

# Commission Meeting Agenda



## *Mayor*

Samuel D. Cobb

## *City Commission*

Marshall R. Newman

Jonathan Sena

Patricia A. Taylor

Joseph D. Calderón

Garry A. Buie

Don R. Gerth

## *City Manager*

J. J. Murphy

*August 1, 2016*



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

**Monday, August 1, 2016 - 6:00 p.m.**

Sam D. Cobb, Mayor

Marshall R. Newman  
Commissioner - District 1

Jonathan Sena  
Commissioner - District 2

Patricia A. Taylor  
Commissioner - District 3

Joseph D. Calderón  
Commissioner - District 4

Garry A. Buie  
Commissioner - District 5

Don R. Gerth  
Commissioner - District 6

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**A G E N D A**

*City Commission Meetings are  
Broadcast Live on KHBX FM 99.3 Radio*

**CALL TO ORDER AND ROLL CALL**

**INVOCATION AND PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES**

1. Minutes of the July 18, 2016, Regular Commission Meeting

**PROCLAMATIONS AND AWARDS OF MERIT**

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

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

2. Resolution No. 6466 - Resolution of Support for FY 17-18 Grant Application for Public Transportation (*Jan Fletcher*)
3. Resolution No. 6467 - Appointing Mayor Pro Tem Joseph D. Calderón as the Voting Delegate and Appointing Mayor Sam Cobb as the Alternate Delegate for the NMML Conference in Hobbs (*Mayor Sam Cobb*)

## **DISCUSSION**

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

4. Resolution No. 6468 - Authorizing a Grant Agreement with the J. F Maddox Foundation for the Design and Construction of an Indoor Recreation and Wellness Center (HWLC) (*J. J. Murphy*)
5. Approval of Contract Amendment No. 3 (GMP Amendment) with Haydon Building Corporation for a New Health Wellness and Learning Center (HWLC) (*J. J. Murphy*)
6. Consideration of Approval of Authorization Letter No. 4 for RFP No. 464-15 to BRS (Barker Rinker Seacat Architecture) for Construction Administration Services for a New Health Wellness and Learning Center (HWLC) (*J. J. Murphy*)
7. **FINAL ADOPTION:** Ordinance No. 1095 - Repealing Chapter 10 of the Hobbs Municipal Code in its Entirety; Repealing Section 1.12.100 of the Hobbs Municipal Code; and Adopting a New Chapter 10 Titled the "Uniform Traffic Ordinance"; and Adopting a Penalty Assessment Program (*Efren Cortez and Police Capt. Michael Walker*)
8. **FINAL ADOPTION:** Ordinance No. 1096 - Approving a Real Estate Purchase Agreement to Sell and Convey a Parcel of Land Comprised of Lot 1 Within the Hobbs Industrial Airpark South Subdivision, Containing 3.61 Acres, to Bridgeway Properties, LLC, for the Purchase Price of \$83,200.00 (*Kevin Robinson*)
9. **FINAL ADOPTION:** Ordinance No. 1097 - Consenting to the Navajo Annexation of 1.3169 Acres, Which is Presently Not Included in the City Limits, as Requested by the Property Owners and as Approved by the Planning Board (*Kevin Robinson*)

10. Resolution No. 6469 - Approving MOA with NMDOT for FY 16-17 Public Transportation (*Jan Fletcher*)
11. Resolution No. 6470 - Approving a Development Agreement with Black Gold Estates, LLC, Concerning the Development of Market Rate Single Family Housing (*Kevin Robinson*)
12. Resolution No. 6471 - Approving a Development Agreement with French Brothers, Inc., Concerning the Development of Market Rate Single Family Housing (*Kevin Robinson*)

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

13. Next Meeting Date:

- ▶ Regular Meeting - ***Monday, August 15, 2016***, at 6:00 p.m.

### **ADJOURNMENT**

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



# CITY OF HOBBS

## COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1, 2016

**SUBJECT:** City Commission Meeting Minutes

DEPT. OF ORIGIN: City Clerk's Office  
DATE SUBMITTED: July 27, 2016  
SUBMITTED BY: Jan Fletcher, City Clerk

**Summary:**

The following minutes are submitted for approval:

- ▶ Regular Commission Meeting of July 18, 2016

**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, July 18, 2016, in the City Commission Chamber, 200 East Broadway, 1<sup>st</sup> Floor Annex, Hobbs, New Mexico.

### **Call to Order and Roll Call**

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

Mayor Sam D. Cobb  
Commissioner Marshall R. Newman  
Commissioner Jonathan Sena  
Commissioner Patricia A. Taylor  
Commissioner Joseph D. Calderón  
Commissioner Garry A. Buie  
Commissioner Don Gerth

Also present:

J. J. Murphy, City Manager  
Mike Stone, City Attorney  
Efren Cortez, Assistant City Attorney  
Chris McCall, Police Chief  
Barry Young, Deputy Fire Chief  
Paul Thompson, Fire Captain  
Manny Marquez, Building Official  
Ronny Choate, General Services Director  
Ron Roberts, Information Technology Director  
Todd Randall, City Engineer  
Kevin Robinson, Development Coordinator  
Doug McDaniel, Parks and Recreation Director  
Nicholas Goulet, Human Resources Director  
Karen Nevarez, Assistant Human Resources Director  
Toby Spears, Finance Director  
Deborah Corral, Assistant Finance Director  
Meghan Mooney, Director of Communications  
Raymond Bonilla, Community Services Director  
Art De La Cruz, Code Enforcement Superintendent  
Sandy Farrell, Library Director  
Ann Betzen, Executive Assistant/Risk Manager  
Mollie Maldonado, Deputy City Clerk  
Jan Fletcher, City Clerk  
20 citizens

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

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

### **Approval of Minutes**

Commissioner Newman moved that the minutes of the regular meeting held on July 5, 2016, be approved as presented. Commissioner Sena seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Taylor yes, Calderón yes, Buie yes, Gerth yes, Cobb yes. The motion carried.

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

There were no proclamations or awards of merit presented.

### **Public Comments**

Mr. Thomas Blackman, a 20-year Veteran of the U. S. Air Force, stated he is present again at tonight's meeting in support of a Veterans Memorial. Mayor Cobb stated Lea County has formed a committee for the proposed Veterans Memorial, and they will be appointing members on Wednesday, July 20, 2016. He requested Mr. J. J. Murphy, City Manager, to contact representatives of Lea County regarding the appointments.

Mr. Jimmy Clay addressed concerns regarding dogs running ta large in the area of 1302 East Midwest. Mayor Cobb stated Mr. Raymond Bonilla, Community Services Director, is in the audience, and he recommended that Mr. Clay speak with him after the meeting.

Commissioner Taylor thanked Mr. Clay for voicing his concerns regarding the dogs as they are a problem in District 3.

### **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 Calderón moved for approval of the following Consent Agenda Item(s):

*Resolution No. 6458 - Authorizing an Agreement with the Southeastern New Mexico Economic Development District/COG.*

*Resolution No. 6459 - Approving an Allocation of Lodgers' Tax Funds to the Cinco de Mayo Committee in the Amount of \$5,000.00 for the 2017 Cinco de Mayo Event.*

Commissioner Sena seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Taylor yes, Calderón yes, Buie yes, Gerth yes, Cobb yes. The

motion carried. A copy of the resolutions and supporting documentation are attached and made a part of these minutes.

Mayor Cobb recognized Representative David Gallegos in the audience.

### **Discussion**

*Discussion and Prioritization of the Top 10 Projects for the FY 2018-2022 Infrastructure Capital Improvements Plan (ICIP) as Recommended by the City of Hobbs Planning Board.* Mr. Todd Randall, City Engineer, presented the suggested Top 10 Projects of the proposed Infrastructure Capital Improvement Plan (ICIP) and stated the final list needs to be submitted to the New Mexico Department of Finance and Administration (DFA) by September 1, 2016. He reviewed the following Top 10 Projects as recommended by the Planning Board:

1. WWTP Effluent System: This project is a water conservation project which consists of developing infrastructure to fully utilize available treated effluent water for irrigation purposes at the municipal golf course, surrounding parks, and other recreational sites as categorized within City's Effluent Reuse Master Plan.
2. Sewer Main Replacement Program: The project includes the design, replacement and reconstruction of 24 inch diameter reinforced concrete pipe main sewer transmission pipe lines.
3. Drainage Master Plan: Develop a drainage master plan for Hobbs Urban Area. Plan, design and construct storm water and drainage facilities needed; prepare a capital improvement plan for facilities with funding mechanisms, joint use policies for drainage facilities and new rules for development projects. Phase 1 will be the planning phase right-of-way, acquisition and design. Phase 2 will be completing the design and beginning construction. Phases 3 - 5 will be construction.
4. New City Jail: Plan, design and construct a new detention facility that meets current needs of the department. The inmate count has been steadily increasing and a bigger facility is needed to accommodate the increase.
5. Taylor Ranch Improvements: Design and construction of Taylor Ranch park and recreational areas. Taylor Ranch is a 219 acre parcel of land owned by the City of Hobbs that will serve as the City's new gateway for those entering the city from the East. Phase I of the Taylor Ranch



Improvements Project is currently in the design development phase and the following amenities are being considered: a Family Entertainment Center that would include miniature golf, go-karts, and arcade games; a 5.45 acre lake with a large pavilion and great lawn on the north side, corporate pavilions, fishing piers, shade structures and two restaurant pad sites; a Veteran's Memorial; and a skate park.

6. College Lane Realignment: The College Lane realignment will relocate the current College Lane intersection with Lovington Highway South and align College Lane with Business Park Boulevard located West of Lovington Highway. The project will include drainage facilities to convey small storms under College Lane along with a retention and detention pond to lessen historical flooding problems within this area.
7. Citywide Wireless Internet: Plan, design and construct Citywide Wireless Infrastructure.
8. West Bender Widening Project & Drainage: Design, widen and make drainage improvements on Bender Blvd.
9. The Health Wellness Learning Center (HWLC): HWLC is currently in the design-development phase. The HWLC is a collaborative effort between the City of Hobbs, New Mexico Junior College, Hobbs Municipal Schools, Lea County, University of the Southwest and the J. F Maddox Foundation. Amenities being considered for the facility include: an indoor artificial turf field house, a gymnasium with multi-use flooring, a competition pool, an indoor leisure pool with a lazy river and water slides, a warm water therapy pool, an elevated jogging/walking track, fitness equipment for both cardio and strength workouts, an indoor play structure, fitness rooms, meeting rooms, party rooms, and administrative offices. Design is estimated to begin in May 2017 and be completed in December 2017. Once the final design is complete, information regarding the size and type of construction will be available. An RFP has been received and awarded for the design of the project. Upon design completion, the construction portion will be bid out.
10. Southeast and Northwest Bypass: Acquire right-of-way, design and construct the Hobbs Southeast and Northwest Bypass. The Southeast bypass is an arterial roadway bypass connection with SR 18, Eunice Hwy and SR 18, Seminole Hwy. The Northwest bypass is an arterial roadway bypass connection with SR 18, Lovington Hwy and US 62/180, Carlsbad Hwy.

In reply to Mayor Cobb's inquiry, Mr. Randall stated the Top 10 ICIP Projects for the FY 2018-2022 is required by the State for grant funding purposes.

Mayor Cobb expressed appreciation to the Planning Board for their work in ranking the Top 10 ICIP Projects for FY 2018-2022. He stated the Commission has the authority to add or remove projects from the list.

In response to Commissioner Sena's question, Mr. Randall stated the City was awarded \$500,000.00 in Legislative grant funding for street and drainage improvements within District 3. He credited the effort to Commissioner Taylor.

After discussion regarding the Top 10 ICIP Projects for FY 2018-2022, Mr. Murphy suggested the Commission review and rank the projects. He stated the Commission can then discuss the list and vote on the project ranking and priority at the next Commission meeting.

### **Action Items**

#### **Resolution No. 6460 - Approving a Budgetary Adjustment for FY 15-16.**

Mr. Toby Spears, Finance Director, explained the resolution and stated there are several adjustments to individual line items within the multiple funds increasing revenue and expenses. He stated these budgetary adjustments do not have any effect on the ending cash balances as each increase in expense is matched with a decrease in expense.

Commissioner Sena moved that Resolution No. 6460 be adopted as presented. Commissioner Calderón seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Taylor yes, Calderón yes, Buie yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documents are attached and made a part of these minutes.

#### **Resolution No. 6461 - Approving the 4<sup>th</sup> Quarter DFA Financial Report for FY 15-16.**

Mr. Spears explained the 4<sup>th</sup> Quarter DFA Financial Report and stated the State requires the report to be approved by the governing body. He stated the Cash Balance at the end of June, 2016, is \$116,169,727.39 for all restricted and unrestricted funds. Mr. Spears stated the City year-to-date actual revenues for the period ending June 30, 2016, are \$102,654,284.92 and expenditures \$107,198,836.35. He stated reserves for the period ending June 30, 2016, were at 31%.

Commissioner Calderón moved that Resolution No. 6461 be adopted as presented. Commissioner Newman seconded the motion and the vote was recorded as follows:

Newman yes, Sena yes, Taylor yes, Calderón yes, Buie yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documents are attached and made a part of these minutes.

In response to Commissioner Sena's question, Mr. Spears stated each percent of the reserve is equivalent to about \$750,000.00. He stated the actual overall reserves are 45% which includes both restricted and unrestricted funds.

Resolution No. 6462 - Adopting a Budgetary Adjustment for FY 16-17.

Mr. Spears explained the budgetary adjustment and stated this adjustment incorporates the adjusted cash balances as of June 30, 2016. Mr. Spears stated this adjustment also incorporates a few new items for consideration and items budgeted in the FY 16 but not completed and requested for carryover into the current year. He further stated adjustments to transfers have been made to meet the State's requirements, while maximizing the cash balance in the General Fund. Mr. Spears stated the City received GRT for FY 15 in the amount of \$85 million and FY 16 in the amount of \$53 million. He further stated the City budgeted \$40 million for FY 17 for GRT. He stated the FY 17 Preliminary Budget had 30% reserves, and with the budgetary adjustment, it is at 34%.

In reply to Mayor Cobb's question, Mr. Spears stated the State requires the City's reserve to be at least 1/12% of the operational cost.

In response to Commissioner Buie's inquiry, Mr. Spears stated the New Mexico Municipal League Conference, road improvements to Jack Gomez Blvd., and the renovation of railroad crossings are an example of some of the projects that were budgeted in FY 16 but not yet completed and requested for carryover into the current year.

In reply to Commissioner Buie's question, Mr. Murphy stated the City is in discussion with representatives of the New Mexico/Texas Railroads regarding the cost sharing of the renovation to the railroad tracks.

Mr. Murphy stated additional items added to the FY 17 Budget are Fire and EMS upgrades, new personnel positions and golf course improvements. He stated the budgeted GRT was also reduced from \$42 million to \$40 million.

In response to Commission Buie's inquiry, Mr. Spears stated that any upgrades to the golf course which exceed \$60,000.00 will have to be presented to the Commission for approval. Mr. Murphy and Mayor Cobb agreed.

Commissioner Sena moved that Resolution No. 6462 be adopted as presented. Commissioner Gerth seconded the motion and the vote was recorded as follows:

Newman yes, Sena yes, Taylor yes, Calderón yes, Buie yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documents are attached and made a part of these minutes.

Consideration of Approval of Change Order No. 1 to Ramirez & Son's Work Order on the Rockwind Effluent Project for the Reconstruction and Repaving of Jack Gomez Blvd.

Mr. Randall explained the change order and stated it is for the paving portion of the Rockwind Effluent Project. He stated staff recommends the reconstruction of all of Jack Gomez rather than patching the disturbed areas including the Jack Gomez entrance onto SR 18. In addition, staff will attempt to coordinate with representatives of New Mexico/Texas Railroad regarding railroad crossing improvements. Mr. Randall stated the construction timeline goal is to have the Jack Gomez pavement re-construction complete prior the New Mexico Municipal League Conference which starts August 30, 2016.

Mayor Cobb stated the New Mexico/Texas Railroads is only responsible for maintenance and repair of 18 inches on each side of the tracks. He stated the railroad is a private asset and not public.

After a lengthy discussion regarding various railroad tracks which need repair, Commissioner Taylor moved to accept the work order with Ramirez & Son's in the amount of \$420,000.00 plus GRT for the Rockwind Effluent Project as presented. Commissioner Calderón seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Taylor yes, Calderón yes, Buie yes, Gerth yes, Cobb yes. The motion carried. Copies of the agreement and supporting documentation are attached and made a part of these minutes.

Resolution No. 6463 - Approving a Real Estate Purchase Agreement with Wayne Richardson for the Purchase of Real Property Located in Lots 1 through 12, Block 8, Original Hobbs Addition, for the Purchase Price of \$255,000.00.

Mr. Kevin Robinson, Development Coordinator, stated the City is proposing to purchase real property to be utilized as a possible site for a new Municipal Detention Facility. He stated the site is located West of the Hobbs Police Department and South of the Municipal Court. Mr. Robinson stated the proposed purchase price is \$255,000.00.

In reply to Commissioner Gerth's question, Mr. Robinson stated the property being considered for purchase is half of a City block. He further stated the City already owns the other half. He add streets will not be blocked off if the jail is built on this site.

In response to Commissioner Newman's comment, Police Chief Chris McCall stated the State Bureau of Prison recommends that detention facilities should be close to the police station. He stated the current jail was built in 1930.

Commission Sena stated the jail staff does great work trying to keep the facility maintained but upgrades need to be made.

Commissioner Sena moved that Resolution No. 6463 be adopted as presented. Commissioner Newman seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Taylor yes, Calderón yes, Buie yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documents are attached and made a part of these minutes.

*Resolution No. 6464 - Adopting the LIHTC Local Contribution Policy for Fiscal Year 2017.*

Mr. Murphy explained the resolution and stated the adoption of the Low Income Housing Tax Credit Local Contribution Policy will cause the City to potentially incur an expense of 10% of the total development costs for low income housing development that receive an allocation of tax credits from New Mexico Mortgage Finance Authority. He stated developers were not awarded LIHTC last year so the monies budgeted in FY16, in the amount of \$400,000.00, were reverted to the FY17 Budget for LIHTC Local Contribution incentives.

In reply to Commissioner Gerth's question, Mr. Murphy stated the City can only fund up to 10% of the total development costs for low income housing developments per NMMFA. He also stated the developer may receive up to 10 points for each 1% the City funds.

In response to Commissioner Gerth's inquiry, Mr. Murphy stated NMMFA, in the past, has awarded LIHTC to developers who constructed two development projects which are apartments on Jefferson and Yeso and North of Highland Junior High School.

Mayor Cobb explained the NMMFA process and stated funding is based on population and the need for affordable housing. He stated the requests for LIHTC awards are competitive throughout the State. He stated the City's contribution helps developers to be awarded NMMFA LIHTC.

In response to Commissioner Sena's inquiry, Mayor Cobb stated the LIHTC are awarded to private developers which lowers their loan amount. Commissioner Sena stated the affordable housing on East Marland and the Parkside Terrace are great projects.

Commissioner Calderón moved that Resolution No. 6464 be adopted as presented. Commissioner Buie seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Taylor yes, Calderón yes, Buie yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documents are attached and made a part of these minutes.

*Resolution No. 6465 - Adopting a 2016 Market Rate Multi-Family and Single Family Unit Production Municipal Infrastructure Reimbursement Incentive Program for Calendar Year 2016.*

Mr. Murphy stated the 2015 Market Rate Multi-Family and Single Family Unit Production Municipal Infrastructure Reimbursement Incentive Program for Calendar Year 2015 allowed incentives not to exceed \$400,000.00 and would be reimbursed after the project received its Occupancy Certificate within one year. He stated the 2016 Market Rate Multi-Family and Single Family Unit Production Municipal Infrastructure Reimbursement Incentive Program for Calendar Year 2016 will allow an incentive not to exceed \$200,000.00 and would be reimbursed after the project receives its Occupancy Certificate within six months. Mr. Murphy stated the program would still allow the developer to earn \$400,000.00 in incentives annually. He added that \$800,000.00 is budgeted amount which the City could award. He stated this could provide incentives for up to four developments.

In reply to Commissioner Gerth's inquiry, Mayor Cobb stated hotel rates in Hobbs have dropped but he is not sure if the housing rate have dropped as well. Mayor Cobb stated it is important to have affordable housing in the community in order to bring occupations and businesses to the community. Commissioner Sena agreed.

Commissioner Sena moved that Resolution No. 6464 be adopted as presented. Commissioner Calderón seconded the motion and the vote was recorded as follows: Newman yes, Sena yes, Taylor yes, Calderón yes, Buie yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documents are attached and made a part of these minutes.

**Comments by City Commissioners, City Manager**

Mr. Murphy stated his thoughts and prayers are with the families of the police officers who lost their lives in Dallas, Texas, and Baton Rouge, Louisiana.

Mr. Murphy commended the Hobbs Police Department for their handling of an incident which occurred earlier in the day.

Mr. Murphy stated he will host a joint meeting with community leaders on how to better engage in public safety, affordable housing and quality of life issues. He stated all Americans should be unified and not divisive.

Commissioner Sena thanked everyone for attending tonight's meeting.

Commissioner Calderón asked Police Chief McCall to inform his officers to be careful in the community.

Commissioner Buie stated his thoughts and prayers are with the police officers. He stated he is very proud of all of the public safety employees. Commissioner Newman echoed Commissioner Buie's comments.

Commissioner Taylor stated she sympathized with the families of the shooters as they were not aware of their family member's actions.

**Adjournment**

There being no further discussion or business, Commissioner Calderón moved that the meeting adjourn. Commissioner Buie seconded the motion. The vote was recorded as follows: Newman yes, Sena yes, Taylor yes, Buie yes, Calderón yes, Gerth yes, Cobb yes. The motion carried. The meeting adjourned at 7:10 p.m.

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SAM D. COBB, Mayor

ATTEST:

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JAN FLETCHER, City Clerk



# **CONSENT AGENDA**





# CITY OF HOBBS

## COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1, 2016

**SUBJECT: RESOLUTION AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO PROVIDE FUNDING FOR PUBLIC TRANSPORTATION FOR FY 17-18 UNDER SECTION 5311 OF THE FEDERAL TRANSIT ACT**

DEPT. OF ORIGIN: City Clerk's Office  
DATE SUBMITTED: July 27, 2016  
SUBMITTED BY: Jan Fletcher, City Clerk

**Summary:**

- ▶ The City of Hobbs operates the Public Transportation Program known as the "Hobbs Express" under a Section 5311 Grant through the Federal Transit Act (FTA) which is administered by the State of New Mexico, Department of Transportation, (NMDOT), Transit and Rail Division. The program has been in continuous operation under this format since 1989. The grant application requires that each applicant submit a resolution of support from the municipality served by the project.
- ▶ This is a formulary grant whereby the costs of the program are shared as follows:
 

Administrative	20% City	80% State
Operating	50% City	50% State
Capital	20% City	80% State

**Fiscal Impact:**

Reviewed By: [Signature]  
Finance Department

The City's portion of the funding is provided through fares charged for the service and by subsidy from the General Fund. Upon approval of the grant application by the NMDOT, a project agreement will be presented to the Commission for formal consideration at a later date.

**Attachments:**

Resolution Authorizing Grant Application under Section 5311 of the FTA  
Summary Page of the Grant Application

**Legal Review:**

Approved As To Form: [Signature]  
City Attorney

**Recommendation:**

Motion to approve the resolution.

Approved For Submittal By:

[Signature]  
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. 6466

A RESOLUTION AUTHORIZING THE CITY OF HOBBS  
TO SUBMIT A GRANT APPLICATION TO THE NMDOT  
FOR PUBLIC TRANSPORTATION FOR FY 17-18  
UNDER SECTION 5311 OF THE FEDERAL TRANSIT ACT

WHEREAS, the City of Hobbs seeks to continue to offer public transportation to residents and visitors in the City of Hobbs; and

WHEREAS, the State of New Mexico, under Section 5311 of the Federal Transit Act, is requesting applications for grant funding to assist local communities with public transportation needs; and

WHEREAS, the City of Hobbs hereby acknowledges and supports submission of an application for FTA Section 5311 Rural Transportation Grant Funding which provides funding to offset the administrative, operating and capital costs of operating public transportation services in rural areas.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the City Manager be, and he hereby is, authorized and directed to take all necessary and appropriate action to effectuate this resolution and specifically to submit a grant application for FTA Section 5311 Rural Transportation Grant Funding for FY 16-17 to the State of New Mexico, Department of Transportation, for the following project:

PUBLIC TRANSPORTATION SERVICE KNOWN AS THE "HOBBS EXPRESS" OPERATING SIX DAYS PER WEEK WITH ADA ACCESSIBLE VEHICLES.

PASSED, ADOPTED AND APPROVED this 1<sup>st</sup> day of August, 2016.

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

ATTEST:

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

# FY 18 APPLICATION

## Section 5311 Rural Public Transit

October 1, 2017 - September 30, 2018

### I. Applicant Information

Organization/ Agency:	City of Hobbs/ Hobbs Express Public Transportation		
Contact Person Name and Title:	Jan Fletcher, Program Manager		
Mailing Address:	200 E. Broadway		
City, State, ZIP:	Hobbs, New Mexico 88240		
Physical Address:	424 W. Broadway		
Phone and Cell Number:	575-397-9207		
FAX Number:	575-397-9334		
E-mail Address: (Required)	<a href="mailto:jfletcher@hobbsnm.org">jfletcher@hobbsnm.org</a>		
Regional Planning Transportation Organization: (circle one)	NERTPO	MRRTPO	<u>SERTPO</u> SWRTPO
	NPRTPO	NWRTPO	SCRTPO
Applicant Signature and Date Signed:			
Please Print Name and Title	J. J. Murphy, City Manager		
DUNS Number *	079339222		

\*In addition to including your agency's DUNS Number, please provide a print screen of your agency DUNS Number from the following website: <https://www.sam.gov>

### II. Summary of Budget Request

Please enter the dollar amount of your application request (Administration, Operating, and Capital) in the appropriate column below. This information should come directly from the budget pages in Section III of this application. Please double check calculations

	Total	Federal Share	Local Share
Administrative (80/20)	*99,700	79,760	19,940
Operating (50/50)	**768,998	384,499	384,499
◆ Capital (80/20)	***130,000	104,000	26,000
<b>TOTAL</b>	<b>\$998,698</b>	<b>\$568,259</b>	<b>\$430,439</b>

#### Capital Breakdown

	Total	Federal Share	Local Share
Capital to Subgrantee	***130,000	104,000	26,000
Capital to Vendor			
List vendor if utilizing Capital to Vendor (if applicable)			
◆ TOTAL should equal 'Capital' amt. above	***130,000	104,000	26,000



# CITY OF HOBBS

## COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1, 2016

**SUBJECT: VOTING DELEGATE AND ALTERNATE FOR THE NEW MEXICO MUNICIPAL LEAGUE ANNUAL CONFERENCE IN HOBBS**

DEPT. OF ORIGIN: City Clerk's Office  
DATE SUBMITTED: July 21, 2016  
SUBMITTED BY: Jan Fletcher, City Clerk

**Summary:**

The Annual Conference of the New Mexico Municipal League will be held on August 31 - September 2, 2016, in Hobbs, New Mexico, and the City of Hobbs is entitled to designate a Voting Delegate and Alternate to attend the annual business meeting and vote on the election of officers and all other questions or business at the annual meeting.

