Thank you for your interest in contributing to the local economy of Hobbs, New Mexico!

**Please Note:** Changes to the City of Hobbs' EDSP Ordinance were approved by the voters of Hobbs, New Mexico, during the regular municipal election in March of 2022. To be eligible for consideration, the proposed qualifying project must have started after April 1, 2022. Applicant businesses will have ninety (90) days from start of the qualifying project, or from their first gross receipts tax filing after start of qualifying project, whichever is later, to file their application for public funding of their qualifying project under the City of Hobbs' EDSP Ordinance.

**Applicant (name of business/entity):** Holvay LLC

#### **Section One – Economic Development Goals**

Having encouraged the support of the community and its leadership through public meetings and interviews, the City of Hobbs' EDSP Ordinance declares certain desired goals. Please mark all of the City's desired economic development goals that your proposed project meets:

- ☒ To diversify the local economy by the creation of additional jobs with the attraction of new business.
- ☐ To work with existing businesses to improve the general business climate in order that they may be successful in retaining employees and creating new jobs through expansion.
- ☐ To support the development of industrial/business park(s) that will be attractive to new and expanding businesses.
- ☒ To, when feasible and within the provisions of the New Mexico Local Economic Development Act, use public funds to assist in the development of new jobs.
- ☒ To encourage cooperation between the public and private sectors as they assist in the creation of new jobs.
- ☒ To help develop within the community's resources the best possible vocational and other skill training to prepare the local populace to enter the work force.
- ☒ To increase gross receipts taxes for the City of Hobbs.



## **Section Two – General Target Industry**

Types of businesses that meet the community's goals: Businesses that fit most or all of these criteria will be given consideration for assistance under the City of Hobbs' EDSP Ordinance. This list is not necessarily all inclusive, and should an industry fall outside of this preferred list, individual consideration may be given.

City of Hobbs considers certain types of businesses to be those that are preferred or meet the community goals. Please mark below all of the criteria specific to Hobbs, New Mexico, that your proposed project will be able to meet.

Industry that is able to take advantage of the following of Hobbs, New Mexico's comparative advantages:

- ☐ Availability of natural resources.
- ☐ Favorable climate.
- ☐ Ample, low-cost land available for development.
- ☐ Affordable housing.
- ☐ Ample availability of a skilled workforce and access to substantial infrastructure of work force development within the secondary and post-secondary level.
- ☐ Significant secondary and post-secondary educational and healthcare institutional resources.
- ☒ A positive business climate within the private and public sectors.
- ☐ Affordable and readily available energy resources.

Industry that provides exceptional benefits to the workforce of Hobbs, New Mexico:

- ☒ Pay comparative wages
- ☒ Provide benefits to foster a positive work/life balance
- ☒ Help improve the local per capita income (household income)
- ☒ Help diversify the local labor market

## **Section Three – Specifically Identified Target Industries**

The City of Hobbs' EDSP Ordinance specifically identifies certain industries that are desirable for potential development. Please mark all of the target industries that your proposed project meets:

- ☐ The dairy industry and related businesses
- ☐ Value-added agricultural production, dairy processing, or food processing and the manufacturer of food products.

- ☐ Service firms or institutions, especially in the educational, health care, information technology, and professional service sectors.
- ☐ Relatively labor-intensive processing and assembling businesses in the manufacturing sector.
- ☐ The construction trade sector.
- ☐ Data, IT, and telecommunications enterprises.
- ☐ Nuclear waste, hazardous waste, and related opportunities.
- ☐ Energy related industry.
- ☒ Retail related industry.
- ☐ Cultural facilities.
- ☒ Warehousing, logistics, distribution, and transportation.
- ☒ Retention and expansion of business and industry.

#### **Section Four – Possible Community Assistance**

The City of Hobbs' EDSP Ordinance allows for "public support," as that term is defined by NMSA 1978, § 5-10-3(K), of qualifying projects. Please mark the specific forms of public support your proposed project is seeking at this time:

- ☒ land, buildings or other infrastructure.
- ☐ the placement of new broadband telecommunications network facilities.
- ☐ rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities.
- ☐ public works improvements essential to the location or expansion of the proposed project.
- ☐ payments for professional services contracts necessary to implement a plan or provide public support for the proposed project.
- ☐ direct loans or grants for land, buildings or infrastructure.
- ☐ technical assistance to cultural facilities.
- ☐ loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from an increment of the municipal gross receipts tax imposed at a rate not to exceed one-fourth percent and dedicated by the ordinance imposing the increment for projects.
- ☐ grants for public works infrastructure improvements essential to the location or expansion of the proposed project or subsidies to cultural facilities.