**Fiscal Impact:**

N/A

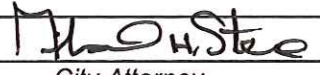
Reviewed By: 

Finance Department

**Attachments:**

- ▶ Resolution Appointing Voting Delegate and Alternate

**Legal Review:**

Approved As To Form: 

City Attorney

**Recommendation:**

Motion to approve the resolution.

Approved For Submittal By:

  
Department Director  
  
City Manager

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

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

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

CITY OF HOBBS

RESOLUTION NO. 6467

A RESOLUTION APPOINTING A VOTING DELEGATE  
AND ALTERNATE DELEGATE FOR THE  
ANNUAL NEW MEXICO MUNICIPAL LEAGUE CONFERENCE

WHEREAS, the Annual Conference of the New Mexico Municipal League will be held August 31 - September 2, 2016, in Hobbs, New Mexico; and

WHEREAS, officers will be elected and the Annual Statement of Municipal Policy and Annual Conference Resolutions will be adopted at the Annual Business Meeting; and

WHEREAS, each member municipality in good standing that is registered and attending the conference shall be entitled to one delegate vote in electing officers, deciding municipal policy and voting upon all other questions at the business meeting.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that JOSEPH D. CALDERÓN is hereby appointed as the Voting Delegate for the City of Hobbs at the Annual Conference of the New Mexico Municipal League and SAM D. COBB is hereby appointed as the Alternate Voting Delegate.

PASSED, ADOPTED AND APPROVED this 1<sup>st</sup> day of August, 2016.

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

ATTEST:

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



**MUNICIPAL CLERKS: PLEASE DISTRIBUTE COPIES TO YOUR ENTIRE GOVERNING BODY**

TO: MAYORS/ GOVERNING BODY MEMBERS  
FROM: William F. Fulginiti, Executive Director  
SUBJECT: 2016 ANNUAL CONFERENCE VOTING DELEGATES  
DATE: July 14, 2016

The 59<sup>th</sup> Annual Conference of the NM Municipal League will be held August 31<sup>st</sup> through September 2<sup>nd</sup> in Hobbs.

At the Annual Business Meeting on Thursday, September 1<sup>st</sup>, a President Elect, Vice President, Treasurer and three Directors-at-Large (2-Year Term) will be elected. Also, the *Annual Statement of Municipal Policy* and *Annual Conference Resolutions* will be adopted.

Each member municipality in good standing that is registered and attending the Annual Conference shall be entitled to one delegate vote in electing officers, deciding municipal policy and voting upon all other questions at the Annual Business Meeting. A municipality in good standing means that at least one-half of the municipality's current League annual dues must have been paid prior to or at the Conference. The vote of the municipality is cast by the Voting Delegate (or in her/his absence, the Alternate) who is selected by the governing body of the municipality.

The Annual Business Meeting will be conducted in accordance with Robert's Rules of Order Revised, and the Annual Business Meeting Rules and Procedures, which shall govern the actions and deliberations of the League membership assembled in convention. Attached for your information are the *Policy Process Outline and the Annual Business Meeting Rules and Procedures*.

Please place the selection of a Voting Delegate and Alternate on the agenda of your next official governing body meeting. **The Voting Delegate and Alternate must be persons planning to attend the Conference.** Once they are selected, enter the names and titles of the Voting Delegate and Alternate for your municipality and **return this form to the League Office no later than Friday, August 26, 2016.**

This is *not* an official registration form for the Annual Conference for either the Voting Delegate or the Alternate. Delegates must register for the Conference on the form provided in the Conference information you have already received.

**Voting Delegates and Alternates must check in with NMML Staff at the Credential's Desk at Conference Registration.**



Municipality: City of Hobbs

Voting Delegate: Joseph D. Calderon Title: Mayor Pro Tem

Alternate: Sam D. Cobb Title: Mayor

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

**RETURN BY OR BEFORE AUGUST 26, 2016 to:**

Jackie Portillo, Support Services Coordinator  
NM Municipal League  
P.O. Box 846 - Santa Fe, NM 87504  
jportillo@nmml.org  
Fax: 505-984-1392



# **Annual Conference**

# **POLICY PROCESS OUTLINE and ANNUAL BUSINESS MEETING RULES and PROCEDURES**

**September 1, 2016  
Hobbs, NM**

# **POLICY PROCESS OUTLINE**

## **PRIOR TO ANNUAL CONFERENCE**

1. Policy Committees meet to review previous year's conference Resolutions and Statement of Municipal Policy, as well as newly submitted Resolutions and statements to be added to Policy. Proposed Resolutions or proposed Policy Statement amendments may be submitted by Committee members, member municipalities or League subsections. Committee makes necessary amendments and adopts, rejects, refers to appropriate other committee or (if resolution is not germane to coming session) refers to following year's committee, all by simple majority of votes cast.

Committee prioritizes all Resolutions it adopts (including those staff is directed to draft) as "High," "Medium" or "Low" priority. Committee then ranks all "High" priority Resolutions in descending order, with "1" as highest rank.

Policy Committee recommendations go to the Resolutions Committee.

2. Resolutions Committee meets and reviews proposed Resolutions and proposed Statement of Municipal Policy amendments as submitted by Policy Committees. Additional proposed Resolutions or proposed Policy Statement amendments may be submitted by Committee members, member municipalities or League subsections. Resolutions Committee makes necessary amendments and adopts or rejects by simple majority of votes cast.

Resolutions Committee recommendations, adopted by simple majority of votes cast, go to Annual Business Meeting at the Annual Conference.

## **LEAGUE ANNUAL CONFERENCE**

3. Resolutions Committee meets to consider additional proposed Resolutions or proposed Policy Statement amendments which have not been considered at its pre-conference meeting. Such proposals may be submitted by Committee members, member municipalities or League subsections. Resolutions Committee adopts or rejects by simple majority of votes cast, any new Resolutions or amended Policy Statement.

Resolutions Committee recommendations go to Annual Business Meeting.

4. The Annual Business Meeting reviews proposed Resolutions and proposed Statement of Municipal Policy amendments submitted by Resolutions Committee. The Annual Business Meeting makes necessary amendments and adopts or rejects by simple majority of votes cast.

Conference Resolutions and the Statement of Municipal Policy adopted by the Annual Business Meeting become the League's official documents for the year ending with the next Annual Business Meeting.

## **AFTER ANNUAL CONFERENCE**

5. At a Fall meeting of the League Board of Directors, the Board reviews the Conference Resolutions and prioritizes them for action in the upcoming legislative session. The Board then selects its top priorities to become the League's primary legislative agenda.

\* \* \* \* \*

In addition, at a joint meeting of the Boards of Directors of the League and the New Mexico Association of Counties, the two boards select those resolutions of the two associations which they jointly agree deserve joint association support in the legislative session.



# ANNUAL BUSINESS MEETING

## RULES AND PROCEDURES

- 1.0 **PRESIDING OFFICER.** The Presiding Officer of the Annual Business Meeting shall be the President who shall call the business meeting to order. If the President is absent from the meeting, the presiding officer will be determined in the following order:
- President-Elect
  - Vice-President
  - Treasurer
  - A member of the Board of Directors selected by the Board.

- 2.0 **FLOOR RULES.** The Presiding Officer shall control the conduct of the meeting and all floor actions, subject to challenge from delegates or the parliamentarian, if any. The Presiding Officer will take motions and seconds from the floor on matters of business, will recognize the call for the question and ask for the official vote from voting delegates. The Presiding Officer will recognize those parties wishing to address the voting delegates.

The business on the floor shall be directed by the following requirements and guidelines:

- 2.1 **Quorum.** The presence of credentialed delegates representing a majority of the member cities registered at the Annual Conference shall constitute a quorum.
- 2.2 **Rules of Order.** Robert's Rules of Order Revised shall govern the conduct of the Business Meeting unless otherwise specified in the New Mexico Municipal League By-Laws or these official rules and procedures.
- 2.3 **Parliamentarian.** A qualified parliamentarian will be appointed to assist the Presiding Officer and delegates on matters of procedure at all times during the Annual Business Meeting.
- 3.0 **ACCESS TO THE FLOOR - GENERAL RULES.** Access to the Annual Business Meeting shall be governed by these rules:
- 3.1 **Separation of Floor From Gallery.** The site of the business meeting shall be divided into a floor section and a gallery section. The floor section shall be further separated into a rostrum and a section for voting delegates and alternates. No one shall be given access to the voting delegates section except as provided by these rules.
- 3.2 **Delegate and Staff Access to the Floor.** To gain access to the floor, voting delegates or alternates must wear a registration name tag bearing a Delegate or Alternate sticker. Only those staff necessary for conducting the meeting shall be permitted on the floor.
- 3.3 **News Media Access to the Floor.** Members of the news media may be allowed on the floor at the discretion of the Presiding Officer.
- 3.4 **Committee Access to the Floor.** Policy committee, task force, or special committee chairpersons and vice-chairpersons, not certified to vote, may be allowed on the floor and may be recognized to speak at the discretion of the Presiding Officer.
- 3.5 **Delegates, Guests and Observers.** Any Conference delegate will have access to the gallery. Guests and observers may have access to the gallery at the discretion of the Presiding Officer. Conference delegates, guests and observers may be recognized to speak at the discretion of the Presiding Officer.

4.0 **VOTING.** Voting at the Annual Business Meeting shall be governed by the following rules:

4.1 **Credentials Committee.** The Credentials Committee shall have the power to determine the right of any municipality to be represented at the Annual Business Meeting of the League.

4.2 **Entitlement to Vote.** Each member municipality in good standing, as determined by the Credentials Committee, registered and attending the Annual Conference shall be entitled to one vote by its delegate appointed by its governing body. **Voting by proxy is prohibited. The delegate must be present to cast a vote.**

In the event that a member municipality fails to appoint a delegate, such matter shall be referred to the Presiding Officer of the Annual Business Meeting who may designate a Voting Delegate from that member municipality.

4.3 **Method of Voting.** Where there is more than one nominee for office, the voting shall be only by written, printed or typed ballot, and shall be counted by the Canvassing Committee. In the case of the Director-At-Large positions, the candidates receiving the largest plurality shall be elected. All other voting shall be by a show of hands or voice vote, except that upon request of one-third of the delegates present, a roll call shall be called upon any question. Upon any vote, a majority of the delegates present and voting shall prevail, except upon questions which require more than a majority vote under any of the provisions of the By-Laws.

5.0 **ELECTIONS.** Elections for officers of the Municipal League and its Board of Directors shall be governed by these rules: Elections for the following positions shall take place at the Annual Business Meeting: President, (if no President-Elect is currently holding office), President-Elect, Vice-President, Treasurer and expired At-Large Board of Directors seats, including unexpired At-Large Directorships if any.

5.1 **Nominating Committee.** In the absence of any declaration of candidacy for a particular office or directorship, the League President shall appoint a Nominating Committee not less than fifty-nine (59) days before the Annual Conference and written notice of such appointment shall be given to all member municipalities. The Nominating Committee shall consist of the President, who shall serve as chair; and two persons from each of the League Districts. No declared candidate for any office or for directorship shall be a member of the Nominating Committee.

5.2 **Nominating Committee Meeting.** When necessary, the Nominating Committee will meet not later than twenty-one (21) days prior to the Annual Conference to recommend a candidate for any undeclared office. The Nominating Committee Report shall be sent to all members within five (5) days after the finalization of the Committee Report.

5.3 **Nominations from the Floor.** At the Annual Business Meeting, nominations from the floor may be made by any certified voting delegate in attendance, for any office or directorship to be filled.

5.4 **Election of Officers and Directors.** Voting shall be conducted as set out in Procedures 4.1, 4.2 and 4.3. The nominee(s) receiving the highest number of votes shall be elected. In the case of the Directorships At-Large positions, the candidates receiving the largest plurality shall be elected.

6.0 **ADOPTION OF THE STATEMENT OF MUNICIPAL POLICY & RESOLUTIONS**

Adoption of the Statement of Municipal Policy and Resolutions as outlined in the Annual Business Meeting preface of this document shall be by a majority of votes cast by the certified voting delegates present and voting.

7.0 **ADJOURNMENT OF THE ANNUAL BUSINESS MEETING**

After the Presiding Officer has determined all business has been concluded, the Annual Business Meeting shall be closed by a motion from the floor. A motion to adjourn requires approval by a voice vote of a majority of those voting delegates present and voting.



# **ACTION ITEMS**



# CITY OF HOBBS

COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1, 2016

**SUBJECT: RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A GRANT AGREEMENT BETWEEN THE CITY OF HOBBS AND J. F MADDOX FOUNDATION FOR THE DESIGN AND CONSTRUCTION OF AN INDOOR RECREATION AND WELLNESS CENTER (HWLC)**

**DEPT. OF ORIGIN:** Office of the City Manager  
**DATE SUBMITTED:** July 26<sup>th</sup>, 2016  
**SUBMITTED BY:** JJ Murphy, City Manager

*Summary:* In 2013, recommendations contained in the Lea County Recreational Master Plan prompted a historic public/private initiative with capital support for the design, construction and equipping of the Project from the City, NMJC, the District, and the Foundation (\$56M) and ongoing operating support pledged by the County, the City, NMJC, and the District. In addition, the NMJC received general obligation bonds approved by the voters of New Mexico in November of 2014, which increased the capital commitment by five million dollars (\$5,000,000) for an original overall budget of \$61M.

To facilitate agreements for the mutual design, construction, and operation of the Project, the City, NMJC, the District, and the County have executed a Memorandum of Understanding dated as of September 4, 2015 (the "MOU") to cooperatively finance, design, construct, operate and maintain the Project, the use of which will be shared by the City, NMJC, the District and the County.

Haydon Building Corporation was awarded the Project, as the Construction Manager at Risk, and has provided estimates throughout the Schematic Design, Design Development and Final Construction Document phases. In May of 2016, Haydon released the 100% construction plans and specifications to potential/interested subcontractors. A Best Value Assessment (BVA) was provided by Haydon and the design team to create an overall budget of \$63.5M, which was shared with the capital funding partners.

The attached Grant Agreement defines the contributions of all capital funding partners and detailed in the Fiscal Impact below. The J. F Maddox Foundation total contribution is the initial grant funding of \$25M and a supplemental grant funding \$2.5M for the portion over the original \$61M cost for **a total project budget of \$63.5M.**

**Fiscal Impact:**

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

<b>Total Expenditure Budget:</b> (pending \$2.5M budget adjustment)	<b><u>\$63,500,000</u></b>
<b>Revenue Summary</b>	
J. F Maddox Foundation (Initial Grant Funding)	\$25,000,000
City of Hobbs (General Fund)	\$25,000,000
New Mexico Junior College (General Obligation Bond)	\$4,950,000
New Mexico Junior College (1% of G.O. Bond reserved for Public Art)	\$50,000
New Mexico Junior College (Mill Levy Funds)	\$5,000,000
Hobbs Municipal School District (Local Bond Funds)	\$1,000,000
J. F Maddox Foundation (Supplemental Grant Funding)	\$2,500,000
	<b><u>\$63,500,000</u></b>

**Note:** The FY17 Budget includes the original \$61M and a budget adjustment is necessary for the \$2.5M increased revenue and \$2.5M increased expenditures.

**Attachments:** Resolution, Grant Agreement

**Legal Review:**

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

**Recommendation:**

Consideration for the Approval of the Resolution authorizing the Mayor to execute the Grant Agreement

Approved For Submittal By:

\_\_\_\_\_  
Department Director

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

CITY CLERK'S USE ONLY  
COMMISSION ACTION TAKEN

Resolution No. \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Approved \_\_\_\_\_

Other \_\_\_\_\_

Continued To: \_\_\_\_\_

Referred To: \_\_\_\_\_

File No. \_\_\_\_\_

Denied

CITY OF HOBBS

RESOLUTION NO. 6468

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE  
A GRANT AGREEMENT BETWEEN  
THE CITY OF HOBBS AND J. F MADDOX FOUNDATION  
FOR THE DESIGN AND CONSTRUCTION OF AN  
INDOOR RECREATION AND WELLNESS CENTER**

WHEREAS, the City of Hobbs has executed a Memorandum of Understanding dated September 4<sup>th</sup>, 2015 with the NMJC, the Hobbs Municipal School District and Lea County to cooperatively finance, design, construct, operate, and maintain a Health Wellness and Learning Center ("HWLC");

WHEREAS, the City of Hobbs has received and reviewed the attached Grant Agreement between the City of Hobbs and J. F Maddox Foundation ("GRANT AGREEMENT"); and

WHEREAS, under the terms of the Grant Agreement, the J.F Maddox Foundation will provide grant funding for the design, construction and equipping of the HWLC in an initial grant amount of Twenty Five Million Dollars (\$25,000,000) and up to Two Million Five Hundred Thousand Dollars (\$2,500,000) in supplemental grant funding.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the City Mayor be, and he hereby is, authorized and directed to execute the Grant Agreement and to take all necessary and appropriate action to effectuate the terms of the Grant Agreement.

PASSED, ADOPTED AND APPROVED this 1<sup>st</sup> day of August, 2016.

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

ATTEST:

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

**GRANT AGREEMENT**  
**[HWLC]**

**THIS GRANT AGREEMENT** (the "Agreement") shall be effective as of August 1, 2016 (the "Effective Date") and is between the City of Hobbs, a New Mexico municipality ("City"), and J. F Maddox Foundation, a New Mexico nonprofit corporation (the "Foundation").

**RECITALS**

A. Beginning in 2011, several local governmental entities and educational organizations, including Lea County, New Mexico (the "County"), the City, New Mexico Junior College ("NMJC"), Hobbs Municipal School District (the "District"), and the University of the Southwest ("USW"), (collectively referred to herein as the "Local Institutions"), and the Foundation convened on many occasions to develop a comprehensive understanding of unmet recreational and wellness needs of the residents of Lea County and to explore how these Local Institutions could collaborate to better meet such needs.

B. In 2012, the Local Institutions engaged experts on community recreation and wellness planning (the "Consultants") to study issues essential to the quality of life of area residents. The Local Institutions desired to develop recreational and wellness facilities sufficient to (i) better serve existing residents, (ii) enhance the quality of life in the area to enable local employers to retain their existing workforce and (iii) more effectively attract new residents in developing an additional workforce needed to further grow and diversify the local economy. The Local Institutions also desired to analyze local needs and interests within the context of emerging national trends in recreation and wellness facilities for similar sized communities.

C. In 2012, following extensive analysis of recreation and wellness interests and needs of area residents, the Consultants developed a recreational master plan for Lea County (the "Master Plan"). The Master Plan was subsequently presented and adopted at an unprecedented joint session of the County Commission, the City Commission, and the Board of NMJC.

D. The single most significant recommendation in the Master Plan was the multijurisdictional development of a major indoor recreation and wellness center (the "Project" or sometimes referred to herein as the "HWLC") for the benefit of all Lea County residents. The Project was subsequently designed to replace existing, but outdated, inefficient, and separately operated recreation and wellness facilities in the community. The approach employed in planning the Project will enable greater multijurisdictional use and support with significantly greater operational efficiencies for the benefit of the community.

E. In 2013, recommendations contained in the Master Plan prompted a historic public/private initiative with capital support (which collectively resulted in a total financial commitment of Fifty-Six Million Dollars (\$56,000,000)) for the design, construction and equipping of the Project from the City, NMJC, the District, and the Foundation (the "Capital Funding Partners") and ongoing operating support pledged by the County, the City, NMJC, and the District.

F. This unprecedented public/private collaborative succeeded in attracting an additional capital commitment of Five Million Dollars (\$5,000,000) as part of the general obligation bonds approved by the voters of New Mexico in November of 2014 (the "General Obligation Bonds") for the design of the Project.

G. To facilitate agreements for the mutual design, construction, equipping and operation of the Project, the City, NMJC, the District, and the County have executed a Memorandum of Understanding dated as of September 4, 2015 (the "MOU") to cooperatively finance, design, construct, equip, operate and maintain the Project, the use of which will be shared by the City, NMJC, the District and the County.

H. The City acquired approximately 12.8 acres of land (the "Land") on which the Project will be built. The City structured the acquisition so that the Land will be owned by NMJC, the City and the District ("Owners"), as tenants in common. Pursuant to the terms of the MOU, the City has agreed to contribute Fifty Million Dollars (\$50,000,000) towards the cost of the Project to design, construct and equip the Project and any other costs as outlined in Exhibit C, consisting of Twenty-Five Million Dollars (\$25,000,000) of unrestricted general funds and Twenty-Five Million Dollars (\$25,000,000) of private grant funds. The Foundation agreed to provide the Twenty-Five Million Dollars (\$25,000,000) of private grant funds (the "Initial Grant Funds") for a portion of the design, construction, equipment costs, and any other costs as outlined in Exhibit C. The City will also contribute funds for the on-going operation, maintenance and repair of the Project in accordance with the MOU.

I. NMJC is contributing Five Million Dollars (\$5,000,000) towards the cost to design the Project represented by the General Obligation Bonds, subject to approval of the contributions by the New Mexico Higher Education Department ("NMHED"), of which Fifty Thousand Dollars (\$50,000) must be spent for Art in Public Places. NMJC is also contributing an additional Five Million Dollars (\$5,000,000) towards the cost to design, construct and equip the Project from its mill levy funds. NMJC will also contribute funds for the on-going operation, maintenance and repair of the Project in accordance with the MOU.

J. The District is contributing One Million Dollars (\$1,000,000) of local bond funds towards the cost to design, construct and equip the Project. The District will also contribute funds for the on-going operation, maintenance and repair of the Project in accordance with the MOU.

K. The parties to the MOU originally estimated a cost of Sixty-One Million Dollars (\$61,000,000) (the "Original Project Budget") to design, construct and equip the Project. The Original Project Budget is attached hereto as Exhibit A. Subsequent to the execution of the MOU, the parties have determined that the estimated costs for the design, construction and equipping of the Project could exceed Sixty-One Million Dollars (\$61,000,000).

L. Given that the estimated total cost in Exhibit C is approximately \$2.5 million greater than the Original Project Budget, the Foundation has agreed to provide up to an additional Two Million Five Hundred Thousand Dollars (\$2,500,000) of private grant funds (the "Supplemental Grant Funds," the Initial Grant Funds and the Supplemental Grant Funds shall collectively be referred to herein as the "Grant Funds") to be used for the design, construction and equipping of the Project and any other cost as outlined in Exhibit C.



M. The Foundation and the City have agreed to the order for the draw of funds related to the Grant Funds as well as the funds to be provided by the City, the District, and NMJC as well as proceeds from the General Obligation Bonds for application to the design, construction and equipping costs of the Project.

**IN CONSIDERATION** of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

## **Article I DEFINITIONS**

Section 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

“Agreement” – means this Grant Agreement for the HWLC, as such exists on its original date and any amendments, modifications or restatements thereof.

“Code” – means the Internal Revenue Code of 1986, as amended from time to time, and all United States Treasury Regulations, revenue procedures and revenue rulings issued pursuant thereto.

“Completion Date” – means the date that is the earlier of (i) the date on which the certificate of occupancy for the entire the Project has been issued by the State of New Mexico, or (ii) the date on which the following have occurred: (a) the Contractor (as defined in the Construction Contract Documents) has issued to the City a certificate certifying that the Project has been “substantially completed,” subject to the completion of minor punch list items that do not materially affect the use or occupancy of the Project; and (b) a temporary certificate of occupancy has been issued by the State of New Mexico.

“Construction Contract Documents” – means the document or documents, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders, modifications thereof or supplements thereto, which collectively form the contract between the City and the Contractor or Contractors for the completion of the construction of the Project or performance of any other work necessary for completion of the Project including, without limitation, any contract or documents for work on or before the Completion Date for either a fixed price or a guaranteed maximum price.

“Construction Items” – means the work to be performed under the Construction Contract Documents and as further described in the Plans and Specifications by Barker Rinker Seacat and Dekker Perich Sabatini dated as of May 6, 2016, as may be amended from time to time and incorporated herein by reference.

“Construction Manager” – means the legal entity that has entered into the Construction Services Agreement with the City for completion of the work on the Project.

“Construction Services Agreement” – means the Construction Services Agreement by and between the City and Haydon Building Corporation dated August 1, 2016, as the same may be amended or replaced from time to time.

“Contractor” – means any person engaged to work on or to furnish materials and supplies for the Construction Items including, if applicable, a general contractor.

“Event of Default” – means one or more of those events delineated in Section 2.08.

“Grant Funds” – means the sum total of the Initial Grant Funds and the Supplemental Grant Funds.

“HWLC” - HWLC or the eventual complete name and acronym describing the name of the facility as determined by the Capital Funding Partners.

“Owner” – means one or more of the owners of the Project as defined in the MOU.

“Qualified Expenditures” – means those expenditures identified in Exhibit C hereto.

“Request for Reimbursement” – means a formal, written request for reimbursement of Grant Funds hereunder with sufficient documentation, as referred to in Section 6.02.

## **Article II GRANT**

**Section 2.01 Grant of Monies.** The Foundation shall disburse the Grant Funds in accordance with Section 6.01 below, conditioned on compliance with the terms and provisions of this Agreement.

**Section 2.02 Public Ownership.** The Foundation acknowledges and agrees that the Grant Funds are being provided to the City for the Project which will be owned by the governmental entities as set forth in the MOU. The City represents and warrants to the Foundation that it has, or will acquire, such interests in the Land and Project and, in addition, that it possesses, or will possess, all easements and will install all utilities necessary for the operation, maintenance, repairs and management of the Project in the manner specified in Section 2.04.

**Section 2.03 Use of Grant Proceeds.** The City shall only use Grant Funds from the Foundation entirely for the purposes of Qualified Expenditures related to the Project.

**Section 2.04 Operation of the Project.** The Land and Project must be used by the City or the other parties to the MOU for the purposes set forth in the MOU. The City shall cause the Project to be acquired, constructed, equipped and used for the operation of the HWLC in

accordance with the MOU or for such other authorized use as the City may from time to time designate, and for no other purposes or uses.

Section 2.05 **City Covenants, Representations and Warranties.** The City further covenants with, and represents and warrants to the Foundation as follows:

A. The City has legal authority to enter into, execute, and deliver this Agreement, the MOU, and all other documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. The City has legal authority to use the Grant Funds for the purpose or purposes described in this Agreement.

C. The City has legal authority to design, construct, equip and operate the Project.

D. This Agreement, the MOU and all other documents to which the City is a party referred to herein are or, upon due execution and delivery will be, the legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms.

E. The City will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, the MOU, and all other documents referred to herein.

F. The City will comply with all of the provisions and requirements contained in and imposed by the laws of the State of New Mexico.

G. All of the information the City will submit to or at the direction of the Foundation relating to the expenditure and disbursement of any of the Grant Funds will be true, accurate and complete.

H. The City is not in violation of any provisions of the New Mexico statutes or material violation of any other laws of the State of New Mexico, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Land and the Project, or its ownership interest or participation therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement or the MOU or Construction Contract Documents, or to perform any of the acts required of it under this Agreement, the MOU, the Construction Contract Documents, or any document referred to herein.

I. Neither the execution and delivery of this Agreement or the MOU, the Construction Contract Documents, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term,

condition, or provision of any agreement or document to which it is now a party or by which the City is bound.

J. Upon completion of the Project, the contemplated use of the Land and Project will not violate any applicable use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

K. The Project will be completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

L. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

M. All applicable licenses, permits and bonds required for the operation of the HWLC in the manner specified in Section 2.04 have been, or will be, obtained.

N. The City will operate, maintain, repair and manage the HWLC or cause the HWLC to be operated, maintained, repaired and managed in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

O. The City will fully enforce the terms and conditions contained in the MOU and any other contract executed in connection with the Project.

P. The City will not allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the City's ownership interest in the Land or Project.

Q. The City will possess the ownership interest in the Land and Project described herein and in the MOU and it does not expect to sell such ownership interest.

R. The City will use its best efforts and reasonably expects to supply, or cause to be supplied, and appropriate or to appropriate, whatever funds are needed above and beyond the amount of the Grant Funds to complete and fully pay for its share of the Project and its ongoing share of the operation, maintenance and repair costs.

S. The City will meet its obligations set forth in the MOU and will be responsible for stewardship of the Project funds, including the proceeds of the Grant Funds, and the public interest therein.

T. The Construction Items will be completed substantially in accordance with the Construction Contract Documents.

U. The City will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its performance under the Construction Contract Documents.

V. The City shall furnish such satisfactory evidence regarding the representations and warranties described herein and in the MOU as may be requested by the Foundation.

W. If additional change orders are requested, the City agrees to provide copies to the Foundation for review prior to execution of such change orders, and the City will provide the Foundation with copies of all Change Orders to the Construction Contract Documents.

X. The City shall provide the Foundation with copies of the Annual Facility Budget and the Year-End Financial Reports on an annual basis along with copies of the meeting minutes and reports from the Facility Committee established pursuant to the MOU.

**Section 2.06 City's Ownership of the Land and the Project.**

A. The City shall not lease the Land and/or Project without first complying with the following provisions.

1. Such lease must contain a provision that provides sufficient authority to allow the City to operate the Land and Project in accordance with the requirements imposed under Section 2.04.

2. Such lease must not contain any provisions that would limit or impair the City's operation of the Land and Project in accordance with the requirements imposed under Section 2.04.

3. Such lease must acknowledge the existence of this Agreement and the MOU and contain a provision that the terms, conditions and provisions contained in this Agreement and the MOU shall control over any inconsistent or contrary terms, conditions and provisions contained in such lease.

4. The City and the Owners pursuant to the MOU must be the lessee under such lease.

B. The provisions contained in this Section are not intended to and shall not prevent the City from including additional provisions in a lease that are not inconsistent with or contrary to the requirements contained in this Section.

C. The expiration of the term of a lease shall not be an event that requires the City to reimburse the Foundation for any portion of the Grant Funds, and upon such expiration the City's ownership interest in the Land and Project shall continue to be subject to this Agreement.

D. The City shall fully and completely comply with all of the terms, conditions and provisions contained in a lease and shall obtain and file with the Foundation a copy thereof.

**Section 2.07 Frustration of Purpose or Failure to Appropriate Funds.** Should (i) the governmental purpose of the Project be discontinued, or (ii) one of the Owners of the Project fail to appropriate funds for the ongoing operation, maintenance and repair of the Project, the City shall promptly give notice to the Foundation. Within 30 days of such initial notice, the City shall, if applicable, additionally notify the Foundation of the efforts the City is making to restore the financial commitment and requirements for the operation, maintenance and repair of the Project, which efforts may include finding other operating partners of the Project or locating another suitable owner for the Project. If, after no less than 30 additional days, the Foundation determines that the City's actions or actions of the other Owners are not reasonable, timely or likely to succeed, the intent and purpose of this Agreement shall be frustrated (a "Frustration of Purpose") and the Agreement will terminate. The provisions of this Section shall not be effective until the earlier of (i) the Completion Date or (ii) December 31, 2018, and shall not affect the rights of the Foundation under any other provisions of this Agreement, including but not limited to the provisions of Section 2.08 and 2.09.

**Section 2.08 Event(s) of Default.** The following events shall, unless waived in writing by the Foundation, constitute an Event of Default under this Agreement upon the Foundation giving the City 30 days' written notice of such event and the City's failure to cure such event during such 30-day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days, as long as the City is using its best efforts to cure and is making reasonable progress in curing such Events of Default.

A. If any representation or warranty made by the City in this Agreement or in any Request for Reimbursement in order to induce the Foundation to approve the disbursement of any of the Grant Funds shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation or warranty was made.

B. If the City fails to obtain or otherwise provide and expend the required amount of the matching funds pursuant to this Agreement and the MOU, to correspond to the aggregate amount of the Grant Funds advanced and disbursed for the actual costs of the Project.

C. Failure by one of the Owners of the Project to appropriate funds for the Project.

D. The Completion Date has not taken place on or before December 31, 2018.

Notwithstanding the foregoing, any of the above delineated events that cannot be cured shall, unless waived in writing by the Foundation, constitute an Event of Default under this Agreement immediately upon the Foundation giving the City written notice of such event.

**Section 2.09 Remedies.** Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the Foundation, the Foundation may suspend the disbursement of the Grant Funds; provided, however, the

Foundation may disburse Grant Funds to the City after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

The Foundation reserves the right to seek specific performance for the enforcement of the terms and provisions of this Agreement.

**Section 2.10 Notification of Event of Default.** The City shall furnish to the Foundation, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the City proposes to take with respect thereto.

**Section 2.11 Survival of Event of Default.** This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only terminate in accordance with the provisions contained in Section 2.12.

**Section 2.12 Term of Grant Agreement.** This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the Effective Date and ending on July 31, 2036. If there are no uncured Events of Default as of such date, this Agreement shall terminate and no longer be of any force or effect, and the Foundation shall execute whatever documents are needed to release the City from the obligations under this Agreement.

### **Article III LEASE AND USE CONTRACTS**

**Section 3.01 General Provisions.** The City has statutory authority as provided by laws of the State of New Mexico to enter into leases or use contracts for all or any portion of the Land and Project.

**Section 3.02 Tax Exempt Compliance.** The City will ensure that the Project is used for governmental purposes.

**Section 3.03 Deposit of Proceeds for Lease or Use of the Project.** The City will ensure that, as property manager of the Project pursuant to the MOU, that it will operate, maintain and repair the Project in good operating condition and that all "Facility Contributions" received pursuant to the MOU shall be deposited into the Capital Reserve Account and used for the purposes set forth in Paragraph 5(b) and (c) of the MOU.

### **Article IV UNANTICIPATED SALE**

**Section 4.01 Sale.** It is unexpected that the City would contemplate a future sale of the Project to a third party. Accordingly, the City shall not sell any part of its ownership interest in

the Land and Project unless the City shall have complied with laws of the State of New Mexico and obtained the prior written consent of the Foundation.

**Section 4.02 Proceeds of Sale.** In the unexpected event of the sale of the City's ownership interest in the Land and Project, the proceeds thereof shall be disbursed as provided by the laws of the State of New Mexico, with reimbursement as provided herein. Taking into consideration capital investments made, initially and subsequent to construction of the Project, by all Capital Funding Partners in the HWLC, the Foundation shall be reimbursed the prorated share of its investments [initial and subsequent capital investments] in the HWLC of the proceeds of such sale. In no case will the Foundation receive more than the total sum of its initial and subsequent capital investments in the HWLC in the event of the sale of the HWLC.

Upon such sale, this Agreement shall terminate and no longer be of any force and effect, and the Foundation shall execute, or have executed, and deliver to the City such documents as are required to release the City's ownership interest in the Land and Project from the effect of this Agreement.

#### **Article V PRESERVATION OF TAX-EXEMPT STATUS**

**Section 5.01 Tax-Exempt Status.** If any funds contributed to the Project by the Owners are from tax-exempt bonds, the City agrees not to take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the tax-exempt bonds, or to omit to take any action necessary to maintain such tax exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

#### **Article VI DISBURSEMENT OF GRANT FUNDS**

**Section 6.01 Reimbursement.** The Foundation agrees, on the terms and subject to the conditions set forth herein, to reimburse the City from the Initial Grant Funds for 50% of Qualified Expenditures incurred by the City that are not subject to reimbursement under the terms of the MOU with other parties and/or proceeds from the General Obligation Bonds, with the understanding that such reimbursement from the Foundation will not exceed Twenty-Five Million Dollars (\$25,000,000).

After, and only after, the City has expended (i) all the funds due from all its partners under the terms of the MOU, (ii) the proceeds from General Obligation Bonds, (iii) the funds the City is obligated to provide as referred to in the preceding paragraph and (iv) all the Initial Grant Funds, the Foundation will reimburse the City from the Supplemental Grant Funds on a dollar-for-dollar basis upon satisfaction of the requirements set forth in 6.02 herein for Qualified Expenditures.

The City will not use the Grant Funds for off-site infrastructure costs and off-site work for the preparation of the Land for the Project. Those costs will be borne 100% by the City.



It is the intent of the parties hereto that the rate of Reimbursement from the Foundation shall be in accordance with this section and the provisions of Section 7.16 relating to matching funds and appropriation of funds from the City.

**Section 6.02 Reimbursement Requests.** All requests made to the Foundation by the City for Grant Funds shall be accompanied with the following documentation:

- A. Documentation of actual Qualified Expenditures incurred by City.
- B. Evidence that the Request for Reimbursement is for Qualified Expenditures not otherwise eligible for reimbursement under the terms of the MOU with other parties or from proceeds from applicable New Mexico Statewide General Obligation Bonds.
- C. Evidence that the Project is being constructed within budget.
- D. That the City is in compliance with all other provisions of this Agreement and the MOU.

Upon receipt of a Request for Reimbursement from the City showing payment of the requested Qualified Expenditures, the Foundation shall (a) review such requisition for compliance with the Agreement, (b) confirm that there are no apparent material defaults under the Agreement, and (c) promptly approve any amounts requested by the City in the Request for Reimbursement with payment of the Qualified Expenditures from the Foundation's Grant Funds.

At the time of submission of the final Request for Reimbursement (which may be submitted only on or after the Completion Date) in respect of the Project as provided in the Construction Contract Documents, the City shall submit in accordance with the Agreement: (i) such supporting evidence as may be required to substantiate all payments which have been made subject to the final Request for Reimbursement or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities, and that all requisite certificates of occupancy and other approvals have been issued.

If, on the date a Request for Reimbursement is requested, the City has complied with all requirements of this Agreement (including, but not limited the provisions of Sections 6.03, 6.04, 7.17, and 7.18) and the authorized representative of the Foundation has approved the Request for Reimbursement, the Foundation shall disburse or cause to be disbursed the amount of the requested payments to the City.

**Section 6.03 Condition Precedent to Any Disbursement.** The obligation of the Foundation to provide Grant Funds hereunder shall be subject to the following conditions precedent, it being the intention of the parties that the conditions precedent set out in A. to M., inclusive, will have been satisfied:

- A. The Foundation has received appropriate documentation to adequately support a Request for Reimbursement specifying the amount of funds being requested, evidence of the payment by the City of such Qualified Expenditures, which amount when

added to all prior requests for an Advance shall not exceed the amount of the Grant Funds described in Section 1.01 and Section 6.01.

B. The Foundation has received evidence, in form and substance acceptable to the Foundation, that (i) the City has legal authority to and has taken all actions necessary to enter into this Agreement, and (ii) this Agreement is binding on and enforceable against the City.

C. The Foundation has received evidence, in form and substance acceptable to the Foundation, that the City has sufficient funds to fully and completely pay for the Project and all other expenses that may occur in conjunction therewith.

D. The Foundation has received evidence, in form and substance acceptable to the Foundation, that the City is in compliance with the matching funds requirements, if any, contained in Section 7.16.

E. The Foundation has received evidence, in form and substance acceptable to the Foundation, showing that the City possesses the ownership interest delineated in Section 2.02.

F. The Foundation has received evidence, in form and substance acceptable to the Foundation, that the Land and Project, and the contemplated use thereof are permitted by, or are expected to be permitted by, and will comply with all applicable use or other restrictions and requirements imposed by applicable ordinances or regulations, and, if required by law, have been, or are expected to be, duly approved by the applicable municipal or governmental authorities having jurisdiction thereover.

G. The Foundation has received evidence, in form and substance acceptable to the Foundation, that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

H. The Foundation has received evidence, in form and substance acceptable to the Foundation, that all applicable and required permits, bonds and licenses necessary for the operation of the Land and Project in the manner specified in Section 2.04 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. The Foundation has received from the City a certified copy of a guaranteed maximum price contract or other comparable agreement with respect to the Project, or other evidence, in form and substance acceptable to the Foundation, that the Project will be completed in a manner that will allow the Land and Project to be operated in the manner specified in Section 2.04.

J. The Foundation has received evidence, in the form of the fully executed Construction Contract Documents and the updated budget for the Project, that the City has the ability and a plan to fund the operation of the Land and Project in the manner specified in Section 2.04.

K. The Foundation has received evidence, in form and substance acceptable to the Foundation, that the insurance requirements under Section 7.01 of this Agreement and the MOU have been satisfied.

L. No Frustration of Purpose or Event of Default under this Agreement, or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse, shall have occurred and be continuing.

M. The City has supplied to the Foundation all other items that the Foundation reasonably may require.

**Section 6.04 Construction Inspections.** The City and the Construction Manager shall be responsible for making their own inspections and observations of the Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of Grant Funds has been properly done or supplied in accordance with the Construction Contract Documents. The Foundation shall have no obligation to ensure that the work completed complies with Construction Contract Documents.

## **Article VII MISCELLANEOUS**

**Section 7.01 Insurance.** The City shall insure the Project in an amount equal to the full insurable value thereof and as further described in the MOU. The City shall name the Foundation as a named insured on any policy obtained by the City for the term of this Agreement. If damages which are covered by such required insurance occur, then the City shall use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully repair such damage.

The City may require its counterparty under any leases or use contract, to provide and maintain any or all of the insurance required under this Section; provided that the City continues to be responsible for the providing of such insurance in the event that such counterparty fails to provide or maintain such insurance.

The City shall promptly furnish to the Foundation all written notices and all paid premium receipts received by the City regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

If the City fails to provide and maintain the insurance required under this Section, the Foundation may, at its sole option and discretion, obtain and maintain insurance of an equivalent nature and any funds expended by the Foundation to obtain or maintain such insurance shall be due from the City and payable on demand by the Foundation; provided, however, nothing contained herein, including but not limited to this Section, shall require the

Foundation to obtain or maintain such insurance, and the Foundation's decision to not obtain or maintain such insurance shall not lessen the City's duty to obtain and maintain such insurance.

**Section 7.02 Use, Maintenance, Repair and Alterations.** The City shall (i) keep the Land and Project, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Land and promptly restore in like manner any portion of the Project which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Land or Project, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, and (v) comply with the provisions of any Land or Project lease or use contract.

The City shall not, without the written consent of the Foundation: (a) permit or suffer the use of any of the Land or Project, for any purpose other than the purposes specified in Section 2.04, (b) remove, demolish or substantially alter any of the Land or Project, except such alterations as may be required by laws, ordinances or regulations or such other alterations as may improve such Land or Project by increasing the value thereof or improving its ability to be used to operate the intended governmental purposes thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of the Land or Project, (d) abandon the Land or Project, (e) commit or permit any waste or deterioration of the Land or Project, (f) remove any fixtures or personal property from the Land or Project, that was paid for with the proceeds of the Grant Funds unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon the Land or Project, in violation of any law, ordinance or regulation.

**Section 7.03 Record Keeping and Reporting.** The City shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the Project and operation of the Land and Project needed to comply with the requirements contained in this Agreement and the MOU, including without limitation those requirements, if applicable, for the preservation of the tax-exempt status of bonds under Article 5, and upon request shall allow or cause the entity which is maintaining such items to allow the Foundation and auditors for the Foundation, to inspect, audit, copy, or abstract, all of such items. The City shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained (i) all of such items that relate to the construction of the Project for a period of twenty (20) years from the date that the Project is fully completed and placed into operation, and (ii) all of such items that relate to the operation of the Land and Project for a period of six (6) years from the date such operation is initiated.

**Section 7.04 Data Practices.** The City agrees with respect to any data that it possesses regarding the Grant Funds, the Project, or the Land, to comply with all of the provisions and restrictions contained in New Mexico Statutes that exist as of the date of this Agreement and the MOU and as such may subsequently be amended, modified or replaced from time to time.

Section 7.05 **Non-Discrimination.** The City agrees to not engage in discriminatory employment practices regarding the design, construction and equipping of the Project, or operation or management of the Land and Project, and it shall, with respect to such activities, fully comply with all of the provisions contained in New Mexico Statutes, if and when applicable, that exist as of the date of this Agreement and the MOU and as such may subsequently be amended, modified or replaced from time to time.

Section 7.06 **Liability.** The City and the Foundation [subject to provisions of New Mexico Law] agree that they will be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof.

Section 7.07 **Relationship of the Parties.** Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the City or the Foundation, nor shall the City be considered or deemed to be an agent, representative, or employee of the Foundation in the performance of this Agreement, the design, construction and equipping of the Project, or the operation of the Land and Project.

The City represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement, the MOU and the design, construction and equipping of the Project, and the operation, maintenance and repair of the Land and Project. All personnel of the City or other persons while engaging in the performance of this Agreement, the design, construction and equipping of the Project, or the operation, maintenance and repair of the Land and Project shall not have any contractual relationship with the Foundation, and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act, claims of discrimination against the City, its officers, agents, contractors, or employees shall in no way be the responsibility of the Foundation. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the Foundation including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 7.08 **Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To Foundation at:

J. F Maddox Foundation  
220 West Broadway, Suite 200  
Hobbs, NM 88240  
Telephone: (575) 393-6338 ext. 22  
Fax: (575) 397-7266

Attention: Executive Director

To the City at:

City of Hobbs  
200 E. Broadway  
Hobbs, NM 88240  
Telephone: (575) 397-9206  
Fax: (575) 397-0379

Attention: City Manager

**Section 7.09 Binding Effect and Assignment or Modification.** This Agreement and the MOU shall be binding upon and inure to the benefit of the City and the Foundation, and their respective successors and assigns. Provided, however, that neither the City nor the Foundation may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement shall be binding on either the City or the Foundation unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

The City shall provide the Foundation with copies of any amendments to the MOU.

**Section 7.10 Waiver.** Neither the failure by the City or the Foundation, or by the Foundation as a third party beneficiary to the MOU, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the City or the Foundation, or the Foundation as a third party beneficiary to the MOU, to exercise any right, privilege, or remedy conferred hereunder or under the MOU or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of the City or the Foundation, or the Foundation as a third party beneficiary of the MOU, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

**Section 7.11 Entire Agreement.** This Agreement, the Exhibits thereto, the MOU, and all documents referred to and incorporated herein by reference embody the entire agreement between the City and the Foundation, and there are no other agreements, either oral or written, between the City and Foundation on the subject matter hereof.

**Section 7.12 Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement shall be determined in accordance with the laws of the State of New Mexico. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of New Mexico Fifth Judicial District Court located in Lovington, County of Lea, State of New Mexico.

Section 7.13 **Severability.** If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 7.14 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 7.15 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 7.16 **Matching Funds and Annual Appropriations.** The City shall provide the Land and the funds in the amount of not less than Twenty-Five Million (\$25,000,000) plus additional funds for the off-site work for the Project. The City shall also provide on-going annual expenses referenced herein subject to New Mexico law. The City shall annually supply to the Foundation all documentation to substantiate the availability and source of any and all matching funds and annual appropriations, and the source and terms relating to all matching funds and annual appropriations must be as provided by the MOU or other applicable law, or as otherwise consented to, in writing, by the Foundation.

Section 7.17 **Owner Preconstruction Expenditures.** The City represents and warrants that all Owner Preconstruction Expenditures not provided for in other Qualified Expenditure line items in Exhibit C including, but not limited to, such costs as Project related branding, the development of a Project video, Project-specific studies, engagement of Project-specific consultants, and due diligence-related trips to tour similar facilities will not exceed \$200,000. To the extent such expenditures exceed \$200,000 ("Excess Owner Preconstruction Expenditures"), the City shall be responsible for the payment of such Excess Owner Preconstruction Expenditures and the Excess Owner Preconstruction Expenditures shall not be charged as Qualified Expenditures of the Project as set forth in Exhibit C.

Section 7.18 **Owner's Contingency.** Any expenditure for the Project from any funding source to be charged against the Owner's Contingency (\$1,725,956) set forth in Exhibit C must be approved in advance by the City and the Foundation.

Section 7.19 **Source and Use of Funds.** The City represents to the Foundation that Exhibit C is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such Exhibit C correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down among the following categories:

- (i) State funds, local funds, Grant Funds, identifying the source and amount of such funds.
- (ii) Matching funds, identifying the source and amount of such funds.
- (iii) Other funds supplied by the City, identifying the source and amount of such funds.
- (iv) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the City must provide to the Foundation a detailed description of such conditions and what is being done to satisfy such conditions or include such information on Exhibit C.

The City shall also supply whatever other information and documentation the Foundation may request to support or explain any of the information contained in Exhibit C.

**Section 7.20 Project Completion Schedule.** The City represents to the Foundation that **Exhibit B** correctly and accurately delineates the projected schedule as of the date of this Agreement for the completion of the Project; provided, however, such schedule is subject to change.

**Section 7.21 City Tasks.** Any tasks that this Agreement imposes upon the City may be performed by such other entity as the City may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the City.

**Section 7.22 City and Foundation Required Acts and Approvals.** The City and the Foundation shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

**Section 7.23 Applicability to Land and Project.** This Agreement applies to the City's ownership interest in the Land and Project and the City's interests in the Land and Project as set forth in the MOU with the other Owners.



**IN TESTIMONY HEREOF**, the City and the Foundation have executed this Grant Agreement for a HWLC on the day and date indicated immediately below their respective signatures.