- ☐ land for a publicly held industrial park or a publicly owned cultural facility, by purchase.
- ☒ the construction of a building for use by the proposed project.

**NOTE:** The term "public support" does not include the purchase, lease, grant or other acquisition or conveyance of water or mineral rights.

### **Section Five – Criteria for Community Assistance**

In deciding the eligibility for community assistance, the City of Hobbs may enlist the services of an agent, such as the Economic Development Corporation of Lea County or another agent, as needed or recommended to be the City's agent in dealing with projects and formulating recommendations to the City Commission.

For an applicant to be considered for assistance, the application may include, but is not limited to, the information outlined below (check all information that has been included in your application).

Identification information:

- ☒ Complete name and address of entity
- ☒ Organizational documentation
- ☒ List of board of directors and principal officers, with copy of the entity's organizational chart including names and titles of all principals.

Evidence of financial solvency:

- ☐ Company financial history
- ☐ If the company has a previous business history, audited financial statement (income statement and balance sheet) for the past three years
- ☒ Federal tax number, New Mexico State Taxation and Revenue number and City business license
- ☒ Projected income statement for at least three years
- ☒ The City has previously communicated with me that the following information has been deemed pertinent by the City and is included in my application packet:

Evidence of organizational capacity:

- ☐ Brief history of the entity
- ☐ Organizational chart of entity

Economic Development Project Plan (Qualifying Project):

- ☒ Preliminary description of proposed project

- ☐ Preliminary proposal of assistance requested
- ☒ The number of jobs to be created
- ☒ The types of business and jobs including a business plan
- ☒ Job training and career development plan for employees
- ☒ Compatibility with City's economic development goals including, but not limited to, gross receipts generation and/or job creation
- ☒ List of other funding resources researched by the applicant
- ☒ Financial and marketing projections
- ☒ The City has previously communicated with me that the following information has been deemed pertinent by the City and is included in my application packet:

Cost benefit analysis (Complete on this form and provide supporting documentation in packet) :

- ☒ The number and type of jobs to be created, both temporary construction jobs and permanent jobs (by New Mexico Department of Labor category) 60
- ☐ Pay scale of jobs \$15-40/ hour
- ☐ Determination of which jobs are expected to be filled locally and which will be filled by transfer from other facilities or recruited from outside the Hobbs area 100% local full and part time positions
- ☐ Total payroll expected at start-up and after one year 22% of gross revenue
- ☐ Anticipated impact on local tax base n/a
- ☐ Anticipated impact on local school systems provide high school and college students job experience
- ☐ Anticipated impact on infrastructure creating a new business idea for the community

Analysis of other benefits to the Community (besides those listed above, what will your project bring to the Community):

To provide healthy, tea related products in a fun and clean environment while developing and empowering people for a greater purpose



Analysis of substantive contributions to the Community. For purposes of this section "substantive contributions" shall be of value and may include money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion or improvement of the economy.

Providing job opportunities, 2% of gross receipts to local charities, 2% of gross receipts to local advertising firm

#### **Section Six – Review Criteria for Applications**

☒ By checking this box, I, the undersigned, acknowledge and agree that the City of Hobbs and/or its agent, will use due diligence to verify all facts about the applicant seeking assistance including but not limited to:

- A. Requiring financial statements and appropriate tax records made available by the business to be reviewed in detail. This review shall be consistent with the review required of Industrial Revenue Bond applications.
- B. Investigation to determine the validity of any claims to patent rights, trade secrets, etc.
- C. Verification of financial data including requesting data from banks and other financial institutions that may have had previous dealings with the business seeking assistance or its principals.
- D. Review of information pertaining to any other borrowing by the business or its principals that might affect the business's ability to repay debt or fulfill other obligations, if any, owed to the City of Hobbs.
- E. Review of the business's plans and marketing plans proposed by the applicant including, if deemed necessary, outside professional review of technical data.
- F. Review of the environmental and community impacts of the proposed project. Special attention will be given to the job training and career advancement programs and policies. Level of commitment of business to provide career opportunities for Hobbs area residents will be reviewed.

☒ By checking this box, I, the undersigned, acknowledge and agree that I shall at all times be required to cooperate fully with City in City's due diligence verification efforts. I further understand that any failure on my part to cooperate with City's verification efforts may result in my application being summarily denied at the discretion of the City. Failure to cooperate includes, but is not limited to, refusal to sign any authorizations necessary to obtain the referenced material.