**FOUNDATION:**

**J. F Maddox Foundation,**  
a New Mexico nonprofit corporation

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

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

Its: President

Dated: August \_\_, 2016

**CITY:**

**City of Hobbs, New Mexico**  
a New Mexico municipality

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

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

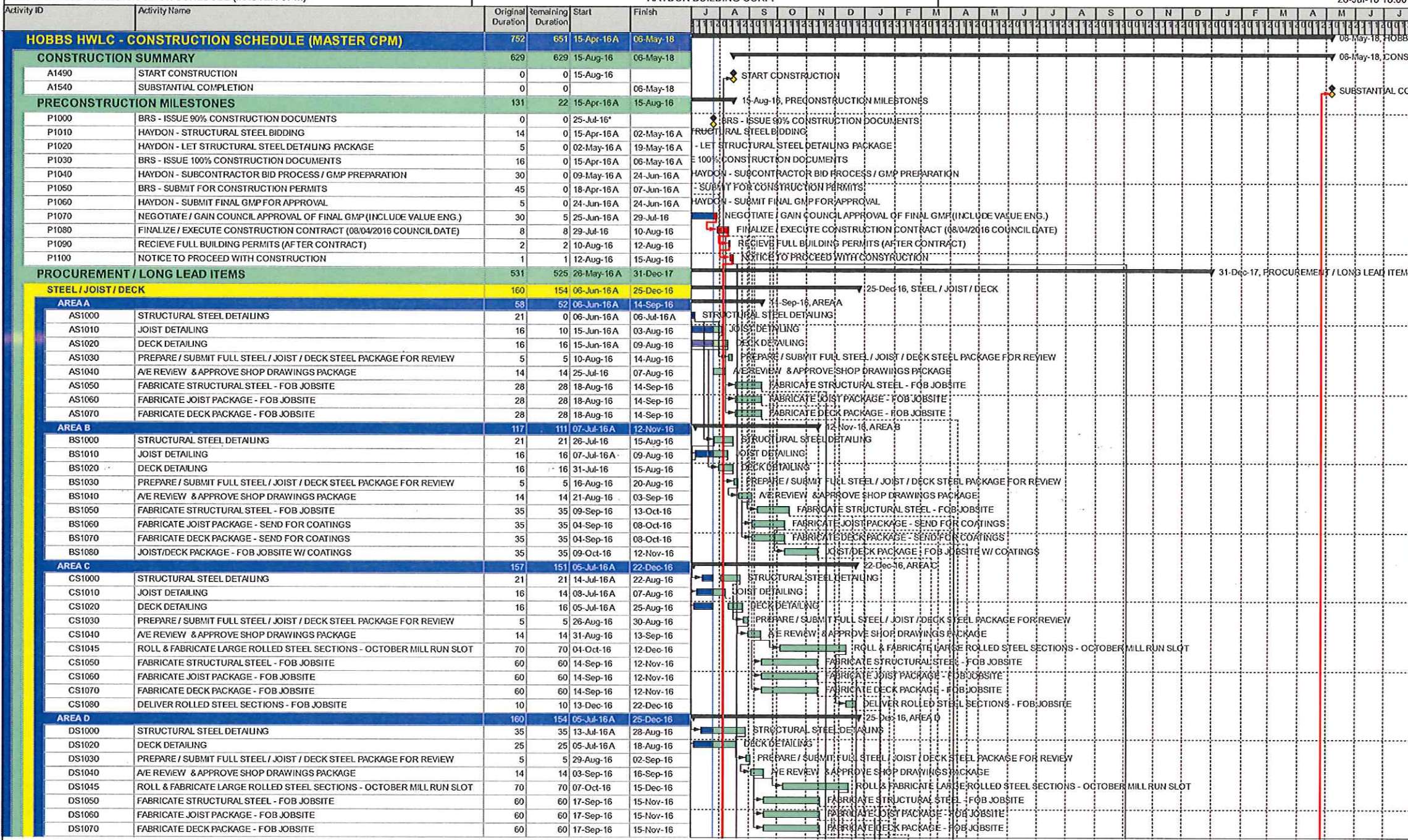
Its: Mayor

Dated: August \_\_, 2016

**Exhibit A  
Original Project Budget**

**Health Wellness and Learning Center – Original Budget**

Project Component		Schematic Design Phase	
<b>CONSTRUCTION COSTS</b>			
<b>1. BASE BUILDING CONSTRUCTION W/OUT ALTERNATES</b>		<b>\$40,800,000</b>	
A.	Deduct Alternate A - Slide Tower Reduction from 40ft to 21ft		
A2.	Slide Tower Reduction to 30ft		
B.	Deduct Alternate B - Body vs Innertube Slide 40ft		
B2.	Reduction to 30 ft body slide if A2 is taken		
C.	Reduce Indoor Play feature allowance to \$300,000		
C2.	Reduce Indoor Play feature allowance to \$500,000		
D.	Deduct to remove 2nd floor spectator seating and structure		
E.	Deduct to remove elevated track and associated structure		
F.	Deduct to remove 2,950 SF of cardio on 2nd floor		
G.	Not Used		
H.	Deduct to reduce competition pool to 8 In stretch 25 yd		
H2	8 lane - 60ft x 75ft + remove gallery seating to deck level seating		
H3	8 lane - 75ft x 75ft + remove gallery seating to deck level seating		
I.	Reduce size of Multipurpose Fieldhouse by half		
J.	Eliminate Southeast Parking Lot (future phase)		
K.	Eliminate Southwest Parking Lot (future phase)		
L.	Breakout pricing of site entry connection (3 zones)		
L2	Zone A	\$172,072	not incl. in/abv
L3	Zone B		
L4	Zone C		
M.	Reduce planting base scope (future phased planting) 10%		
N.	Add cost for 6ft sidewalk around perimeter road	\$59,800	not incl. in/abv
O.	Cost per foot to lower entire building. (2ft total)		
P.	Lower fieldhouse spaces by 2ft		
Q.	Reduce height of Fieldhouse A (soccer) by 5ft		
R.	Reduce height of fieldhouses B (MP) by 5ft		
R2.	Reduce height of 1/2 Fieldhouse B (MP) 5ft		
S.	Eliminate Splashpad		
T	Add option to include Portable turf for 1/2 fieldhouse B (no netting)		incl. in abv.
U	Add option to include Portable turf for entire fieldhouse B (incl. netting)		
V	Reduce hardscape by 20% + reduce 10ft walks by 40%		
W	Reduce Kitchen to catering vs warming		
X	Reduce 60ft kalwall dome skylight to 16ft skylight		
Y	Add Myrtha system for Wellness Pool	\$53,100	not incl. in/abv
Z	Add Myrtha system for Competitive Pool	\$147,500	not incl. in/abv
AA	Add Myrtha system for Leisure Pool	confirm	not incl. in/abv
Design Alternates Total		<b>\$432,472</b>	
<b>1A. BUILDING CONSTRUCTION INCL. ALTERNATES</b>		<b>\$41,232,472</b>	
Building Cost per/SF		\$258.45	
<b>2. OFF-SITE CONSTRUCTION</b>		<b>\$0</b>	
<b>3. SITE CONSTRUCTION (13 acres)</b>		<b>\$3,996,089</b>	
Building & Site Cost per/SF		\$283.50	
<b>4. ADJ. CONSTRUCTION COST (Fee, Cont. Escal.)</b>		<b>\$48,926,846</b>	
Adjusted Building & Site Cost per/SF		\$306.68	
GC Markup/CMAR fee			Incl. in total
CMAR pre-con Cost		\$80,000	Incl. in total
Builders Risk / Insurance			Incl. in total
P&P Bond			Incl. in total
Escalation (estimated assumption by DPS)		\$1,356,857	3%
Design/Estimating Contingency		\$2,261,428	5%
<b>5. GMP (MACC \$45mil.)</b>		<b>\$48,926,846</b>	
NMGRT for Construction Cost Only		\$3,333,386	6.813%
<b>6. TOTAL CONSTRUCTION COST</b>		<b>\$52,260,232</b>	
<b>DEVELOPMENT COSTS</b>			
<b>7. SOFT COSTS (A/E, FFE, ETC.)</b>		<b>\$7,411,999</b>	
Land Purchase		\$0	excluded
Public Art Allocation		\$50,000	Incl. in total
Professional Fees		\$4,868,900	Incl. in total
FFE - Furniture, Fixtures & Equipment		\$2,019,419	Incl. in total
Plant Investment / Tap Fees		\$25,000	Incl. in total
Construction testing & survey		\$200,000	Incl. in total
Reimbursable Expenses		\$218,680	Incl. in total
Plan Review Fees		\$30,000	Incl. in total
<b>8. SUB TOTAL SOFT COSTS (A/E, FFE, ETC.)</b>		<b>\$7,411,999</b>	
NMGRT for Soft Cost Only		\$504,980	6.813%
<b>9. TOTAL DEVELOPMENT COST</b>		<b>\$7,916,979</b>	
<b>PROJECT COSTS</b>			
<b>10. SUB-TOTAL ALL PROJECT COSTS</b>		<b>\$60,177,210</b>	
Owner Contingency		\$822,790	1.4%
<b>11. GRAND-TOTAL ALL PROJECT COSTS (\$61mil.)</b>		<b>\$61,000,000</b>	
<b>Health Wellness and Learning Center – Original Funding Sources</b>			
J. F Maddox Foundation (Initial Grant Funding)			\$25,000,000
City of Hobbs (General Fund)			\$25,000,000
New Mexico Junior College (General Obligation Bond)			\$4,950,000
New Mexico Junior College (1% of G.O. Bond reserved for Public Art)			\$50,000
New Mexico Junior College (Mill Levy Funds)			\$5,000,000
Hobbs Municipal School District (Local Bond Funds)			\$1,000,000
<b>TOTAL ORIGINAL FUNDING SOURCES</b>			<b>\$61,000,000</b>

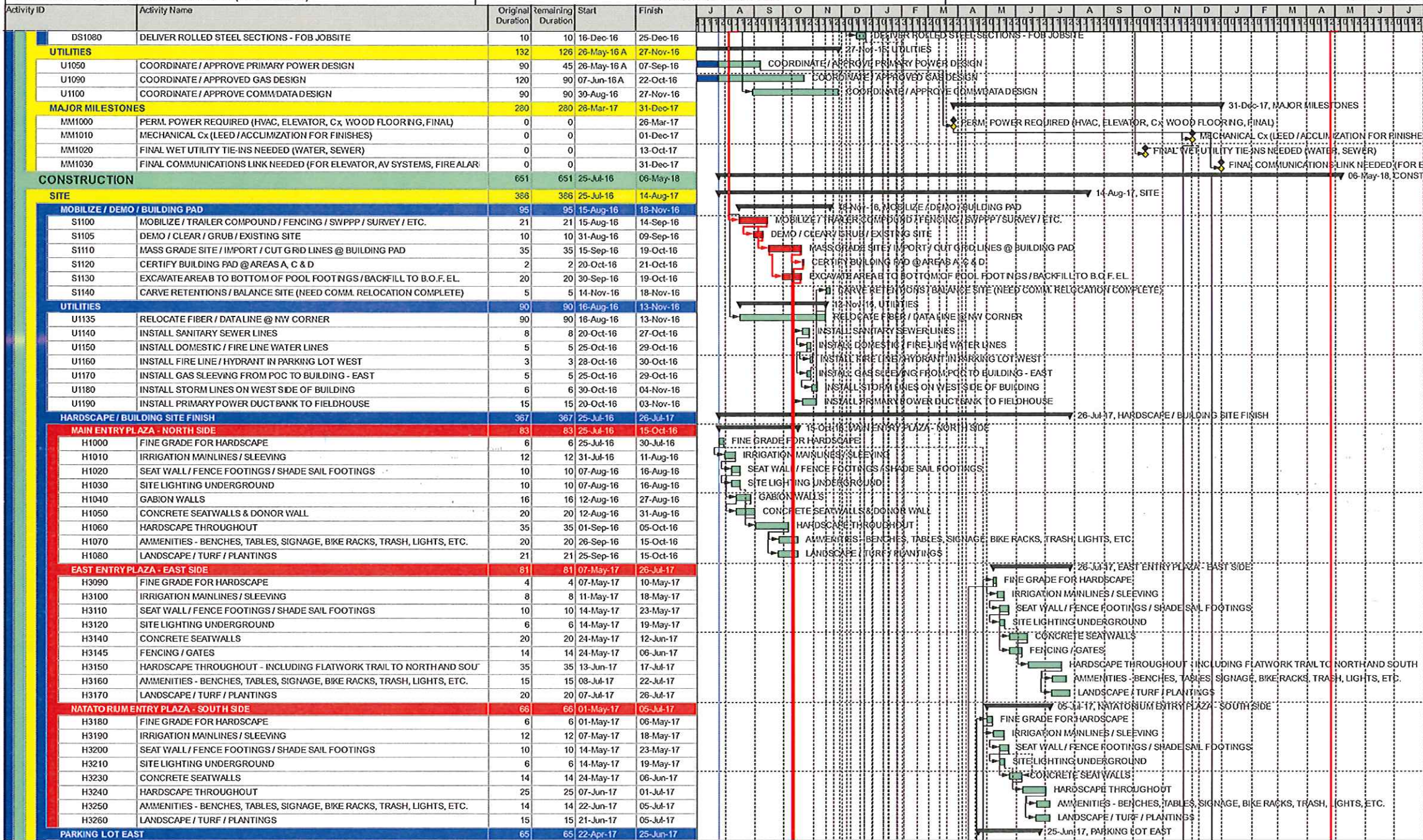


Project Completion Schedule

EXHIBIT B

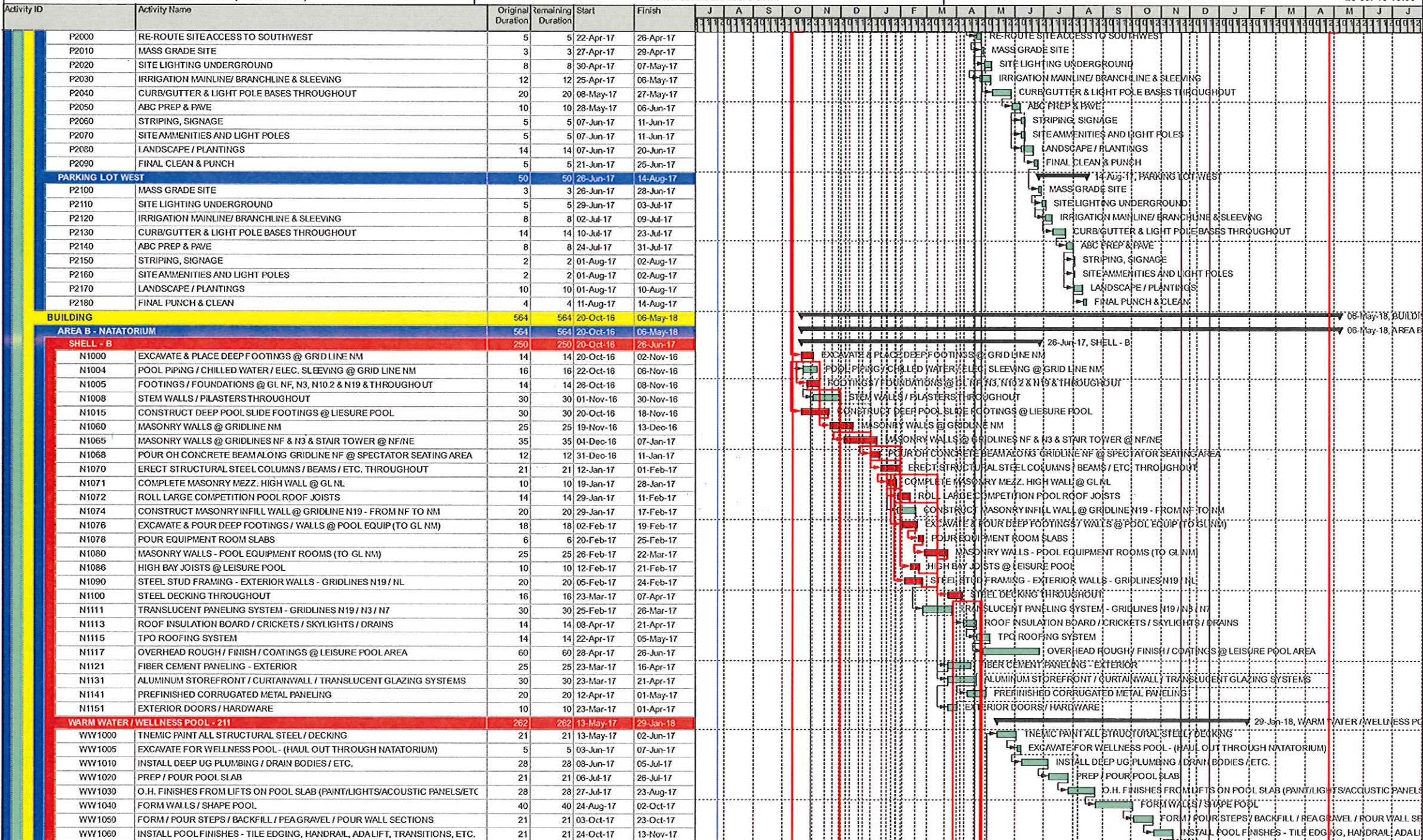
█ Actual Work     █ Critical Remaining Work     █ Remaining Work  
◆ Milestone     ◆ Base Line Milestone     ◆ Summary





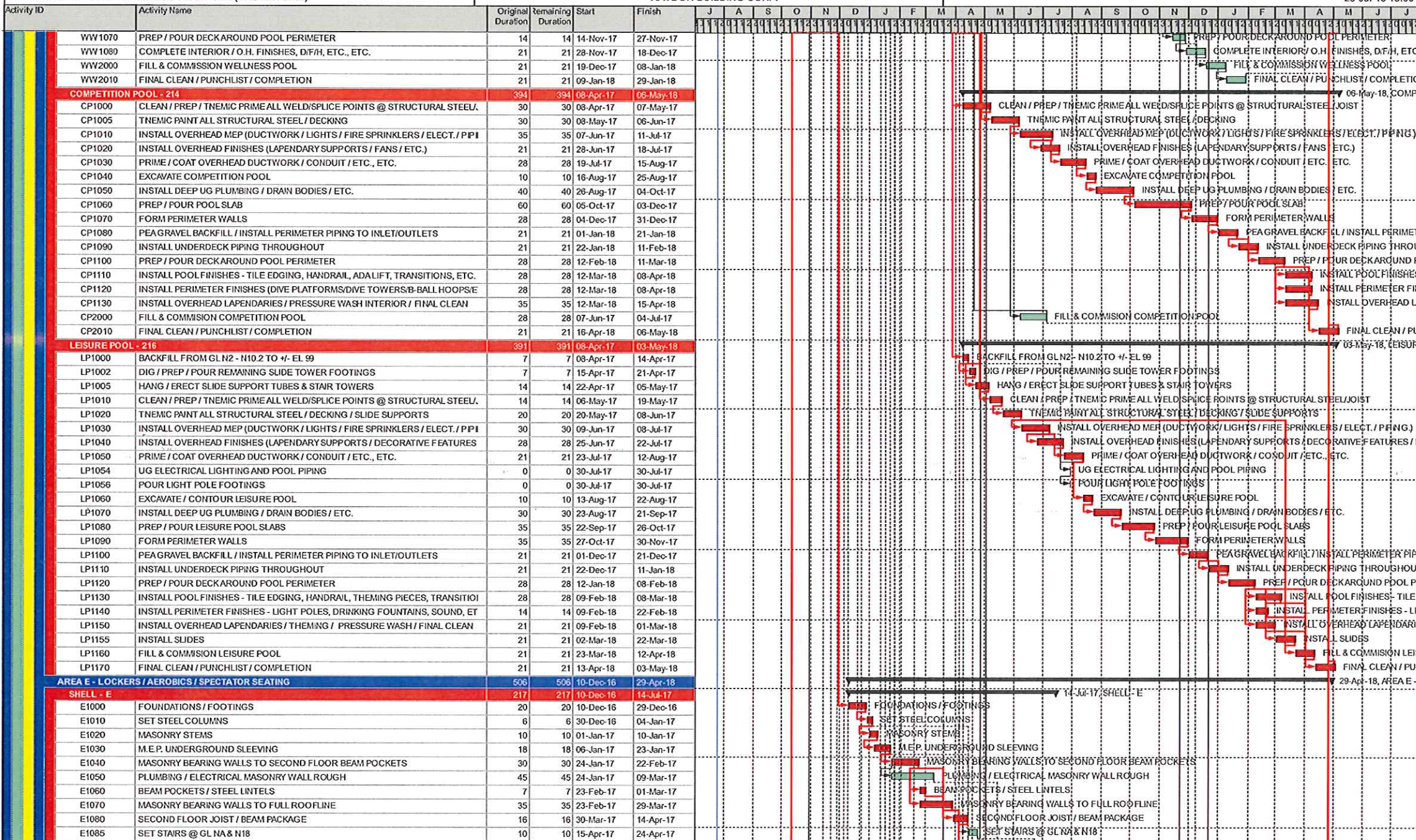
■ Actual Work     ■ Critical Remaining Work     ◆ Milestone  
■ Remaining Work     ◆ Base-line Milestone     ▼ Summary





█ Actual Work     █ Critical Remaining Work     █ Remaining Work  
◆ Milestone     ◆ Baseline Milestone     ◆ Milestone  
→ Summary





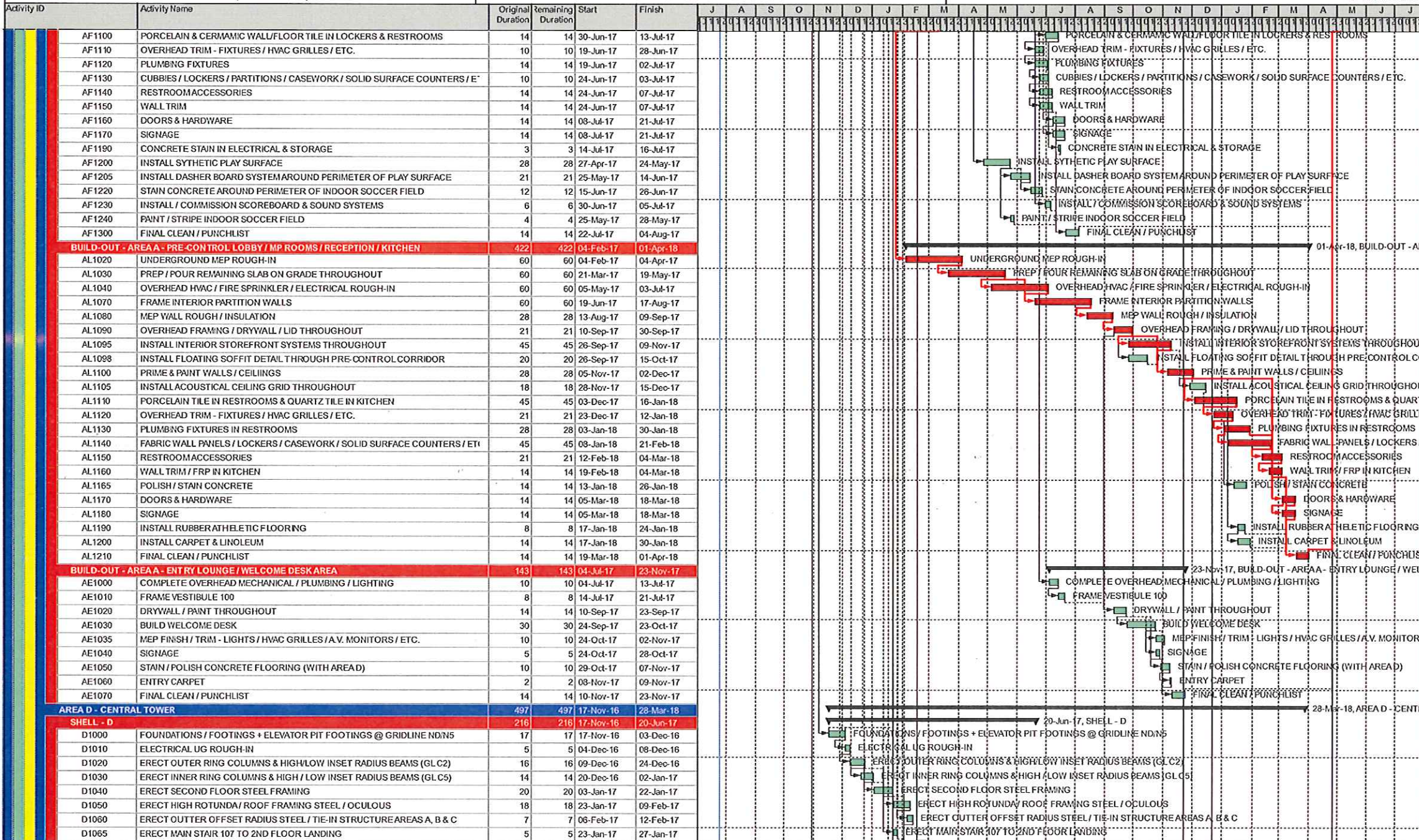
█ Actual Work     █ Critical Remaining Work     ◆ Milestone  
█ Remaining Work     ◆ Baseline Milestone     ▼ Summary





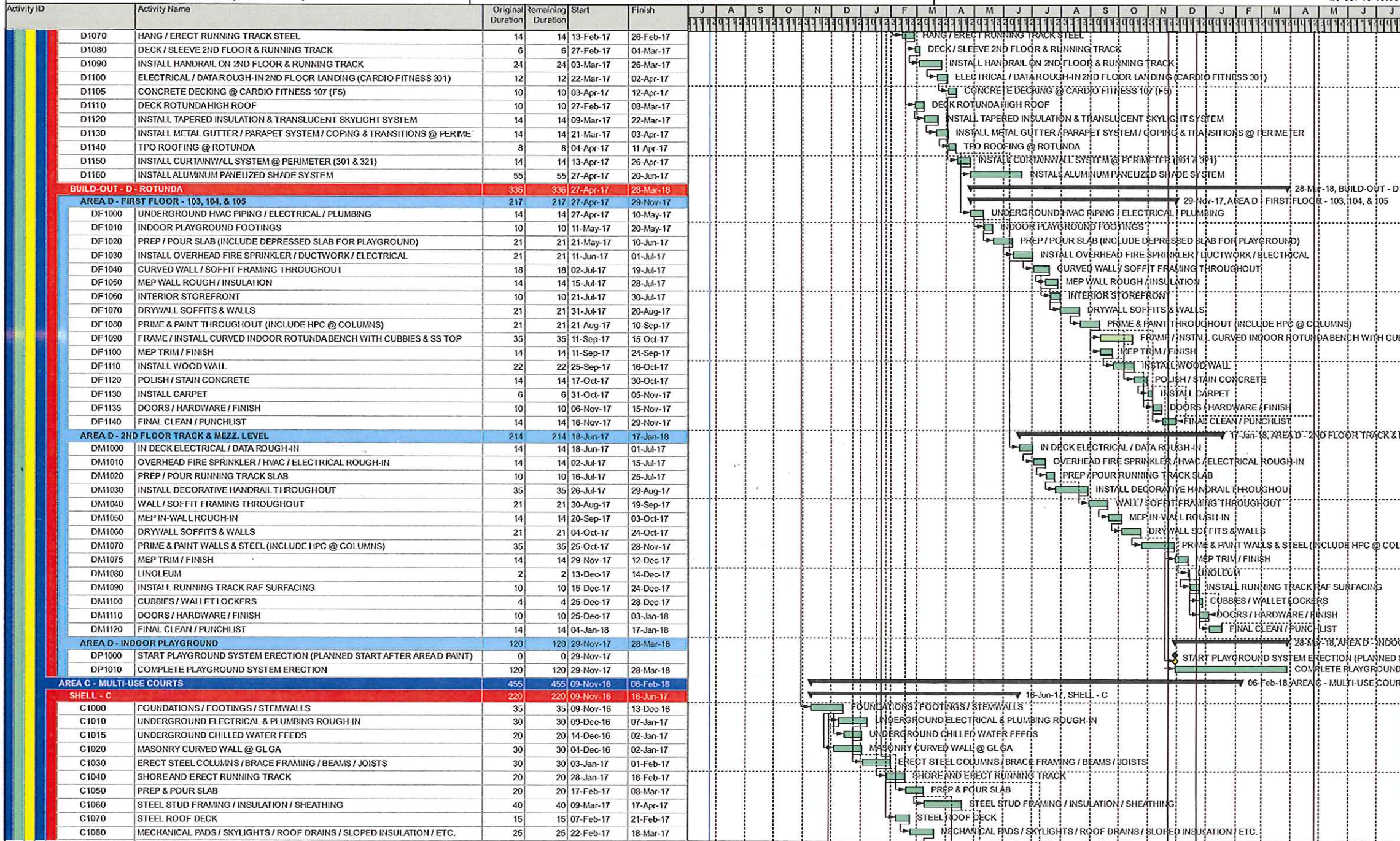






■ Actual Work     ■ Critical Remaining Work     ◆ Milestone  
■ Remaining Work     ◆ Base-line Milestone     ▼ Summary





█ Actual Work     █ Critical Remaining Work     ◆ Milestone  
█ Remaining Work     ◆ Base-line Milestone     → Summary

HOBBS HEALTH & WELLNESS LEARNING CENTER (MASTER CPM)





**EXHIBIT C**

**Qualified Expenditures**

<b>HOBBS NM HEALTH WELLNESS AND LEARNING CENTER RECAP OF BUDGET &amp; BID ITEMS</b>		
<b>CODE</b>	<b>DESCRIPTION</b>	<b>GMP Budget</b>
01-1000	GENERAL CONDITIONS Specified General Conditions Contractors Field Work	\$2,571,210 \$400,000
01-1200	ALLOWANCES Temporary heat and weather protection Holes and sleeves for Owner dasher board system	\$100,000 \$18,600
01-1500	SURVEY / STAKING	\$67,665
02-2000	EARTHWORK & PAVING Dust Control/SWPPP	\$2,059,421 \$41,100
02-5500	PAVEMENT MARKINGS	\$17,500
02-7000	SITE UTILITIES	\$173,966
02-8000	FENCING	\$63,788
02-9000	LANDSCAPING / SITE FURNISHINGS	\$861,061
03-1000	SITE CONCRETE	\$959,222
03-3000	BUILDING CONCRETE Soil Poisoning	\$2,960,576 \$23,400
04-2000	MASONRY & STONE	\$1,520,286
05-1200	STRUCTURAL & MISC STEEL	\$4,568,412
06-1000	ROUGH CARPENTRY	\$100,000
06-4100	ARCHITECTURAL CASEWORK & TRIM	\$712,766
07-1000	DAMPROOFING	\$11,375
07-2100	INSULATION / AIR BARRIER	\$487,626
07-2119	FOAM IN PLACE INSULATION	\$50,000
07-4213	SIDING	\$2,352,879
07-4000	ROOFING / FLASHINGS Roof hatch	\$1,107,942 \$5,250
07-8400, 07-9200	FIRE STOPPING / JOINT SEALANTS	\$93,553
07-9513	EXPANSION JOINTS	\$106,966
08-1000	DOORS / FRAMES / HARDWARE	\$185,474
08-3100	ACCESS DOORS	\$5,000
08-3613	SECTIONAL OVERHEAD DOORS	\$20,800
08-4100	ALUMINUM STOREFRONT & CURTAINWALL	\$1,549,867
08-4500	TRANSLUCENT WALL ASSEMBLIES / SKYLIGHTS	\$894,888
09-2000	METAL FRAMING & DRYWALL	\$1,635,572
09-2313	SOUND ABSORBING PLASTER	\$38,651
09-3000	TILE	\$426,510
09-5100	ACOUSTICAL TILE CEILINGS & ACCESSORIES	\$433,350
09-5600	ACRYLIC PLASTER CEILINGS	\$130,834
09-6254	SYNTHETIC TURF SURFACING	\$162,776
09-6400	WOOD STRIP FLOORING	\$48,045
09-6500	FLOORING	\$120,000
09-6566	RESILIENT ALTHLETIC FLOORING	\$540,060
09-6800	SPECIAL FLOOR FINISHES	\$69,703
09-9000	PAINTING / WALLCOVERINGS / HPC	\$516,594
09-9730	FRP PANELING	\$11,290
09-9990	FINAL CLEANING	\$65,000
10-1100	VISUAL DISPLAY BOARDS	\$4,835
10-1400	SIGNAGE & GRAPHICS	\$115,121
10-2100	TOILET PARTITIONS AND ACCESSORIES	\$112,900
10-2200	FOLDING PANEL PARTITION	\$35,750
10-2600	WALL AND CORNER GUARDS	\$7,500
10-3100	MISCELLANEOUS SPECIALTIES	\$12,500
10-4400	FIRE PROTECTION SPECIALTIES	\$5,745
10-5100	PHENOLIC LOCKERS	\$165,421
11-3100	FOOD SERVICE EQUIPMENT	\$72,100
11-6620	GYMNASIUM EQUIPMENT	\$152,615
11-6640	SCOREBOARDS	\$63,899
11-9900	POOL EQUIPMENT ROOM HOIST	\$5,000
12-2400	WINDOW	\$50,395

	SHADES	
12-6615	BLEACHERS	\$11,150
13-1000	POOLS	\$6,586,987
13-1816	SOCCER DASH BOARDS & EQUIPMENT	\$120,715
13-2800	RAQUETBALL COURT SYSTEMS	\$72,639
13-3400	PLAY SYSTEM	\$881,397
14-2000	ELEVATOR	\$68,700
21-0000	FIRE SPRINKLER SYSTEM	\$372,218
23-0000	MECHANICAL	\$6,762,895
26-0000	ELECTRICAL & SPECIAL SYSTEMS	\$3,400,574
	<b>SUBTOTAL - Base Construction</b>	<b>\$47,370,035</b>
	<b>Contractor Contingency</b>	<b>\$1,324,447</b>
	<b>Insurance Adjustment</b>	<b>\$0</b>
	<b>Bond</b>	
	<b>Adjustment</b>	<b>\$0</b>
	<b>Fee</b>	<b>\$1,359,804</b>
	<b>SUBTOTAL - GMP</b>	<b>\$50,054,285</b>
	<b>New Mexico Gross Receipts Tax (NMGRT)</b>	<b>\$3,409,948</b>
	<b>TOTAL MACC - Haydon Contract</b>	<b>\$53,464,234</b>
<b>Development Soft Costs</b>		
	Land Purchase	\$0
	Public Art Allocation	\$50,000
	Professional Fees	\$4,920,415
	FFE - Furniture, Fixtures and Equipment	\$1,708,000
	Gas Easement Documentation	\$1,200
	CMAR Precon Fee	\$250,000
	Plant Investment / Tap Fees	\$25,000
	Construction Testing and Special Inspections	\$200,000
	Reimbursable Expenses	\$255,919
	Plan Review Fees	\$45,000
	Owner Preconstruction / Other Costs (Branding, Video, Studies, Trips)	\$200,000
	<b>Total Development Soft Costs</b>	<b>\$7,655,534</b>
	NMGRT on Soft Costs	6.8125% \$521,533
	<b>Subtotal All Project Costs</b>	<b>\$61,641,301</b>
	<b>Owner Contingency</b>	<b>2.8000% \$1,725,956</b>
	NMGRT on Contingency	6.8125% \$117,581
	<b>GRAND TOTAL PROJECT COST</b>	<b>\$63,484,838</b>
<b>FUNDING SOURCES</b>		
	J. F Maddox Foundation (Initial Grant Funding)	\$25,000,000
	City of Hobbs (General Fund)	\$25,000,000
	New Mexico Junior College (General Obligation Bond)	\$4,950,000
	New Mexico Junior College (1% of G.O. Bond reserved for Public Art)	\$50,000
	New Mexico Junior College (Mill Levy Funds)	\$5,000,000
	Hobbs Municipal School District (Local Bond Funds)	\$1,000,000
	J. F Maddox Foundation (Supplemental Grant Funding)	\$2,500,000
	<b>Revised Total Funding</b>	<b>\$63,500,000</b>



# CITY OF HOBBS

## COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1<sup>st</sup>, 2016

**SUBJECT: CONSIDERATION OF APPROVAL OF A CONTRACT AMENDMENT No. 3 (GMP AMENDMENT) WITH HAYDON BUILDING CORPORATION for a New Health Wellness & Learning Center (HWLC)**

DEPT. OF ORIGIN: Office of the City Manager  
 DATE SUBMITTED: July 26<sup>th</sup>, 2016  
 SUBMITTED BY: JJ Murphy – City Manager

**Summary:**

Haydon Building Corporation was awarded the CMAR contract for the HWLC on June 15th, 2015, which the RFQ and RFP included the City of Hobbs and Partners throughout the bidding documents. The Contract with Haydon was amended on the August 25th, 2015 to add the NMJC and HMS as "Owners" to the Contract. On April 18<sup>th</sup>, 2016 the City Commission approved Contract Amendment No. 2 to address changes in the scope of work and contract construction. In addition, an Early Work release was approved for the Structural Steel Detailing / Shop Drawings and Play Feature Structural Foundation Details

In May of 2016, Haydon released the 100% construction plans and specifications to potential/interested subcontractors. A Best Value Assessment (BVA) was provided by Haydon and the design team to create an overall budget of \$63.5M, which was shared with the capital funding partners.

The CMAR portion of the overall \$63.5M Budget is shown below (exclusive of the Preconstruction Services already provided \$250,000 plus GRT).

### GMP - Breakdown

<b>SUBTOTAL - Base Construction</b>	<b>\$47,370,035</b>
<b>Contractor Contingency</b>	<b>\$1,324,447</b>
<b>Fee</b>	<b>\$1,359,804</b>
<b>SUBTOTAL - GMP (CMAR CONTRACT)</b>	<b>\$50,054,285</b>
<b>New Mexico Gross Receipts Tax (NMGR)</b>	<b>\$3,409,948</b>
<b>TOTAL PROJECT CONSTRUCTION BUDGET</b>	<b>\$53,464,234</b>

### Development / Design Softcosts

<b>Total Project Budget Recap - Design Development Stage</b>		
<b>Current Construction Cost and NMGR with VE Incorporated</b>		<b>\$53,464,234</b>
<b>Development Soft Costs</b>		
Land Purchase		\$0
Public Art Allocation		\$50,000
Professional Fees		\$4,920,415
FFE - Furniture, Fixtures and Equipment		\$1,708,000
Gas Easement Documentation		\$1,200
CMAR Precon Fee		\$250,000
Plant Investment / Tap Fees		\$25,000
Construction Testing and Special Inspections		\$200,000
Reimbursable Expenses		\$255,919
Plan Review Fees		\$45,000
Owner Preconstruction / Other Costs (Branding, Video, Studies, Trips)		\$200,000
<b>Total Development Soft Costs</b>		<b>\$7,655,534</b>
NMGR on Soft Costs	6.8125%	\$521,533
<b>Subtotal All Project Costs</b>		<b>\$61,641,301</b>
<b>Owner Contingency</b>	<b>2.8000%</b>	<b>\$1,725,956</b>
NMGR on Contingency	6.8125%	\$117,581
<b>GRAND TOTAL PROJECT COST</b>		<b>\$63,484,838</b>

**Fiscal Impact:**

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

*Finance Department*

The FY17 Budget includes \$61M in expenditures for the HWLC design, construction and equipping the facility. In addition, \$4M has been budgeted for the off-site improvements associated with drainage, utility extension and roadway construction. The execution of the Contract Modification and GMP Amendment will be coordinated with Finance and timing/approval of the City of Hobbs FY17 Budget by DFA.

- **Budget Line Item:**
  - (FUND 01 - PROJ No. 200) HWLC Facility
  - (DESIGN/CONSTRUCTION): \$61M (FY 17 Budget)
  - (FUND 44 – PROJ No. 200) HWLC (INFR/UTIL) \$4M
- **SUERTE AGREEMENT (9-2-14 Comm. Meeting):**
  - Roadway / Utilities & RR Crossing: \$2,000,000
  - Drainage Improvements: \$2,000,000
- **ASSOCIATED REVENUE AND FUTURE COST SHARE:**
  - Developer Fair Share assessment: \$1,000,000
  - Drainage Pond Construction: \$250,000 (Est. Value)
  - RR License Agreement (Payment to COH) \$300,000
  - 25+ Acres Deeded or dedicated to COH (12+ acre drainage pond & 13 acres HWLC site)
- **HW&LC FACILITY (Final Programming TBD):**
  - 13+ Acre Site
  - Facility Size: 150,000+ sq. ft.
  - Cost of HWLC Facility: \$61M to \$63.5M (based on GMP and other Soft Costs)
  - Est. Off-Site Improvement (Noted above) \$4M
  - Est. Revenue (Annual) TBD \*
  - Est. Expenditures (Annual) TBD \*\*
  - Est. Net Reoccurring Costs \$1.4M / yr \*\*\*

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

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

\*\*\* \$1.3M in net reoccurring costs is a goal for this project, which would be shared costs with City of Hobbs, NMJC, Lea County and Hobbs Schools. This was reduced from \$1.4M to \$1.3M to reflect the proposed MOU's with other partners. Final programming and fee schedules for the proposed uses will determine final estimated revenue and expenditure for the on-going operational costs. Ballard King has been authorized to update the Feasibility Study and preliminary line item budget.

**Attachments:** Contract Amendment and Supporting Documentations

**Legal Review:**

*Approved As To Form:*

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

**Recommendation:**

**Commission consideration for the approval of a Contract Amendment No. 3 (GMP Amendment) with the Haydon Building Corporation**

*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. _____



**Agreement between the Owner  
and the Construction Manager at Risk  
Contract Amendment #3 – Contract Modification  
&  
CMAR Contract Exhibit A – GMP Amendment**

THIS AMENDMENT is made and entered into by and between the City of Hobbs / New Mexico Junior College / Hobbs Municipal Schools (the "Owner") and Haydon Building Corp (the "CMAR"). The date of this Amendment shall be the date when it is approved by the Owner. Amendment Date: **August 1<sup>st</sup>, 2016.**

**GENERAL CONDITIONS - ARTICLE 9 PAYMENTS AND COMPLETION**

*Delete paragraph 9.8.6 and replace with the following:*

9.8.6 Warranties shall be in accordance with this Subparagraph 9.8.6 and Paragraph 12.2 and shall include all components and equipment required by the Contract Documents. All Work shall be warranted for the greater of:

1. a minimum of eighteen (18) months from the date of Substantial Completion;
2. eighteen (18) months from the date of first installation in accordance with Subparagraph 12.2.2.2;
3. eighteen (18) months from the date of replacement due to failure such that; each component of the Work must not fail for an eighteen (18) month period regardless of the date of Substantial Completion;
4. that required by the Contract Documents; or,
5. that provided in the Certificate of Substantial Completion that will become an addendum to the Contract.

Owner and Contractor may, by mutual agreement, amend the Contract at Substantial Completion to include Performance Bonding, extended warranty, on-site maintenance, subsequent testing, scheduled replacement or other mutually agreeable terms.

**GENERAL CONDITIONS – ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

*Delete paragraph 12.2.2.2 and replace with the following:*

12.2.2.2 The eighteen month period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work and in accordance with all other requirements of Subparagraph 9.8.6.

IN WITNESS WHEREOF, the parties have executed this Agreement on **August 1, 2016**

**CITY OF HOBBS**

**CONSTRUCTION MANAGER AT RISK (CMAR)**

\_\_\_\_\_  
**SAM D. COBB, MAYOR**

\_\_\_\_\_  
**HAYDON BUILDING CORP.**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**



**EXHIBIT A**

**GMP AMENDMENT TO THE AGREEMENT BETWEEN THE OWNER AND CONSTRUCTION MANAGER  
AT RISK**

**THIS AMENDMENT IS BETWEEN:**

**OWNER:** CITY OF HOBBS Telephone: 575-397-9200  
SAM D. COBBS, MAYOR 200 E. BROADWAY  
HOBBS, NM 88240

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**And HAYDON BUILDING CORP** Telephone: 602-296-1496  
4640 E. COTTOM GIN LOOP Fax: 602-836-1495  
PHOENIX, AZ 85040

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**CONSTRUCTION MANAGER AT RISK**  
**("the CONSTRUCTION MANAGER AT RISK"):**

**The Project is: Health and Wellness Learning Center**

**Date of Original Agreement: June 15<sup>th</sup>, 2016**

**Date of this Amendment: August 1<sup>st</sup>, 2016**

The Owner and Construction Manager at Risk hereby amend the Contract as set forth below.

1. **GMP.** The parties agree that the GMP for the Project is \$ 50,054,285 (exclusive of NMGRT), consisting of the Cost of the Work, Construction Manager at Risk Fee (stated as a fixed dollar lump sum amount), and the SGC Work as follows:

<b>Cost of the Work:*</b>	\$ <u>46,123,271</u>	(1)
<b>Construction Manager at Risk Fee</b>		
<b>(Fixed dollar lump sum):</b>	\$ <u>1,359,804</u>	(2)
<b>Specified General Conditions:</b>	\$ <u>2,571,210</u>	(3)
<b>GMP (Total of above categories):**</b>	\$ <u>50,054,285</u>	(4 = 1 + 2 + 3)
<b>GMP +PLUS (NMGRT):</b>	\$ <u>53,464,234</u>	(5)
<b>Preconstruction Fee:</b>	\$ <u>250,000</u>	(6)
<b>Preconstruction Fee + PLUS (NMGRT)</b>	\$ <u>267,031</u>	(7)
<b>CONTRACT SUM / TOTAL</b>	\$ <u>53,731,265</u>	(8 = 5 + 7)

\*\*excluding Pre-Construction Fee

For purposes of determining the GMP, the GMP includes the Construction Manager at Risk's Contingency, the Construction Manager at Risk Field Work, and the costs of all components and systems required for a complete, fully functional facility.

2. **Basis of GMP.** The GMP is based on the GMP Supporting Documents attached as Attachments A-F (25 pages) including the Allowances, assumptions, exclusions, unit prices, and alternates designated therein.
3. **Plans and Specifications.** The Plans and Specifications for the Project are as listed in the GMP Supporting Documents. Construction Manager at Risk shall perform Construction Phase Services in accordance with the Plans and Specifications and the other Contract Documents.
4. **Substantial Completion Date.** Notwithstanding any provision in the GMP Supporting Documents to the contrary, the required date for Substantial Completion shall *[NOTE-SELECT ONE: remain that stated in the Contract/ Insert if different Substantial Completion Date has been agreed:*  
630 Calendar Days after the effective date of the Notice To Proceed
5. **Self Performance.** The Construction Manager at Risk will perform 5.14 % of the GMP with its own forces.

**THIS CONTRACT** is executed in two original copies of which one is to be delivered to the CONSTRUCTION MANAGER AT RISK, and the remainder to Owner.

**CONSTRUCTION MANAGER AT RISK:**

Name of Firm: Haydon Building Corp

Address: 4640 E. Cotton Gin Loop, Phoenix, AZ 85040

CONSTRUCTION MANAGER AT RISK's Federal I.D. No: 86-0782387

Construction Manager at Risk's New Mexico Contractor's License No: #:52406 / Class:GB98 & GA01

Construction Manager at Risk's New Mexico Gross Receipt's Tax No: 02-238113-00-9

***Signature of Authorized Representative of CONSTRUCTION MANAGER AT RISK***

Title Fritz Behrhorst, Vice President

Date \_\_\_\_\_

**OWNER:**

***Signature of Owner's Authorized Representative***

Title Sam D Cobb, Mayor

Date \_\_\_\_\_

Attachment A Plans, Specifications, Supplementary Conditions of the Contract, on which the Guaranteed Maximum Price is based, pages 1 through 9 dated 7-28-16.

Attachment B Allowance items, pages 1 through 1 dated 7-27-16.

Attachment C Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages 1 through 3, dated 7-27-16.

Attachment D Completion schedule, pages 1 through 9, dated 7-29-16.

Attachment E Alternate prices, pages 1 through 2, dated 7-28-16.

Attachment F Unit prices, pages 1 through 1, dated 7-27-16.

Attachment G Combined Subcontractor Listing & Assignment of Anti-Trust Claims Form

ATTACHMENT A  
List of Plans  
Specifications Amendments



**Construction Documents dated 5-6-16  
Health Wellness and Learning Center  
3201 W. Millen Dr. Hobbs, New Mexico 88240**

Number	Description	Date	Revision	Stamp
<b>01 General</b>				
G012	FIRST FLOOR LIFE SAFETY PLAN	04/15/16		05/06/16
G013	MEZZANINE FLOOR LIFE SAFETY PLAN	04/15/16		05/06/16
<b>Civil</b>				
C001	CIVIL GENERAL NOTES	05/06/16		05/06/16
CD101	CIVIL DEMOLITION PLAN	05/06/16		05/06/16
CS101	CIVIL SITE PLAN - OVERALL	05/06/16	07/06/16	07/06/16
CS102	CIVIL SITE PLAN - NORTH	05/06/16	07/06/16	07/06/16
CS103	CIVIL SITE PLAN - SOUTH	05/06/16	07/06/16	07/06/16
CS104	CIVIL SITE PLAN - SOUTHEAST	05/06/16	07/06/16	07/06/16
CS105	CIVIL SITE PLAN - CURB AND GUTTER TYPES	05/06/16	06/03/16	06/03/16
CS501	CIVIL SITE DETAILS	05/06/16	07/06/16	07/06/16
CS502	CIVIL SITE DETAILS	05/06/16	06/03/16	06/03/16
CS503	ADA DETAILS	05/06/16		05/06/16
CS701	CIVIL SITE PLAN FIRE LANE TURNING MOVEMENTS	05/06/16		05/06/16
CC101	CIVIL CONTROL PLAN OVERALL SITE	05/06/16		05/06/16
CC102	CIVIL CONTROL PLAN BUILDING FOUNDATION	05/06/16		05/06/16
CC103	CIVIL CONTROL PLAN TBC SECTION 1	05/06/16	07/06/16	05/06/16
CC104	CIVIL CONTROL PLAN TBC SECTION 2	05/06/16	07/06/16	07/06/16
CC105	CIVIL CONTROL PLAN TBC SECTION 3	05/06/16	07/06/16	07/06/16
CC106	CIVIL CONTROL PLAN WALKWAY AND PATIOS NORTH	05/06/16		05/06/16
CC107	CIVIL CONTROL PLAN WALKWAYS AND PATIOS SOUTH	05/06/16		05/06/16
CC108	CIVIL CONTROL PLAN DRAINAGE CHANNEL	05/06/16		05/06/16
CG101	CIVIL GRADING PLAN - OVERALL	05/06/16		05/06/16
CG102	CIVIL GRADING PLAN - NORTH	05/06/16	07/06/16	07/06/16
CG103	CIVIL GRADING PLAN - SOUTH	05/06/16	07/06/16	07/06/16
CG104	CIVIL GRADING PLAN - SOUTHEAST	05/06/16	07/06/16	07/06/16
CG105	LANDSCAPING PERFORATED PIPES	05/06/16		05/06/16
CG201	NORTHWEST ROOF DRAINAGE PLAN AND PROFILE	05/06/16		05/06/16
CG202	NORTHEAST ROOF DRAINAGE PLAN AND PROFILE	05/06/16		05/06/16
CG203	EAST ROOF DRAINAGE PLAN AND PROFILE	05/06/16		05/06/16
CG204	SOUTH ROOF DRAINAGE PLAN AND PROFILE	05/06/16		05/06/16
CG701	SEDIMENT AND EROSION CONTROL PLAN	05/06/16		05/06/16
CU101	CIVIL UTILITY PLAN	05/06/16		05/06/16
CU501	CIVIL UTILITY DETAILS	05/06/16	06/03/16	06/03/16
<b>Landscape</b>				
L1.00	OVERALL SITE PLAN	05/06/16		05/06/16
L1.01	LANDSCAPE PLAN	05/06/16		05/06/16
L1.02	LANDSCAPE PLAN	05/06/16		05/06/16
L1.03	LANDSCAPE PLAN	05/06/16		05/06/16
L1.04	LANDSCAPE PLAN	05/06/16		05/06/16
L2.00	HARDSCAPE ENLARGEMENT PLAN	05/06/16	06/03/16	05/06/16
L2.01	HARDSCAPE ENLARGEMENT PLAN	05/06/16	06/03/16	05/06/16
L2.02	HARDSCAPE ENLARGEMENT PLAN	05/06/16	06/03/16	05/06/16
L3.00	LANDSCAPE ENLARGEMENT PLAN	05/06/16	06/03/16	05/06/16
L3.01	LANDSCAPE ENLARGEMENT PLAN	05/06/16		05/06/16
L3.02	LANDSCAPE ENLARGEMENT PLAN	05/06/16	06/03/16	05/06/16
L4.00	LANDSCAPE NOTES & PLANT LIST	05/06/16		05/06/16

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L4.01	LANDSCAPE NOTES & PLANT LIST	05/06/16	06/03/16	05/06/16
L5.00	DETAILS	05/06/16	06/03/16	05/06/16
L5.01	DETAILS 02	05/06/16	06/03/16	05/06/16
L5.02	DETAILS 03	05/06/16	06/03/16	05/06/16
L5.03	DETAILS 03	05/06/16	06/03/16	05/06/16
L5.04	DETAILS 03	05/06/16	06/03/16	05/06/16
L5.05	SITE DETAILS	05/06/16	06/03/16	05/06/16
L5.06	SITE DETAILS	05/06/16	06/03/16	05/06/16
I1.00	OVERALL IRRIGATION PLAN	05/06/16		05/06/16
I1.01	IRRIGATION PLAN 01	05/06/16		05/06/16
I1.02	IRRIGATION PLAN 02	05/06/16		05/06/16
I1.03	IRRIGATION PLAN 03	05/06/16		05/06/16
I1.04	IRRIGATION PLAN 04	05/06/16		05/06/16
I2.00	IRRIGATION DETAILS	05/06/16		05/06/16
I2.01	IRRIGATION DETAILS	05/06/16		05/06/16
	<b>Architecture</b>			
A000	ABBREVIATIONS, SYMBOLS, AND GENERAL NOTES	05/06/16	06/03/16	05/06/16
A001	WALL, FLOOR, CLG AND ROOF TYPES	05/06/16	06/03/16	
A050	ARCHITECTURAL SITE PLAN	05/06/16	06/03/16	
A051	TRASH ENCLOSURE	05/06/16	06/03/16	
A052	DROP OFF CANOPY	05/06/16	06/03/16	
A091	FIRST FLOOR HORIZONTAL CONTROL PLAN (LAYOUT)	05/06/16		05/06/16
A092	MEZZANINE FLOOR HORIZONTAL CONTROL PLAN (LAYOUT)	05/06/16		05/06/16
A101	OVERALL FIRST FLOOR PLAN	05/06/16		05/06/16
A102	OVERALL MEZZANINE FLOOR PLAN	05/06/16		05/06/16
A111A	FIRST FLOOR PLAN - AREA A	05/06/16	06/03/16	
A111B	FIRST FLOOR PLAN - AREA B	05/06/16	06/03/16	
A111C	FIRST FLOOR PLAN - AREA C	05/06/16	06/03/16	
A111D	FIRST FLOOR PLAN - AREA D	05/06/16		05/06/16
A112A	MEZZANINE FLOOR PLAN - AREA A	05/06/16	06/03/16	
A112B	MEZZANINE FLOOR PLAN - AREA B	05/06/16	06/03/16	
A112C	MEZZANINE FLOOR PLAN - AREA C	05/06/16		05/06/16
A112D	MEZZANINE FLOOR PLAN - AREA D	05/06/16		05/06/16
A113	HILL TRACK PLAN	05/06/16		05/06/16
A114	CLERESTORY PLAN	05/06/16	06/03/16	
A115	OVERALL ROOF PLAN	05/06/16	06/03/16	
A115A	ROOF PLAN - AREA A	05/06/16	06/03/16	
A115B	ROOF PLAN - AREA B	05/06/16	06/03/16	
A115C	ROOF PLAN - AREA C	05/06/16	06/03/16	
A115D	ROOF PLAN - AREA D	05/06/16	06/03/16	
A150	ENLARGED DRAINAGE PLAN - LOCKER ROOMS	05/06/16		05/06/16
A151	ENLARGED DRAINAGE PLAN - COMPETITIVE POOL	05/06/16		05/06/16
A152	ENLARGED DRAINAGE PLAN - LEISURE POOL	05/06/16		05/06/16
A153	ENLARGED DRAINAGE PLAN - WELLNESS POOL	05/06/16		05/06/16
A201	OVERALL FIRST FLOOR RCP	05/06/16		05/06/16
A202	OVERALL MEZZANINE FLOOR RCP	05/06/16		05/06/16
A211A	FIRST FLOOR RCP - AREA A	05/06/16	06/03/16	
A211B	FIRST FLOOR RCP - AREA B	05/06/16	06/03/16	
A211C	FIRST FLOOR RCP - AREA C	05/06/16	06/03/16	
A211D	FIRST FLOOR RCP - AREA D	05/06/16		05/06/16