#### **Section Seven – Project Participation Agreement**

☒ By checking this box, I, the undersigned, acknowledge and agree that in order to receive public support for my qualifying project, I shall work with the City to prepare a project participation agreement. This agreement is the formal document, which states the contribution and obligation of all parties in the economic development project. The agreement must state the following:

- A. The economic development goals of the project.
- B. The contribution of the City and the qualifying entity.



- C. The specific measurable objectives upon which the performance review will be read.
- D. A schedule for project development and goal attainment.
- E. The security being offered for the City's investment.
- F. The procedures by which a project may be terminated and the City's investment recovered.
- G. The time period for which the City shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the City shall relinquish interest in and oversight of the project.



By checking this box, I, the undersigned, acknowledge and agree that the project participation agreement and any other pertinent information will be reviewed for formal approval by the City Commission at a public meeting. I understand that I will be required to appear at the public hearing and respond to any inquiries related to my application and/or proposed project.



By checking this box, I, the undersigned, acknowledge and agree that I shall operate in accordance with the project participation agreement for a period of time specified in the project participation agreement.

### **Section Eight – Investment Protection**



By checking this box, I, the undersigned, understand that the City of Hobbs will provide adequate safeguards to ensure that its rights and financial commitments listed in the project participation agreement are adequately protected and recoverable in the event of default.



By checking this box, I, the undersigned, understand and agree that all investments will be made in compliance with the City of Hobbs' EDSP Ordinance and protections may include:

- A. Security provided for the City of Hobbs may be in the form of a lien, mortgage, or other indenture and pledge of the qualifying business's financial and material participation and personal cooperation to guarantee the applicant's performance pursuant to the project's goals.
- B. Any investment in streets, utilities or other public works will be made in accordance with City policy that provides security for any City investment made pursuant to the attraction of a business under the City of Hobbs' EDSP Ordinance.
- C. Provision for performance review will be established to ensure that the business is operating in accordance with its agreements with the City of Hobbs. This may include milestones, measurable goals and time limits on project development and completion. Provisions for performance review may include penalties for unsatisfactory performance.
- D. The contribution made by each party and its participation in the project will be clearly stated in the project participation agreement.
- E. There will be separate accounts for all financial dealings.
- F. An annual independent audit of the fund/account shall be required.
- G. Should a qualifying entity move, sell, lease or transfer a majority interest in the economic development project before the expiration of the project participation agreement, the City retains the right to deny any and all assignments, sales, leases or transfers of any interests in the economic development project until adequate assurances are made that the transferee, assignee or lessee is a qualifying entity and that the terms of the agreement will be satisfied by the transferee, assignee or lessee. At its discretion, the City may choose to deny said assignment, lease or transfer or may negotiate a new agreement with the new operator, or the City may reclaim its investment and enter into an agreement with the new qualifying entity.

### **Section Nine – Project Termination**



By checking this box, I, the undersigned, acknowledge and agree that the City of Hobbs may by ordinance terminate or revise the City of Hobbs' EDSP Ordinance. The City of Hobbs may also terminate projects developed under this plan provided the terms of any existing project participation agreements are satisfied. Any remaining monies left in the account or funds for a terminated project shall be transferred to the general fund.

[Signature Page on Next Page]



I affirm that all information contained in this City of Hobbs qualifying business application is true and accurate to the best of my knowledge. I voluntarily agree to be bound by the contents of this application along with any other documents completed in anticipation of receiving "public support" for my proposed project. I understand that the provision of "public support" is a discretionary function of the City of Hobbs City Commission and I am not guaranteed any public support for my proposed project.

Holvay LLC

10/12/23

Date Submitted

Title: Holvay LLC  
Address: PO box 2185  
Phone: 855-790-3083  
Fax:  
Email: store309@hiteao.com

PLEASE BE SURE YOU HAVE ATTACHED ALL DOCUMENTS TO THIS APPLICATION. MISSING OR OMITTED DOCUMENTS MAY RESULT IN A DENIAL OF YOUR APPLICATION. ALL DOCUMENTS SUBMITTED WITH THIS APPLICATION SHALL BE DEEMED PART OF THIS APPLICATION. THANK YOU AGAIN.

\*\*\*\*\*For use by the City of Hobbs or its agent only\*\*\*\*\*

Received by: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Approved: \_\_\_\_\_ Denied: \_\_\_\_\_ More Information Needed: \_\_\_\_\_

Project Score: \_\_\_\_\_

Notes Re Proposed Project:

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- \_\_\_\_\_ Contacted City to place on Commission agenda omitted?
- \_\_\_\_\_ Received agenda date?
- \_\_\_\_\_ Informed project manager of agenda date and time?
- \_\_\_\_\_ Review model project participation agreement with project manager?

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