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Number	Description	Date	Revision	Stamp
A212A	MEZZANINE FLOOR RCP - AREA A	05/06/16		05/06/16
A212B	MEZZANINE FLOOR RCP - AREA B	05/06/16		05/06/16
A212C	MEZZANINE FLOOR RCP - AREA C	05/06/16		05/06/16
A212D	MEZZANINE FLOOR RCP - AREA D	05/06/16		05/06/16
A300	OVERALL BUILDING ELEVATIONS	05/06/16		05/06/16
A301	BUILDING ELEVATIONS - AREA A	05/06/16		05/06/16
A302	BUILDING ELEVATIONS - AREA B	05/06/16	06/03/16	
A303	BUILDING ELEVATIONS - AREA C	05/06/16		05/06/16
A305	BUILDING ELEVATIONS - ROTUNDA	05/06/16		05/06/16
A306	BUILDING ELEVATIONS - FCP ELEVATIONS	05/06/16	06/08/16	
A307	BUILDING ELEVATIONS - FCP ELEVATIONS	05/06/16	06/08/16	
A310	3D VIEWS - ROTUNDA INTERIOR	05/06/16		05/06/16
A311	3D VIEWS - MISC.	05/06/16	06/03/16	
A330	BUILDING SECTION - AREA A	05/06/16		05/06/16
A331	BUILDING SECTION - AREA A	05/06/16		05/06/16
A332	BUILDING SECTION - AREA B	05/06/16		05/06/16
A333	BUILDING SECTION - AREA B	05/06/16		05/06/16
A334	BUILDING SECTION - AREA B	05/06/16		05/06/16
A335	BUILDING SECTION - AREA B	05/06/16		05/06/16
A336	BUILDING SECTION - AREA C	05/06/16		05/06/16
A337	BUILDING SECTIONS - AREA C	05/06/16		05/06/16
A338	BUILDING SECTION - ROTUNDA	05/06/16		05/06/16
A400	WALL SECTIONS	05/06/16		
A401	WALL SECTIONS	05/06/16	06/03/16	
A402	WALL SECTIONS	05/06/16	06/03/16	
A403	WALL SECTIONS	05/06/16	06/03/16	
A404	WALL SECTIONS	05/06/16		
A405	WALL SECTIONS	05/06/16	06/03/16	
A406	WALL SECTIONS	05/06/16	06/03/16	
A407	WALL SECTIONS	05/06/16	06/03/16	
A408	WALL SECTIONS	05/06/16		
A409	WALL SECTIONS	05/06/16	06/03/16	
A410	ROTUNDA SECTIONS	05/06/16	06/03/16	
A411	ROTUNDA SECTIONS	05/06/16	06/03/16	
A412	ROTUNDA SECTIONS	05/06/16	06/03/16	
A415	SLIDE SECTIONS	05/06/16	06/03/16	
A500	STAIR PLANS AND DETAILS	05/06/16	06/03/16	
A501	STAIR PLANS AND DETAILS	05/06/16	06/03/16	
A502	STAIR AND ELEVATOR PLANS AND DETAILS	05/06/16	06/03/16	
A503	STAIR DETAILS	05/06/16	06/03/16	
A504	SPECTATOR SEATING PLANS AND SECTIONS	05/06/16		05/06/16
A505	SPECTATOR SEATING DETAILS	05/06/16	06/03/16	
A506	POOL STORAGE MEZZANINE & MECH	05/06/16		05/06/16
A600	ACCESSORY SCHEDULES AND ELEVATIONS	05/06/16		05/06/16
A601	ENLARGED PLAN - LOCKER ROOMS & LOCKER SCHEDULE	05/06/16	06/03/16	
A602	INTERIOR ELEVATIONS - LOCKER ROOM	05/06/16	06/03/16	
A603	INTERIOR ELEVATIONS - ENLARGED PLANS - FAMILY CHANGING RMS	05/06/16		05/06/16
A604	INTERIOR ELEVATIONS - ENLARGED PLANS - RESTROOMS	05/06/16		
A605	INTERIOR ELEVATIONS - ENLARGED PLANS - RESTROOMS	05/06/16	06/03/16	
A610	INTERIOR ELEVATIONS- DESK & ADMIN	05/06/16	06/03/16	

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A611	INTERIOR ELEVATIONS - CHILDWATCH, MULTIPURPOSE & KITCHEN	05/06/16	06/03/16	
A612	INTERIOR ELEVATIONS - INDOOR SOCCER	05/06/16	06/03/16	
A613	INTERIOR ELEVATIONS - POOLS	05/06/16	06/03/16	
A614	INTERIOR ELEVATIONS - WELLNESS, LIFEGUARD, MEET MGMT, PARTY	05/06/16	06/03/16	
A615	INTERIOR ELEVATIONS - FITNESS & COURTS	05/06/16	06/03/16	
A616	INTERIOR ELEVATIONS - MEZZANINE & AEROBICS	05/06/16	06/03/16	
A617	INTERIOR ELEVATIONS - VESTIBULES	05/06/16		05/06/16
A618	STONE VENEER ELEVATIONS	05/06/16	06/03/16	
A619	WOOD WALL ELEVATIONS	05/06/16	06/03/16	
A625	INTERIOR PERSPECTIVE VIEWS	05/06/16		05/06/16
A626	INTERIOR PERSPECTIVE VIEWS	05/06/16		05/06/16
A630	GENERAL MILLWORK DETAILS	05/06/16	06/03/16	
A631	GENERAL MILLWORK DETAILS	05/06/16	06/03/16	
A632	GENERAL MILLWORK DETAILS - DESKS	05/06/16	06/03/16	
A633	GENERAL MILLWORK DETAILS	05/06/16	06/03/16	
A700	DOOR SCHEDULES AND TYPES	05/06/16	06/03/16	
A701	DOOR DETAILS	05/06/16	06/03/16	
A710	INTERIOR WINDOW TYPES	05/06/16	06/03/16	
A711	INTERIOR WINDOW TYPES	05/06/16	06/03/16	
A712	EXTERIOR WINDOW TYPES - LOBBIES	05/06/16	06/03/16	
A713	EXTERIOR WINDOW TYPES AND WINDOW COVERINGS	05/06/16	06/03/16	
A714	EXTERIOR WINDOW TYPES - ROTUNDA	05/06/16		05/06/16
A715	EXTERIOR WINDOW TYPES - ROTUNDA	05/06/16		05/06/16
A716	EXTERIOR WINDOW TYPES - TWA	05/06/16	06/03/16	
A717	WINDOW DETAILS	05/06/16	06/03/16	
A718	WINDOW DETAILS	05/06/16	06/03/16	
A719	WINDOW DETAILS	05/06/16	06/03/16	
A720	WINDOW DETAILS - TWA	05/06/16	06/03/16	
A721	PLAN DETAILS - STONE & WOOD WALLS	05/06/16		05/06/16
A722	PLAN DETAILS - HILL TRACK	05/06/16		05/06/16
A723	PLAN DETAILS	05/06/16		05/06/16
A730	SECTION DETAILS - FOUNDATION	05/06/16	06/03/16	
A734	SECTION DETAILS - ROOF	05/06/16	06/03/16	
A735	SECTION DETAILS - ROOF	05/06/16	06/03/16	
A736	SECTION DETAILS - ROOF	05/06/16	06/03/16	
A737	SECTION DETAILS - ROOF	05/06/16	06/03/16	
A738	SECTION DETAILS - ROOF	05/06/16	06/03/16	
A739	MISC DETAILS - LOCKERS & BENCHES	05/06/16	06/03/16	
A740	MISC DETAILS - LOCKERS, CURB & DRAINS	05/06/16		05/06/16
A741	MISC DETAILS	05/06/16	06/03/16	
A742	MISC DETAILS	05/06/16	06/03/16	
A743	MISC DETAIL - FOLDING PARTITION	05/06/16		05/06/16
A744	EXPANSION JOINT DETAILS	05/06/16	06/03/16	
A745	EXPANSION JOINT DETAILS	05/06/16	06/03/16	
A746	EXPANSION JOINT DETAILS	05/06/16	06/03/16	
A747	EXPANSION JOINT 3D VIEWS	05/06/16		05/06/16
A748	CEILING DETAILS	05/06/16	06/03/16	
A749	CEILING DETAILS	05/06/16	06/03/16	
A800	SCRIM ELEVATIONS	05/06/16		05/06/16



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Number	Description	Date	Revision	Stamp
A801	SCRIM ELEVATIONS	05/06/16		05/06/16
A802	SCRIM ELEVATIONS AND DETAILS	05/06/16		05/06/16
A803	HORIZONTAL SHADING ELEVATIONS AND DTLS	05/06/16	06/03/16	
A805	COURT/FIELD LAYOUT/STRIPING	05/06/16		05/06/16
A806	COURT/FIELD LAYOUT/STRIPING	05/06/16	06/03/16	
A807	CENTRAL ROTUNDA BENCH	05/06/16	06/03/16	
A808	CENTRAL ROTUNDA BENCH	05/06/16	06/03/16	
A900	FINISH DETAILS AND LEGEND	05/06/16	06/03/16	
A911	FIRST FLOOR FINISH FLOOR PLAN OVERALL	05/06/16	06/03/16	
A911A	FIRST FLOOR FINISH FLOOR PLAN - AREA A	05/06/16	06/03/16	
A911B	FIRST FLOOR FINISH FLOOR PLAN - AREA B	05/06/16	06/03/16	
A911C	FIRST FLOOR FINISH FLOOR PLAN - AREA C	05/06/16	06/03/16	
A911D	FIRST FLOOR FINISH FLOOR PLAN - AREA D	05/06/16	06/03/16	
A912A	MEZZANINE FLOOR FINISH FLOOR PLAN - AREA A	05/06/16	06/03/16	
A912B	MEZZANINE FLOOR FINISH FLOOR PLAN - AREA B	05/06/16	06/03/16	
A912C	MEZZANINE FLOOR FINISH FLOOR PLAN - AREA C	05/06/16	06/03/16	
A912D	MEZZANINE FLOOR FINISH FLOOR PLAN - AREA D	05/06/16	06/03/16	
A921A	FIRST FLOOR FURNITURE PLAN - AREA A	05/06/16		05/06/16
A921B	FIRST FLOOR FURNITURE PLAN - AREA B	05/06/16		05/06/16
A921C	FIRST FLOOR FURNITURE PLAN - AREA C	05/06/16		05/06/16
A921D	FIRST FLOOR FURNITURE PLAN - AREA D	05/06/16		05/06/16
A922B	MEZZANINE FLOOR FURNITURE PLAN - AREA B	05/06/16		05/06/16
A922D	MEZZANINE FLOOR FURNITURE PLAN - AREA D	05/06/16		05/06/16
A950	SIGNAGE SCHEDULE	05/06/16	06/03/16	
A951A	FIRST FLOOR SIGNAGE PLAN - AREA A	05/06/16		05/06/16
A951B	FIRST FLOOR SIGNAGE PLAN - AREA B	05/06/16		05/06/16
A951C	FIRST FLOOR SIGNAGE PLAN - AREA C	05/06/16	06/03/16	
A951D	FIRST FLOOR SIGNAGE PLAN - AREA D	05/06/16		05/06/16
A952A	MEZZANINE FLOOR SIGNAGE PLAN - AREA A	05/06/16		05/06/16
A952B	MEZZANINE FLOOR SIGNAGE PLAN - AREA B	05/06/16		05/06/16
A952C	MEZZANINE FLOOR SIGNAGE PLAN - AREA C	05/06/16		05/06/16
A952D	MEZZANINE FLOOR SIGNAGE PLAN - AREA D	05/06/16	06/03/16	
A953	SIGN DRAWINGS	05/06/16	06/03/16	
	<b>Structural</b>			
S000	COVER SHEET	05/06/16		05/06/16
S100	GRID LAYOUT PLAN	05/06/16		05/06/16
S101	3D VIEW	05/06/16		05/06/16
S102	ROOF NET UPLIFT LOADING DIAGRAM	05/06/16	06/03/16	
S111A	FOUNDATION - AREA A	05/06/16	07/01/16	
S111B	FOUNDATION - AREA B	05/06/16	07/01/16	
S111C	FOUNDATION - AREA C	05/06/16	07/01/16	
S111D	FOUNDATION - AREA D	05/06/16		05/06/16
S112A	MEZZANINE FRAMING & LOW ROOF PLAN - AREA A	05/06/16	07/01/16	
S112B	MEZZANINE FRAMING & LOW ROOF PLAN - AREA B	05/06/16	07/01/16	
S112C	MEZZANINE FRAMING & LOW ROOF PLAN - AREA C	05/06/16	06/03/16	
S112D	MEZZANINE FRAMING PLAN - AREA D	05/06/16	06/03/16	
S114A	HIGH ROOF FRAMING PLAN - AREA A	05/06/16	06/03/16	
S114B	HIGH ROOF FRAMING PLAN - AREA B	05/06/16	07/01/16	
S114C	HIGH ROOF FRAMING PLAN - AREA C	05/06/16	06/03/16	
S114D	HIGH ROOF FRAMING PLAN - AREA D	05/06/16	06/03/16	

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S200	MOMENT FRAME ELEVATIONS	05/06/16		05/06/16
S201	BRACE ELEVATIONS	05/06/16		05/06/16
S202	BRACE ELEVATIONS	05/06/16	06/03/16	
S203	TYPICAL BRACE AND RIGID FRAME DETAILS	05/06/16		05/06/16
S300	FULL HT SECTIONS - AREA A	05/06/16		05/06/16
S301	FULL HT SECTIONS - AREA B	05/06/16		05/06/16
S302	FULL HT SECTIONS - AREA C	05/06/16		05/06/16
S303	FULL HT SECTIONS - AREA C	05/06/16		05/06/16
S304	FULL HT SECTIONS - AREA D	05/06/16	07/01/16	
S305	FULL HT SECTIONS - AREA D	05/06/16		05/06/16
S400	PARTIAL PLANS	05/06/16	06/03/16	
S401	PARTIAL PLANS	05/06/16	06/03/16	
S403	DROP OFF SHELTER PLAN & ELEVATIONS	05/06/16	06/03/16	
S500	SCHEDULES	05/06/16		05/06/16
S501	TYPICAL DETAILS	05/06/16		05/06/16
S502	TYPICAL DETAILS	05/06/16		05/06/16
S503	TYPICAL DETAILS	05/06/16		05/06/16
S510	SECTIONS	05/06/16	06/03/16	
S511	SECTIONS	05/06/16	07/01/16	
S512	SECTIONS	05/06/16		05/06/16
S520	SECTIONS	05/06/16	07/01/16	
S521	SECTIONS	05/06/16	07/01/16	
S522	SECTIONS	05/06/16	07/01/16	
S523	SECTIONS	05/06/16	06/03/16	
S524	SECTIONS	05/06/16	06/03/16	
S525	POOL TRUSS AND ELEVATIONS	05/06/16	06/03/16	
S526	SECTIONS	05/06/16	07/01/16	
S530	SECTIONS	05/06/16	07/01/16	
S531	SECTIONS	05/06/16	06/03/16	
S532	SECTIONS	05/06/16	07/01/16	
S540	SECTIONS	05/06/16	07/01/16	
S541	SECTIONS	05/06/16	07/01/16	
S542	SECTIONS	05/06/16	06/03/16	
	<b>Mechanical</b>			
MP000	MECHANICAL COVER SHEET, LEGEND, AND DRAWING INDEX	05/06/16		05/06/16
MP001	MECHANICAL GENERAL NOTES	05/06/16		05/06/16
M111A	FIRST FLOOR HVAC PLAN - AREA A	05/06/16		05/06/16
M111B	FIRST FLOOR HVAC PLAN - AREA B	05/06/16		05/06/16
M111C	FIRST FLOOR HVAC PLAN - AREA C	05/06/16	06/03/16	
M111D	FIRST FLOOR HVAC PLAN - AREA D	05/06/16		05/06/16
M112A	MEZZANINE HVAC PLAN - AREA A	05/06/16	06/03/16	
M112B	MEZZANINE HVAC PLAN - AREA B	05/06/16	06/03/16	
M112C	MEZZANINE HVAC PLAN - AREA C	05/06/16	06/03/16	
M112D	MEZZANINE HVAC PLAN - AREA D	05/06/16		05/06/16
M114A	ROOF HVAC PLAN - AREA A	05/06/16	06/03/16	
M114B	ROOF HVAC PLAN - AREA B	05/06/16	06/03/16	
M114C	ROOF HVAC PLAN - AREA C	05/06/16	06/03/16	
M150	ENLARGED HVAC MECHANICAL ROOM PLANS	05/06/16	06/03/16	
M211A	FIRST FLOOR PIPING PLAN - AREA A	05/06/16	06/03/16	
M211B	FIRST FLOOR PIPING PLAN - AREA B	05/06/16		05/06/16

ATTACHMENT A  
List of Plans  
Specifications Amendments



**HAYDON**

Number	Description	Date	Revision	Stamp
M211C	FIRST FLOOR PIPING PLAN - AREA C	05/06/16	06/03/16	
M211D	FIRST FLOOR PIPING PLAN - AREA D	05/06/16		05/06/16
M212A	MEZZANINE PIPING PLAN - AREA A	05/06/16	06/03/16	
M212B	MEZZANINE PIPING PLAN - AREA B	05/06/16	06/03/16	
M212C	MEZZANINE PIPING PLAN - AREA C	05/06/16	06/03/16	
M400	HVAC SECTIONS	05/06/16	06/03/16	
M401	HVAC SECTIONS	05/06/16		05/06/16
M402	HVAC SECTIONS	05/06/16		05/06/16
M500	HVAC DETAILS	05/06/16		05/06/16
M501	HVAC DETAILS	05/06/16	06/03/16	
M600	HVAC SCHEDULES	05/06/16		05/06/16
M601	HVAC SCHEDULES	05/06/16		05/06/16
M602	HVAC SCHEDULES	05/06/16	06/03/16	
M603	HVAC SCHEDULES	05/06/16		05/06/16
M700	HVAC TEMPERATURE CONTROL DRAWINGS	05/06/16		05/06/16
M701	HVAC TEMPERATURE CONTROL DRAWINGS	05/06/16		05/06/16
<b>Fire Protection</b>				
FP100	FIRE PROTECTION ZONE PLANS	05/06/16		05/06/16
FP111A	FIRST FLOOR FIRE PROTECTION PLAN - AREA A	05/06/16		05/06/16
FP111B	FIRST FLOOR FIRE PROTECTION PLAN - AREA B	05/06/16		05/06/16
FP111C	FIRST FLOOR FIRE PROTECTION PLAN - AREA C	05/06/16		05/06/16
FP112A	MEZZANINE FIRE PROTECTION PLAN - AREA A	05/06/16		05/06/16
FP112B	MEZZANINE FIRE PROTECTION PLAN - AREA B	05/06/16		05/06/16
FP112C	MEZZANINE FIRE PROTECTION PLAN - AREA C	05/06/16		05/06/16
FP114D	ROOF FIRE PROTECTION PLAN - AREA D	05/06/16		05/06/16
<b>Plumbing</b>				
P100	PLUMBING SITE PLAN	05/06/16	06/03/16	
P111A	FIRST FLOOR PLUMBING PLAN - AREA A	05/06/16		
P111B	FIRST FLOOR PLUMBING PLAN - AREA B	05/06/16	06/03/16	
P111C	FIRST FLOOR PLUMBING PLAN - AREA C	05/06/16	06/03/16	
P112A	MEZZANINE PLUMBING PLAN - AREA A	05/06/16		
P112B	MEZZANINE PLUMBING PLAN - AREA B	05/06/16	06/03/16	
P112C	MEZZANINE PLUMBING PLAN - AREA C	05/06/16	06/03/16	
P114A	ROOF PLUMBING PLAN - AREA A	05/06/16		05/06/16
P114B	ROOF PLUMBING PLAN - AREA B	05/06/16		05/06/16
P114C	ROOF PLUMBING PLAN - AREA C	05/06/16	06/03/16	
P114D	ROOF PLUMBING PLAN - AREA D	05/06/16		05/06/16
P150	ENLARGED SCALE PLUMBING PLANS	05/06/16	06/03/16	
P151	ENLARGED SCALE PLUMBING PLANS	05/06/16		
P152	ENLARGED SCALE PLUMBING PLANS	05/06/16	06/03/16	
P400	PLUMBING DETAILS	05/06/16	06/03/16	
P600	PLUMBING SCHEDULES	05/06/16	06/03/16	
P700	PLUMBING ISOMETRICS	05/06/16		05/06/16
P701	PLUMBING ISOMETRICS	05/06/16		05/06/16
P702	PLUMBING ISOMETRICS	05/06/16		05/06/16
<b>Electrical</b>				
E001	ELECTRICAL LEGEND AND GENERAL NOTES	05/06/16		05/06/16
E101	SITE ELECTRICAL PLAN	05/06/16	07/06/16	
E311A	FIRST FLOOR POWER PLAN - AREA A	05/06/16	06/03/16	
E311B	FIRST FLOOR POWER PLAN - AREA B	05/06/16	06/03/16	

ATTACHMENT A  
List of Plans  
Specifications Amendments



**HAYDON**

Number	Description	Date	Revision	Stamp
E311C	FIRST FLOOR POWER PLAN - AREA C	05/06/16	06/03/16	
E311D	FIRST FLOOR POWER PLAN - AREA D	05/06/16	06/03/16	
E312A	MEZZANINE POWER PLAN - AREA A	05/06/16		05/06/16
E312B	MEZZANINE POWER PLAN - AREA B	05/06/16	06/03/16	
E312C	MEZZANINE POWER PLAN - AREA C	05/06/16	06/03/16	
E312D	MEZZANINE POWER PLAN - AREA D	05/06/16		05/06/16
E314	ROOF ELECTRICAL PLAN	05/06/16		05/06/16
E411A	FIRST FLOOR LIGHTING PLAN - AREA A	05/06/16	07/06/16	
E411B	FIRST FLOOR LIGHTING PLAN - AREA B	05/06/16	06/03/16	
E411C	FIRST FLOOR LIGHTING PLAN - AREA C	05/06/16	07/06/16	
E411D	FIRST FLOOR LIGHTING PLAN - AREA D	05/06/16	06/03/16	
E412A	MEZZANINE LIGHTING PLAN - AREA A	05/06/16	06/03/16	
E412B	MEZZANINE LIGHTING PLAN - AREA B	05/06/16	06/03/16	
E412C	MEZZANINE LIGHTING PLAN - AREA C	05/06/16	07/06/16	
E412D	MEZZANINE LIGHTING PLAN - AREA D	05/06/16		05/06/16
E501	ENLARGED ELECTRICAL PLANS	05/06/16	06/03/16	
E601	ELECTRICAL ONE-LINE DIAGRAM	05/06/16		05/06/16
E701	ELECTRICAL SCHEDULES	05/06/16	07/06/16	
E702	ELECTRICAL SCHEDULES	05/06/16		05/06/16
E703	ELECTRICAL SCHEDULES	05/06/16		05/06/16
E704	ELECTRICAL PANEL SCHEDULES	05/06/16	06/03/16	
E705	ELECTRICAL PANEL SCHEDULES	05/06/16	06/03/16	
E706	ELECTRICAL PANEL SCHEDULES	05/06/16	06/03/16	
E801	ELECTRICAL DETAILS	05/06/16		05/06/16
E802	ELECTRICAL DETAILS	05/06/16	06/03/16	
E803	ELECTRICAL DETAILS	05/06/16	07/06/16	
	<b>Aquatics</b>			
PL100	OVERALL AQUATIC PLAN	05/06/16		05/06/16
PL101	GENERAL NOTES AND DETAILS	05/06/16	06/03/16	05/06/16
PL102	STRUCTURAL	05/06/16	06/03/16	05/06/16
PL103	ADA	05/06/16		05/06/16
PL110	POOL A - COMPETITION POOL PLAN	05/06/16	06/03/16	05/06/16
PL111	POOL A - COMPETITION POOL DIMENSION PLAN	05/06/16	06/03/16	05/06/16
PL112	COMPETITION POOL SECTIONS & DETAILS	05/06/16	06/03/16	05/06/16
PL120	POOL B - LEISURE POOL PLAN	05/06/16	06/03/16	05/06/16
PL121	POOL B - LEISURE POOL DIMENSION PLAN	05/06/16		05/06/16
PL122	POOL B - LEISURE POOL SECTIONS & DETAILS	05/06/16	06/03/16	05/06/16
PL123	POOL B - LEISURE POOL SLIDE PLAN	05/06/16		05/06/16
PL124	LEISURE POOL SLIDE DETAILS	05/06/16		05/06/16
PL125	TUBE LAYOUT	05/06/16		05/06/16
PL126	SOUTHWEST SLIDE VIEW - ABOVE	05/06/16		05/06/16
PL127	WEST SLIDE VIEW - LEVEL	05/06/16		05/06/16
PL128	SOUTH SLIDE VIEW - LEVEL	05/06/16		05/06/16
PL129	SOUTHWEST SLIDE VIEW - SIDE	05/06/16		05/06/16
PL129.0	PRELIMINARY INFORMATION	05/06/16		05/06/16
PL129.1	AQUATIC FEATURES	05/06/16		05/06/16
PL129.2	SITE PLAN & FEATURE LAYOUT	05/06/16		05/06/16
PL129.3	SITE PLAN & FEATURE LAYOUT	05/06/16		05/06/16
PL129.4	COLUMN C12 LOADING	05/06/16		05/06/16
PL129.5	COLUMN C13 LOADING	05/06/16		05/06/16

ATTACHMENT A  
List of Plans  
Specifications Amendments



Number	Description	Date	Revision	Stamp
PL129.6	COLUMN C14 LOADING	05/06/16		05/06/16
PL129.7	UTILITY SPECIFICATIONS	05/06/16		05/06/16
PL129.8	RAIN CLOUD SCHEMATIC	05/06/16		05/06/16
PL130	POOL C - WELLNESS POOL PLAN	05/06/16	06/03/16	05/06/16
PL131	POOL C - WELLNESS POOL DIMENSION PLAN	05/06/16		05/06/16
PL132	POOL C - WELLNESS POOL SECTIONS & DETAILS	05/06/16	06/03/16	05/06/16
PL140	POOL D - SPA POOL PLAN, DIMENSION PLAN, AND DETAILS	05/06/16	06/03/16	05/06/16
PL300	OVERALL PIPING PLAN	05/06/16		05/06/16
PL301	GENERAL PIPING DETAILS	05/06/16		05/06/16
PL310	POOL A - COMPETITION POOL PIPING PLAN	05/06/16		05/06/16
PL320	POOL B - LEISURE POOL FILTRATION PIPING PLAN	05/06/16		05/06/16
PL321	POOL B - LEISURE POOL SUCTION & GAVITY PIPING PLAN	05/06/16		05/06/16
PL322	POOL B - LEISURE POOL ACTIVITY & SLIDE PIPING PLAN	05/06/16	06/03/16	05/06/16
PL330	POOL C - WELLNESS POOL PIPING PLAN	05/06/16	06/03/16	05/06/16
PL340	POOL D - SPA PIPING PLAN	05/06/16	06/03/16	05/06/16
PL400	MECHANICAL PLAN, EQUIPMENT SCHEDULE AND DETAILS	05/06/16	06/03/16	05/06/16
PL401	MECHANICAL EQUIPMENT SCHEDULES	05/06/16	06/03/16	05/06/16
PL402	MECHANICAL DETAILS	05/06/16		05/06/16
PL403	MECHANICAL DETAILS	05/06/16		05/06/16
PL450	REGENERATIVE MEDIA ISOMETRIC	05/06/16	06/03/16	05/06/16
PL510	POOL A - COMPETITION POOL SCHEMATICS	05/06/16		05/06/16
PL520	POOL B - LEISURE POOL SCHEMATICS	05/06/16		05/06/16
PL530	POOL C - WELLNESS POOL SCHEMATICS	05/06/16		05/06/16
PL540	POOL D - SPA SCHEMATICS	05/06/16		05/06/16
PL610	POOL A - MYRTHA COMPETITION POOL PLAN	05/06/16		05/06/16
PL611	POOL A - MYRTHA COMPETITION POOL SECTIONS	05/06/16		05/06/16
PL612	POOL A - MYRTHA COMPETITION POOL LAYOUT	05/06/16		05/06/16
PL613	POOL A - MYRTHA COMPETITION POOL SECTIONS	05/06/16		05/06/16
PL614	POOL A - MYRTHA COMPETITION POOL DETAILS	05/06/16		05/06/16
PL620	POOL B - MYRTHA LEISURE POOL CONCRETE WORKS	05/06/16		05/06/16
PL621	POOL B - MYRTHA LEISURE POOL PLANS & SECTIONS	05/06/16		05/06/16
PL622	POOL B - MYRTHA LEISURE POOL TYPICAL SECTIONS AND DETAILS	05/06/16		05/06/16
PL630	POOL C - MYRTHA WELLNESS POOL CONCRETE WORKS	05/06/16		05/06/16
PL631	POOL C - MYRTHA WELLNESS POOL PLANS AND SECTIONS	05/06/16		05/06/16
PL632	POOL C - MYRTHA WELLNESS POOL DETAILS	05/06/16		05/06/16
	<b>Kitchen</b>			
KA1.1	KITCHEN EQUIPMENT PLAN & ELECTRICAL PLAN	05/06/16	06/08/16	
KA1.2	PLUMBING PLAN & BUILDING CONDITIONS	05/06/16	06/08/16	
KA2.1	WALK-IN DETAIL	05/06/16	06/08/16	
	<b>Additional Documents</b>			
	Specification Volume 1 ( addendum 1 Updates )	05/06/16		
	Specification Volume 2 ( addendum 1 Updates )	05/06/16		
	Addendum 1	06/03/16		
	Addendum 2	06/08/16		
	Addendum 3	07/12/16		

ATTACHMENT B  
Allowances



Hobbs NM Health Wellness and Learning Center

7/27/2016

**Allowances: (included in GMP)**

- |  |    |         |
|--|----|---------|
| • Temporary heat and weather protection                          | \$ | 100,000 |
| • Core drill and sleeving for Owner provided dasher board system | \$ | 18,600  |

ATTACHMENT C  
Assumptions

Hobbs NM Health Wellness and Learning Center  
GMP Proposal  
RECAP

7/27/2016



Proposal Recap	Original GMP Budget	BVA Changes	Revised GMP Budget
GMP	\$ 51,343,323	\$ (1,289,037)	\$ 50,054,285
New Mexico Gross Receipts Tax (NMGRT)	\$ 3,497,764	\$ (87,816)	\$ 3,409,948
<b>TOTAL PROJECT CONSTRUCTION BUDGET</b>	<b>\$ 54,841,086</b>	<b>\$ (1,376,853)</b>	<b>\$ 53,464,234</b>

**Allowances:** (included in GMP)

Temporary heat and weather protection	\$ 100,000
Core drill and sleeving for Owner provided dasher board system	\$ 18,600

**General:**

GMP is based on the "100% CD's" plans and specifications for the Hobbs Health Wellness and Learning Center by Barker Rinker Seacat Architecture dated May 6, 2016.

Addendum 001: Dated June 3, 2016

Addendum 002: Dated June 8, 2016

Addendum 003: Dated July 12, 2016

**Qualifications:**

- Price includes Early Work Authorization per Amendment #2
- Specified General Conditions includes: Bond, Liability Insurance, Builders Risk Insurance, and Staffing / Office
- Bleacher seats are included by SturdiSteel
- Install owner furnished specialty items as noted
- Signage and graphics by Century Sign Builders
- Includes core drill and sleeve allowance of \$18,500 for owner provided dasher board system at Multi-Use Indoor Courts
- Includes play equipment by Soft Play LLC
- Includes PA & AV system by Pace Audio

**Exclusions:**

- Governmental or utility company permits and fees of any type.
- Preconstruction and/or design fees
- Testing and special inspections
- Furniture, fixtures and equipment (except as noted)
- Televisions or monitors (except as noted in AV package)
- Data and telecommunication equipment
- Timing and scoreboard for aquatics
- Hazardous material testing or abatement/removal
- Water meters
- Cost of water to fill pools
- Residential appliances (noted to be OFCI on plans)
- Curb & gutter, valley gutter and fillets along proposed access roadway at west and south sides of project (sidewalk is included)
- Removable turf and dasher system at Multi-Use Indoor Courts
- Watering and warranty of seeded area (by owner per plans)
- Relocation of OH power lines/poles, telephone boxes or gas valves

**HAYDON BUILDING CORP**  
**HOBBS NM HEALTH WELLNESS AND LEARNING CENTER**  
**RECAP OF BUDGET & BID ITEMS**  
**7/27/2016**

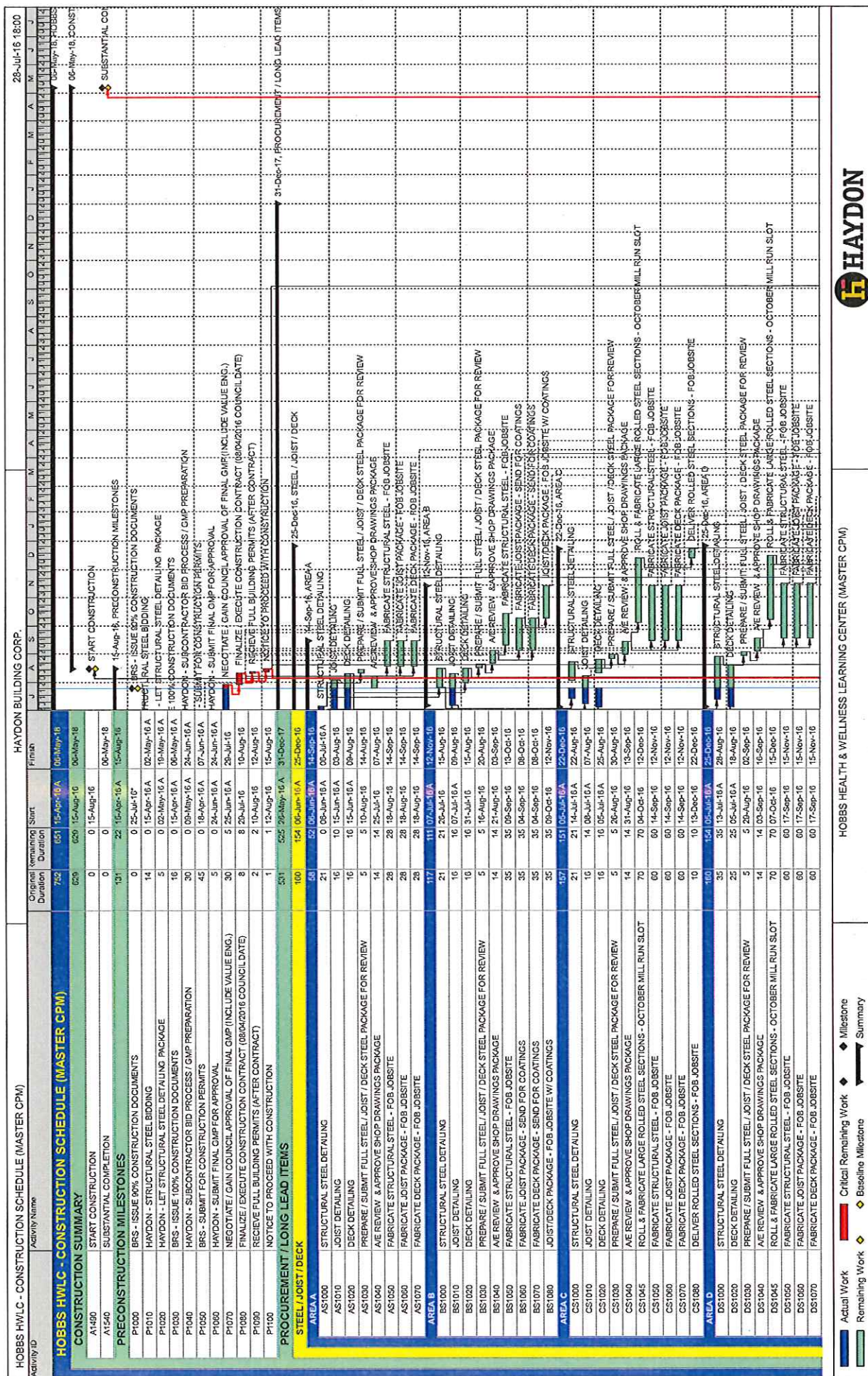
CODE	DESCRIPTION	Original GMP Budget	BVA Changes	Revised GMP Budget
01-1000	GENERAL CONDITIONS			
	Specified General Conditions	\$2,571,210	\$0	\$2,571,210
	Contractors Field Work	\$400,000	\$0	\$400,000
01-1200	ALLOWANCES		\$0	
	Temporary heat and weather protection	\$100,000	\$0	\$100,000
	Holes and sleeves for Owner dasher board system	\$18,600	\$0	\$18,600
01-1500	SURVEY / STAKING	\$67,665	\$0	\$67,665
02-2000	EARTHWORK & PAVING	\$2,059,421	\$0	\$2,059,421
	Dust Control/SWPPP	\$41,100	\$0	\$41,100
02-5500	PAVEMENT MARKINGS	\$17,500	\$0	\$17,500
02-7000	SITE UTILITIES	\$173,966	\$0	\$173,966
02-8000	FENCING	\$63,788	\$0	\$63,788
02-9000	LANDSCAPING / SITE FURNISHINGS	\$1,257,387	(\$396,326)	\$861,061
03-1000	SITE CONCRETE	\$1,095,172	(\$135,950)	\$959,222
03-3000	BUILDING CONCRETE	\$3,007,376	(\$46,800)	\$2,960,576
	Soil Poisoning	\$23,400	\$0	\$23,400
04-2000	MASONRY & STONE	\$1,559,286	(\$39,000)	\$1,520,286
05-1200	STRUCTURAL & MISC STEEL	\$4,568,412	\$0	\$4,568,412
06-1000	ROUGH CARPENTRY	\$100,000	\$0	\$100,000
06-4100	ARCHITECTURAL CASEWORK & TRIM	\$772,219	(\$59,453)	\$712,766
07-1000	DAMPROOFING	\$11,375	\$0	\$11,375
07-2100	INSULATION / AIR BARRIER	\$487,626	\$0	\$487,626
07-2119	FOAM IN PLACE INSULATION	\$50,000	\$0	\$50,000
07-4213	SIDING	\$2,352,879	\$0	\$2,352,879
07-4000	ROOFING / FLASHINGS	\$1,107,942	\$0	\$1,107,942
	Roof hatch	\$5,250	\$0	\$5,250
07-8400	FIRE STOPPING / JOINT SEALANTS	\$93,553	\$0	\$93,553
07-9513	EXPANSION JOINTS	\$106,966	\$0	\$106,966
08-1000	DOORS / FRAMES / HARDWARE	\$185,474	\$0	\$185,474
08-3100	ACCESS DOORS	\$5,000	\$0	\$5,000
08-3613	SECTIONAL OVERHEAD DOORS	\$20,800	\$0	\$20,800
08-4100	ALUMINUM STOREFRONT & CURTAINWALL	\$1,549,867	\$0	\$1,549,867
08-4500	TRANSLUCENT WALL ASSEMBLIES / SKYLIGHTS	\$894,888	\$0	\$894,888
09-2000	METAL FRAMING & DRYWALL	\$1,680,572	(\$45,000)	\$1,635,572
09-2313	SOUND ABSORBING PLASTER	\$38,651	\$0	\$38,651
09-3000	TILE	\$540,250	(\$113,740)	\$426,510
09-5100	ACOUSTICAL TILE CEILINGS & ACCESSORIES	\$385,283	\$48,067	\$433,350
09-5600	ACRYLIC PLASTER CEILINGS	\$130,834	\$0	\$130,834
09-6254	SYNTHETIC TURF SURFACING	\$162,776	\$0	\$162,776
09-6400	WOOD STRIP FLOORING	\$48,045	\$0	\$48,045
09-6500	FLOORING	\$120,000	\$0	\$120,000
09-6566	RESILIENT ATHLETIC FLOORING	\$523,899	\$16,161	\$540,060
09-6800	SPECIAL FLOOR FINISHES	\$69,703	\$0	\$69,703
09-9000	PAINTING / WALLCOVERINGS / HPC	\$516,594	\$0	\$516,594
09-9730	FRP PANELING	\$11,290	\$0	\$11,290
09-9990	FINAL CLEANING	\$65,000	\$0	\$65,000
10-1100	VISUAL DISPLAY BOARDS	\$4,835	\$0	\$4,835
10-1400	SIGNAGE & GRAPHICS	\$124,496	(\$9,375)	\$115,121
10-2100	TOILET PARTITIONS AND ACCESSORIES	\$112,900	\$0	\$112,900
10-2200	FOLDING PANEL PARTITION	\$35,750	\$0	\$35,750



**HAYDON BUILDING CORP  
HOBBS NM HEALTH WELLNESS AND LEARNING CENTER  
RECAP OF BUDGET & BID ITEMS  
7/27/2016**

CODE	DESCRIPTION	Original GMP Budget	BVA Changes	Revised GMP Budget
10-2600	WALL AND CORNER GUARDS	\$7,500	\$0	\$7,500
10-3100	MISCELLANEOUS SPECIALTIES	\$12,500	\$0	\$12,500
10-4400	FIRE PROTECTION SPECIALTIES	\$5,745	\$0	\$5,745
10-5100	PHENOLIC LOCKERS	\$165,421	\$0	\$165,421
11-3100	FOOD SERVICE EQUIPMENT	\$72,100	\$0	\$72,100
11-6620	GYMNASIUM EQUIPMENT	\$152,615	\$0	\$152,615
11-6640	SCOREBOARDS	\$63,899	\$0	\$63,899
11-9900	POOL EQUIPMENT ROOM HOIST	\$5,000	\$0	\$5,000
12-2400	WINDOW SHADES	\$50,395	\$0	\$50,395
12-6615	BLEACHERS	\$11,150	\$0	\$11,150
13-1000	POOLS	\$6,972,933	(\$385,946)	\$6,586,987
13-1816	SOCCER DASH BOARDS & EQUIPMENT	\$120,715	\$0	\$120,715
13-2800	RAQUETBALL COURT SYSTEMS	\$72,639	\$0	\$72,639
13-3400	PLAY SYSTEM	\$750,508	\$130,889	\$881,397
14-2000	ELEVATOR	\$68,700	\$0	\$68,700
21-0000	FIRE SPRINKLER SYSTEM	\$372,218	\$0	\$372,218
23-0000	MECHANICAL	\$6,817,895	(\$55,000)	\$6,762,895
26-0000	ELECTRICAL & SPECIAL SYSTEMS	\$3,455,224	(\$54,650)	\$3,400,574
	<b>SUBTOTAL - Base Construction</b>	<b>\$48,516,157</b>	<b>(\$1,146,122)</b>	<b>\$47,370,035</b>
	<b>Contractor Contingency</b>	<b>\$1,455,485</b>	<b>(\$131,038)</b>	<b>\$1,324,447</b>
	<b>Insurance Adjustment</b>	<b>\$5,499</b>	<b>(\$5,499)</b>	<b>\$0</b>
	<b>Bond Adjustment</b>	<b>\$6,378</b>	<b>(\$6,378)</b>	<b>\$0</b>
	<b>Fee</b>	<b>\$1,359,804</b>	<b>\$0</b>	<b>\$1,359,804</b>
	<b>SUBTOTAL - GMP</b>	<b>\$51,343,323</b>	<b>(\$1,289,037)</b>	<b>\$50,054,285</b>
	<b>New Mexico Gross Receipts Tax (NMGR)</b>	<b>\$3,497,764</b>	<b>(\$87,816)</b>	<b>\$3,409,948</b>
	<b>TOTAL PROJECT CONSTRUCTION BUDGET</b>	<b>\$54,841,086</b>	<b>(\$1,376,853)</b>	<b>\$53,464,234</b>

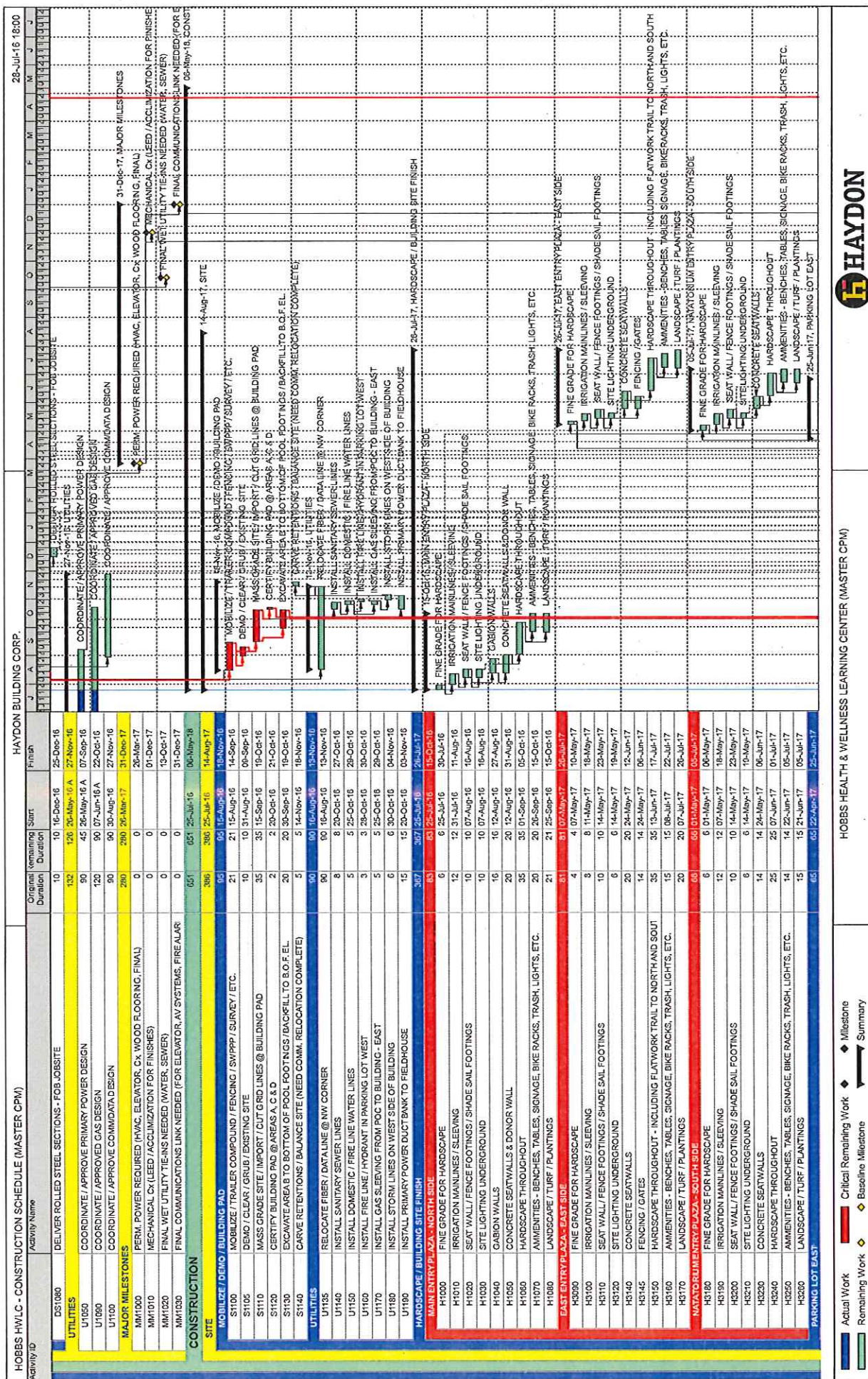
ATTACHMENT D  
Completion Schedule



HOBBS HEALTH & WELLNESS LEARNING CENTER (MASTER CPM)

█ Actual Work  
█ Critical Remaining Work  
█ Remaining Work  
◆ Milestone  
◆ Baseline Milestone  
◆ Summary

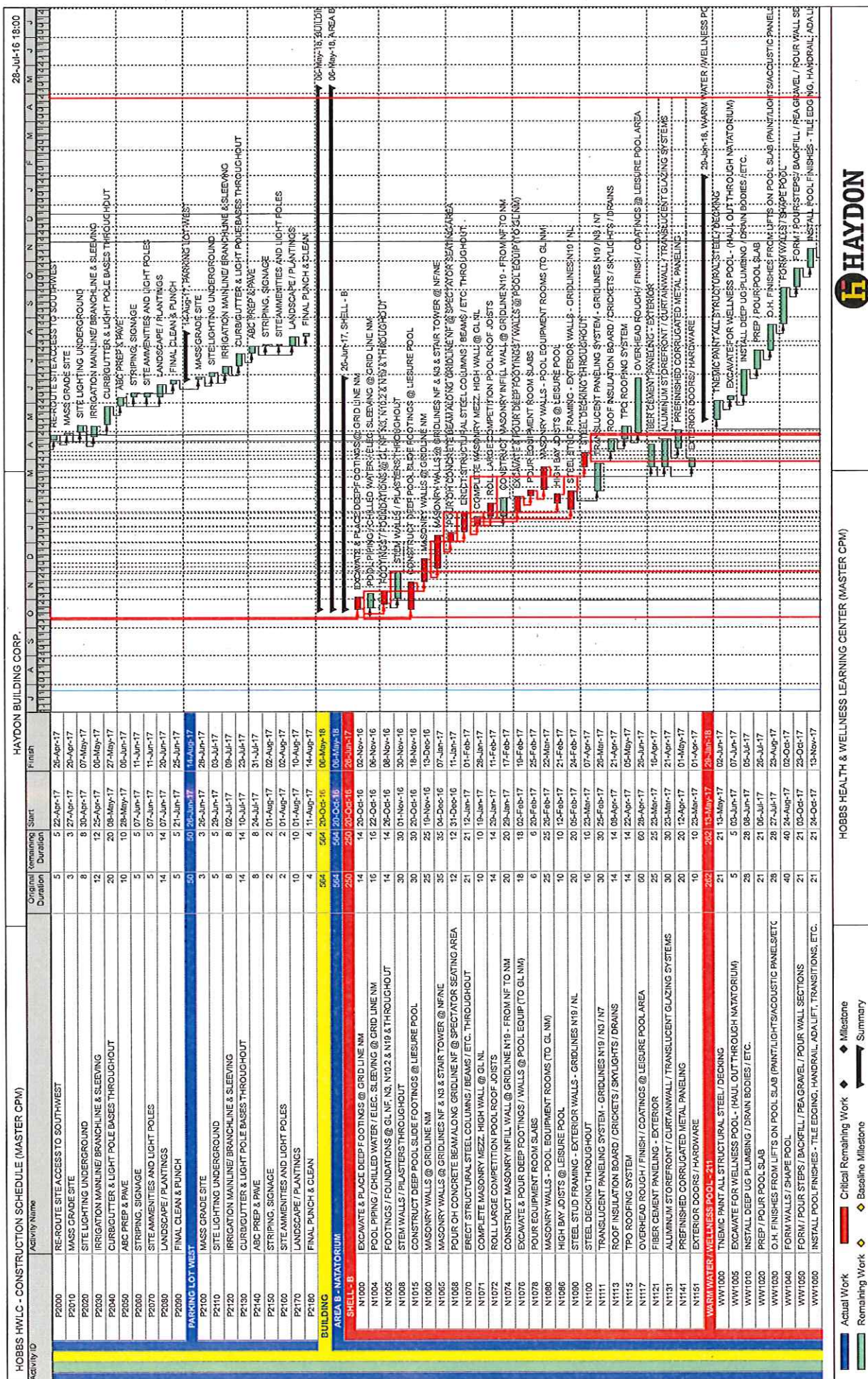
ATTACHMENT D  
Completion Schedule



HOBBS HEALTH & WELLNESS LEARNING CENTER (MASTER CPM)

Actual Work  
Remaining Work  
Critical Remaining Work  
Milestone  
Summary

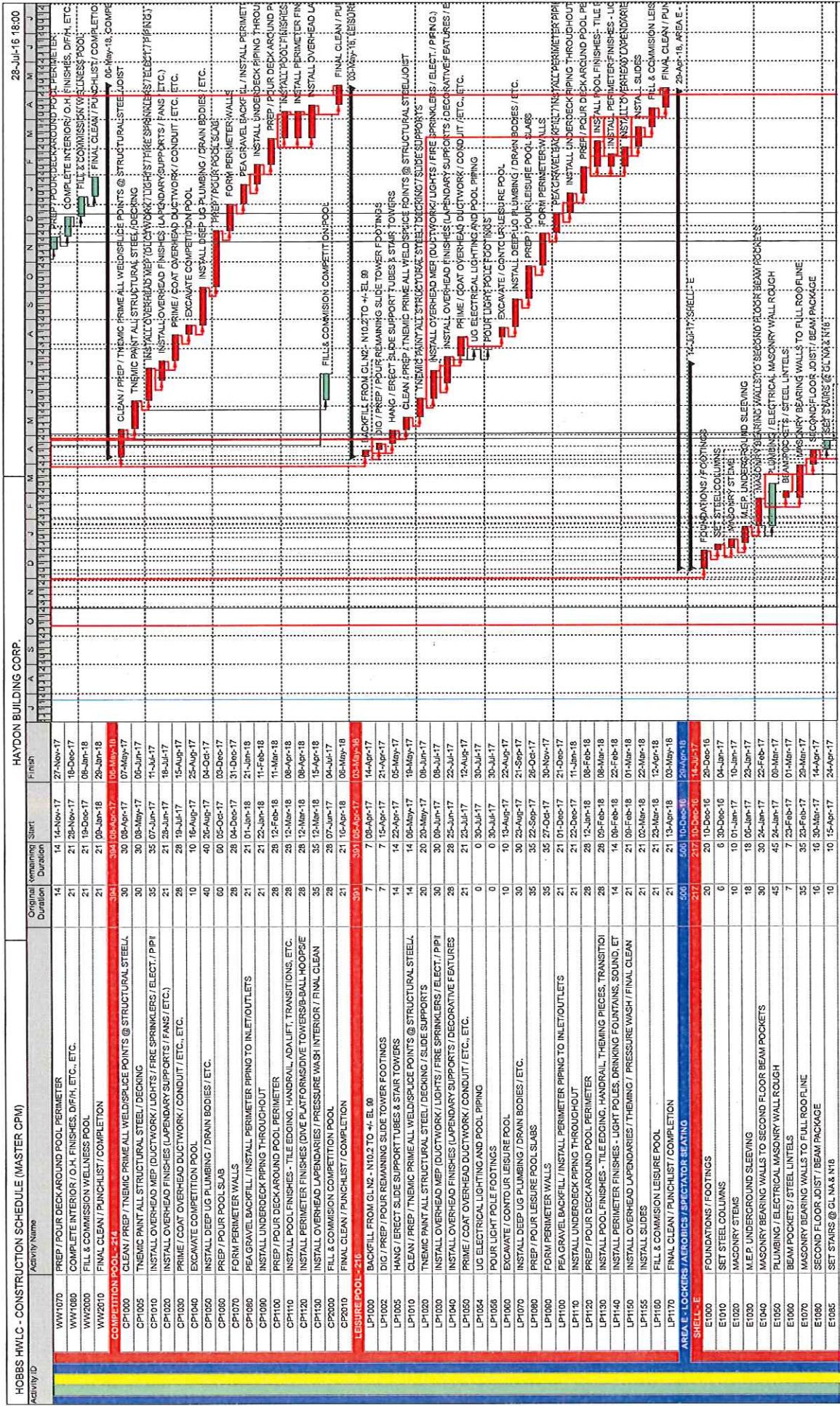
ATTACHMENT D  
Completion Schedule



HOBBS HEALTH & WELLNESS LEARNING CENTER (MASTER CPM)

- Actual Work
- Remaining Work
- Critical Remaining Work
- Milestone
- Summary

# ATTACHMENT D Completion Schedule



**HAYDON**

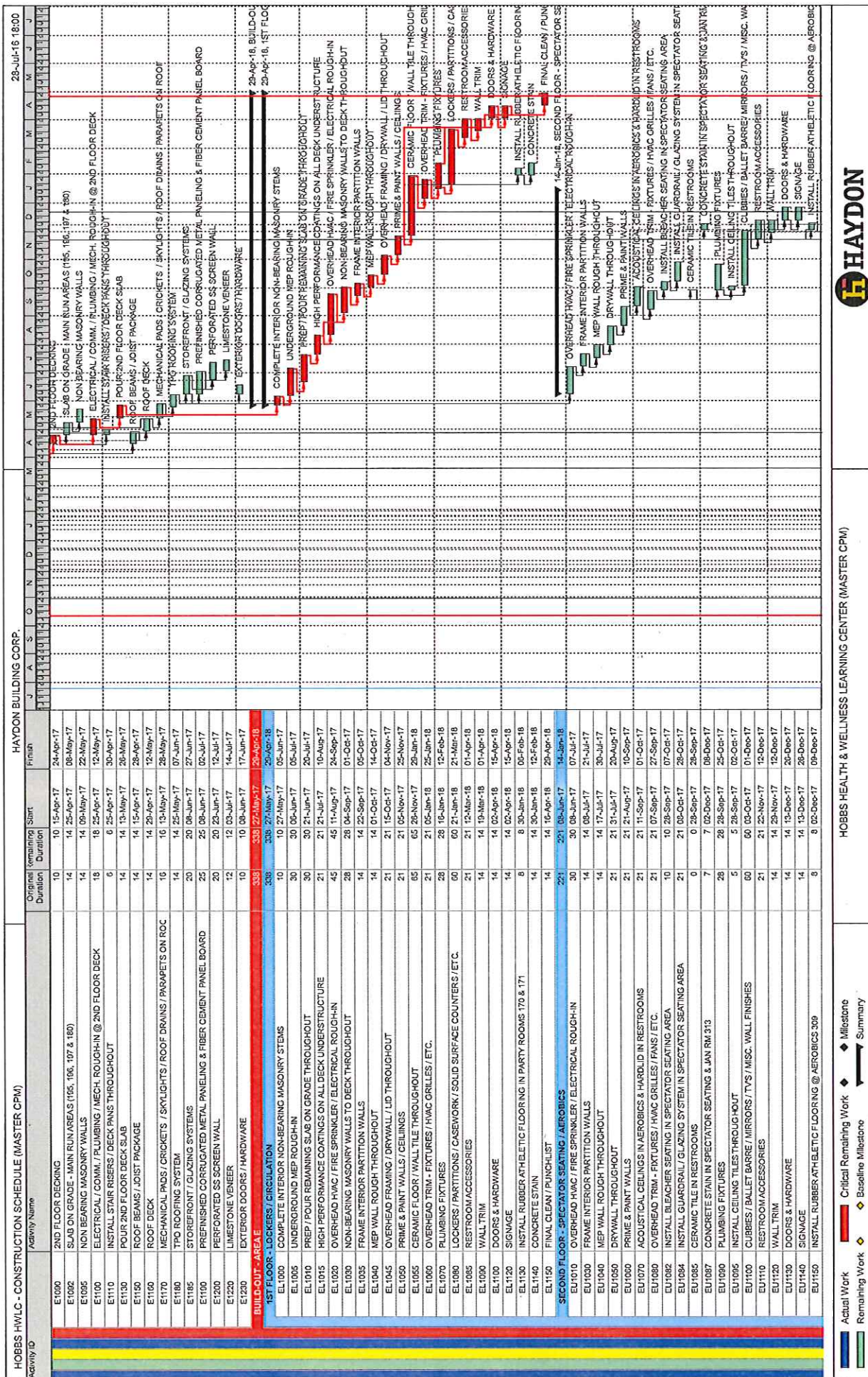
HOBBES HEALTH & WELLNESS LEARNING CENTER (MASTER CPM)

28-Jul-16 18:00

Actual Work █ Critical Remaining Work ◆ Milestone ◆

Remaining Work █ Baseline Milestone ◆ Summary ◆

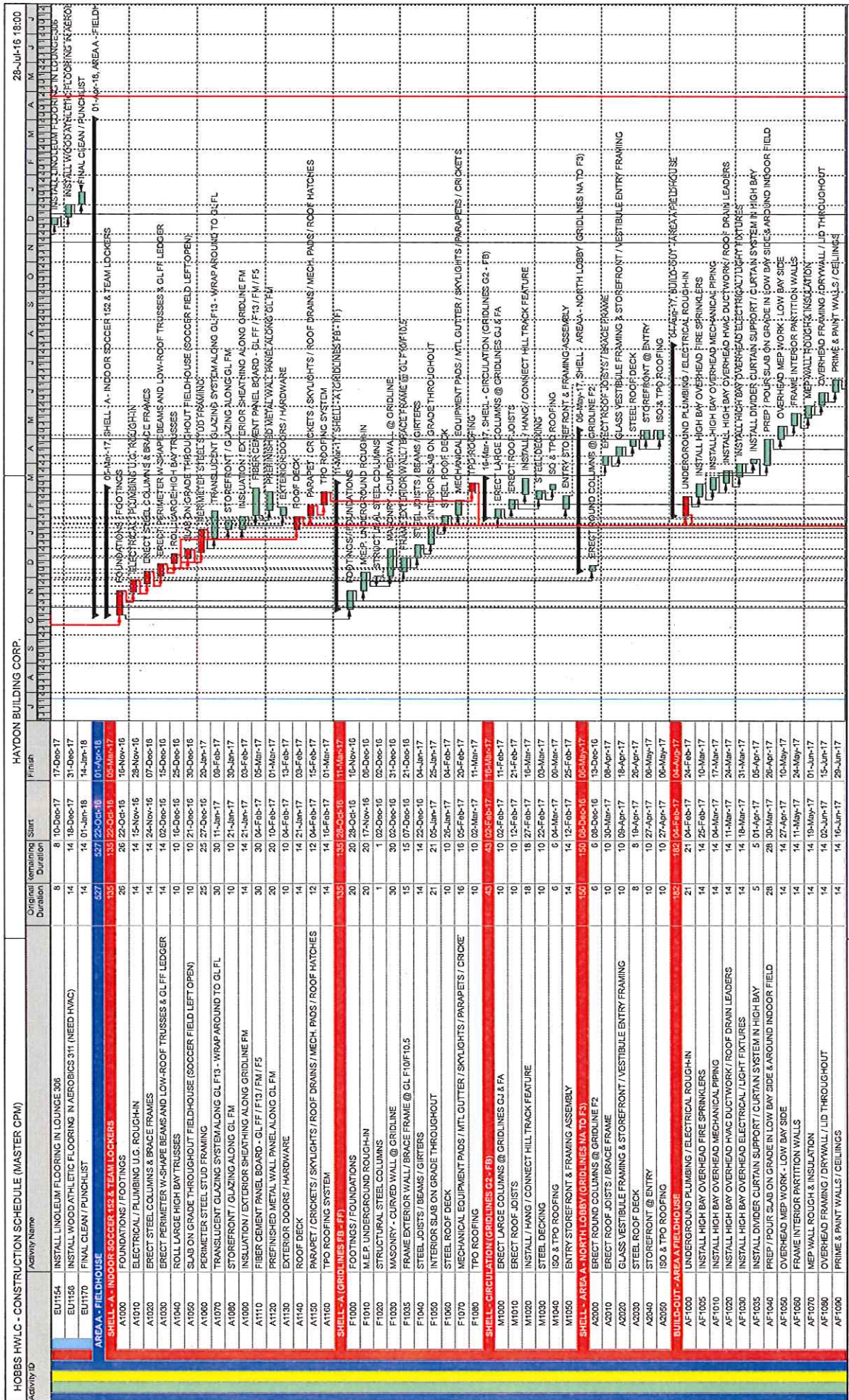
# ATTACHMENT D Completion Schedule



HOBBS HEALTH & WELLNESS LEARNING CENTER (MASTER CPM)

█ Actual Work   
 █ Critical Remaining Work   
 █ Milestone   
 █ Remaining Work   
 ◆ Baseline Milestone   
 ◆ Summary

ATTACHMENT D  
Completion Schedule

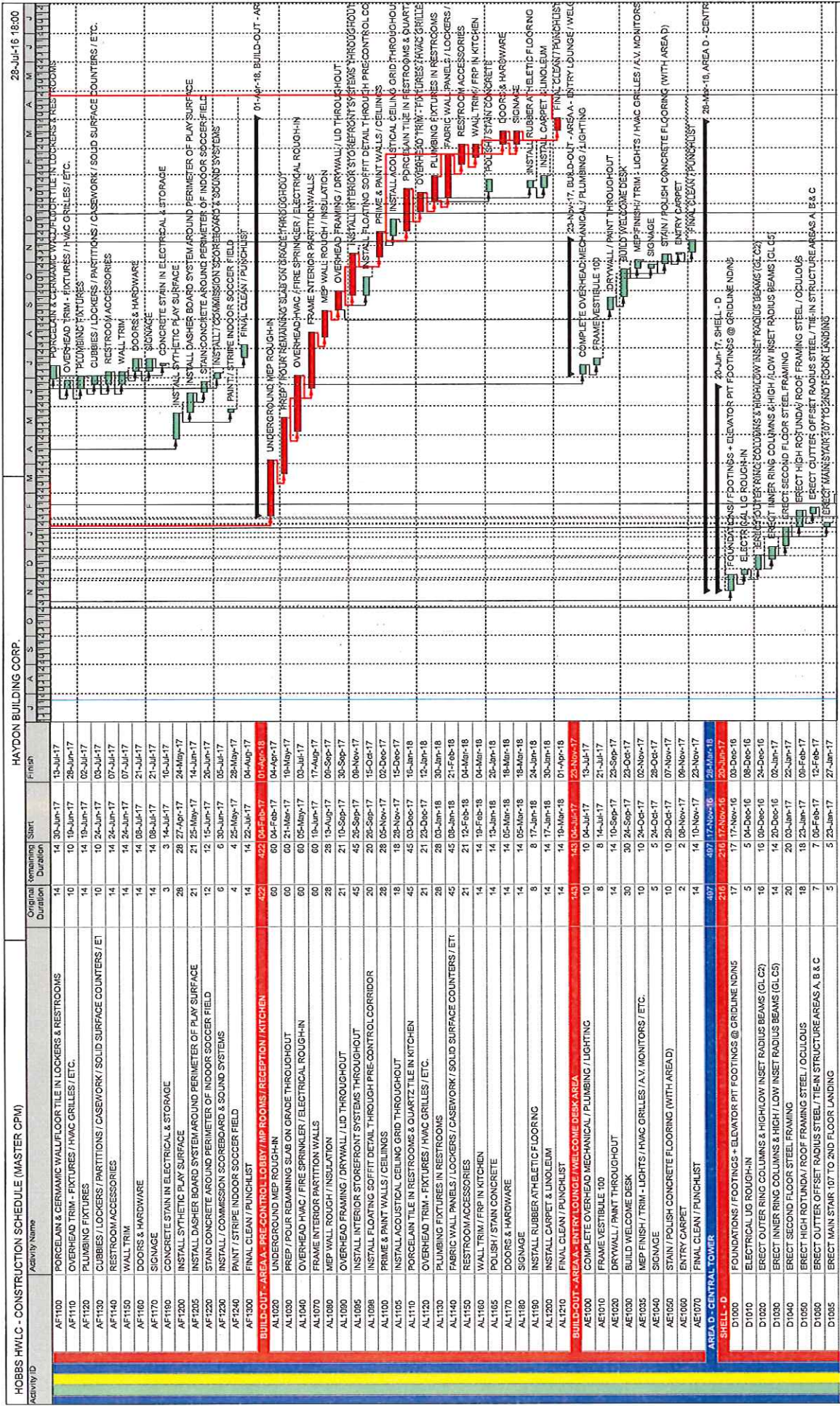


**HAYDON**

**HOBBS HEALTH & WELLNESS LEARNING CENTER (MASTER CPM)**

■ Actual Work  
■ Remaining Work  
■ Critical Remaining Work  
■ Milestone  
◆ Baseline Milestone  
◆ Summary

# ATTACHMENT D Completion Schedule



**HAYDON BUILDING CORP.**

28-Jun-16 18:00

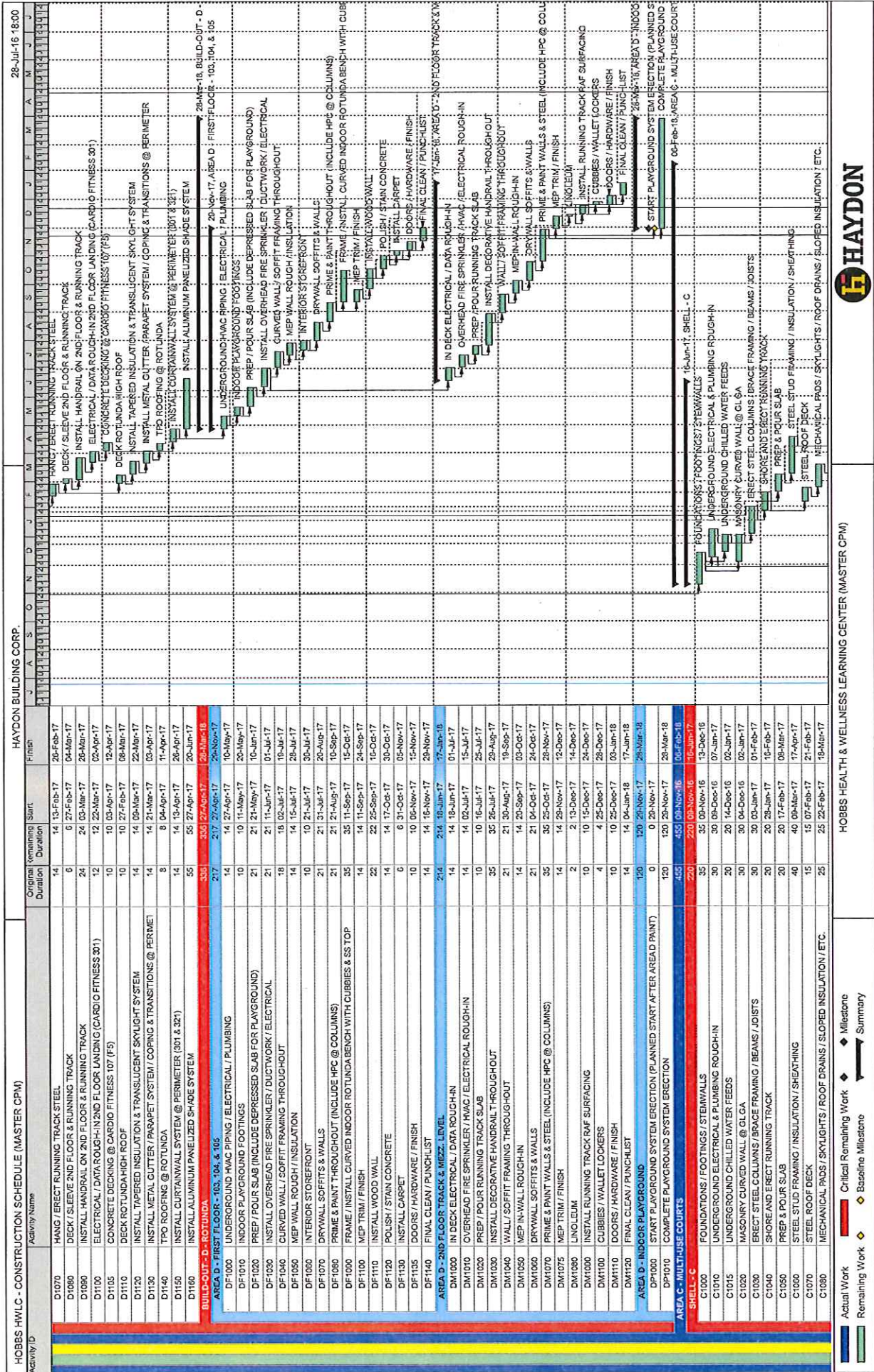
**HAYDON**

**HOBBS HEALTH & WELLNESS LEARNING CENTER (MASTER CPM)**

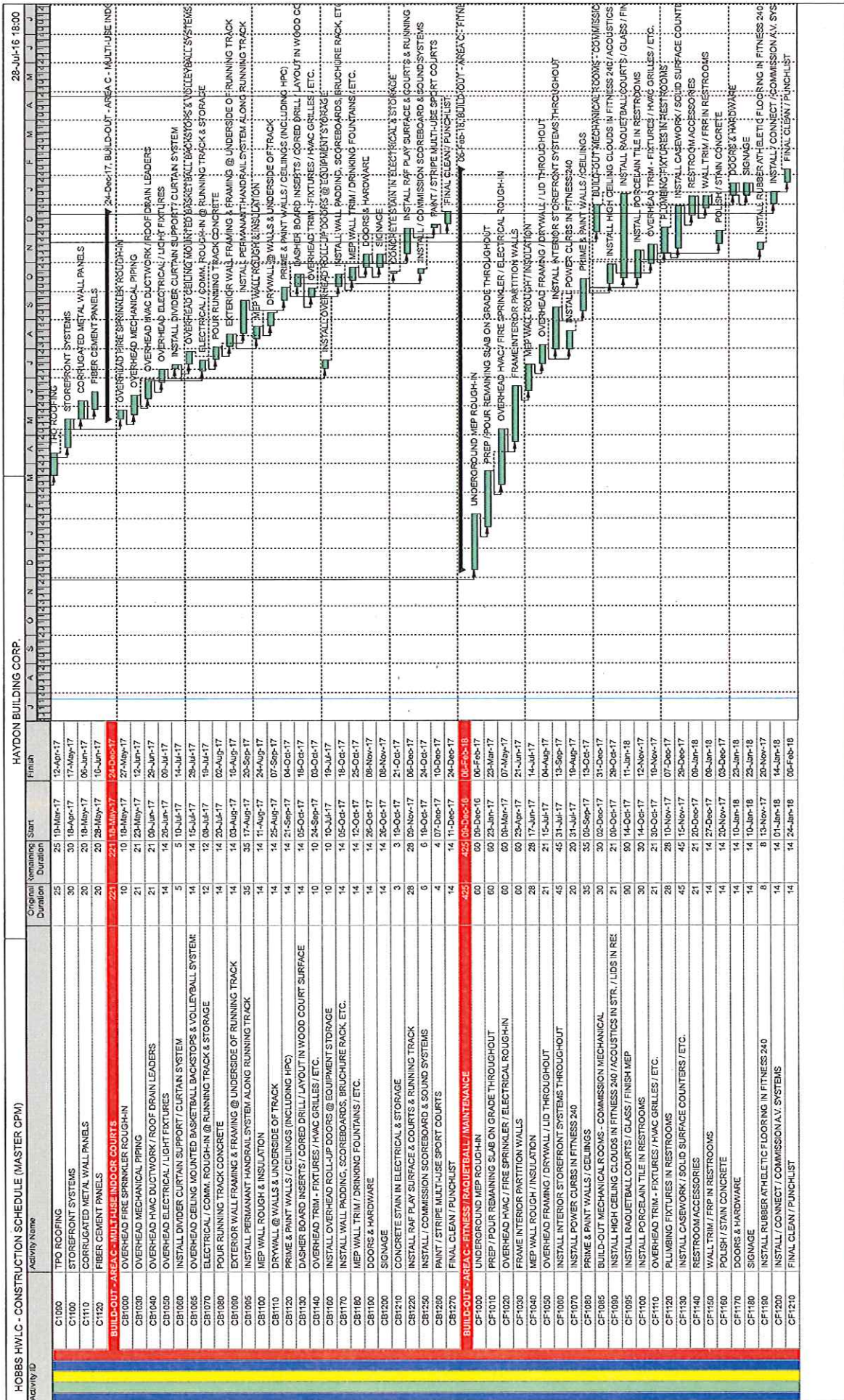
■ Actual Work    
 ■ Remaining Work    
 ■ Milestone    
 ■ Critical Remaining Work    
 ■ Baseline Milestone    
 ■ Summary



# ATTACHMENT D Completion Schedule



ATTACHMENT D  
Completion Schedule



HOBBS HEALTH & WELLNESS LEARNING CENTER (MASTER CPM)

Actual Work █ Critical Remaining Work █ Milestone ◆  
 Remaining Work █ Baseline Milestone ◆ Summary →

ATTACHMENT E  
Alternate Prices  
7-28-16

**Hobbs NM Health Wellness and Learning Center**  
Haydon Building Corporation - GMP Proposal  
Best Value Analysis

BID DATE: 7/20/2016  
BVA Date: 7/20/2016  
BVA Up-Dated: 7/26/2016



#	Description	Priority	Possible Cost Impact	Incorporated To Select Place "x" here>	Rejected		Pending	
					To Select Place "x" here>	Place "x" here>	To Select Place "x" here>	Place "x" here>
<b>Alternates from Specification</b>								
	Alternate #1: Add Acoustical Ceiling Panels @ Rotunda		\$58,017	\$58,017	x			
	Alternate #2: Upgrade Indoor Play Slides to Stainless Steel		\$145,147	\$145,147	x			
	Alternate #4: Add RF Assistive Listening System		\$5,683			\$5,683	x	
	Alternate #5: Pool Timing System		\$114,593	\$15,000				
	Alternate #7: Add Night-Time Pool Lighting		\$52,286	\$52,286	x			
	Alternate #8: Change floor at Multi-Use Courts to Pulastic SP140		\$17,922	\$17,922	x			
<b>Best Value Analysis Items</b>								
1	Use Rhyolite landscape boulders and delete sand blasted images	0	(\$28,880)	(\$28,880)	x			
2	Change Bada Red crusher fines to Franklin Red crusher fines	0	(\$13,218)	(\$13,218)	x			
3	Change Stone Steps 4' x 2' x 30" to Stone Steps 4' x 2' x 10" with dowel pin	0	(\$4,099)	(\$4,099)	x			
4	Use Texas stone supplier ILO NM supplier specified (same stone)	0	(\$43,370)	(\$43,370)	x			
5	Use Dal-Tile "Modern Dimensions" for wall tile CWT-1 thru CWT-5	0	(\$118,533)	(\$118,533)	x			
6	Use Dal-Tile "Color Wave CW27" for glass wall tile GLT-1	0	(\$7,951)	(\$7,951)	x			
14	Use Kalwall standard color "White #00" finish on TWA ILO clear anodized finish specified	0	(\$27,257)			(\$27,257)	x	
18	Delete Brookside Veneer product and replace with real wood veneer	0	(\$14,481)	(\$14,481)	x			
23	Use aluminum feeders for loads 150 amps & above	0	(\$47,262)			(\$47,262)	x	
25	Delete requirement of shop drawings on steel studs	0	(\$16,681)	(\$16,681)	x			
27	Change sidewalk color manufacturer from Davis to Solomon	0	(\$26,022)	(\$26,022)	x			
30	Delete foundation perimeter insulation	0	(\$7,006)	(\$7,006)	x			
35	Change signage lettering from 3/8" aluminum to 3/8" acrylic on signs ST3A, ST3B, ST3C, ST6B, and ST7A.	0	(\$10,425)	(\$10,425)	x			
36	Pools to share (1) 750 lbs CO2 storage tank in lieu of one per pool	0	(\$31,120)	(\$31,120)	x			
38	Use BECS 5 chemical controllers in lieu of BECS 7 as specified	0	(\$22,241)	(\$22,241)	x			
40	Use RFP hair and lint strainers with clear lids in lieu of the specified stainless steel strainers	0	(\$9,452)	(\$9,452)	x			
41	Use surge tank ladder rungs in lieu of the specified pull-up ladders	0	(\$1,946)	(\$1,946)	x			
43	Use Schedule 40 PVC pool piping in lieu of the specified Schedule 80 PVC	0	(\$71,727)			(\$71,727)	x	
7	Use Zurn Aquaflush manual flush valves ILO sensor operated flush valves on all toilets, urinals, and lavs	1	(\$18,126)			(\$18,126)	x	
9	Use Zurn #ZARB199 cast bronze downspouts nozzles ILO specified	1	(\$6,672)	(\$6,672)	x			
13	Change all finish of seat walls to Type B finish (Delete broken rib finish) use same ILO trim rubber flooring at running track and cardio fitness room 301	1	(\$39,589)	(\$39,589)	x			
15 b	Change all locker and changing room bench edge detail to 10" standard return ILO 10" beveled return as shown on 1/A739	1	(\$10,312)			(\$10,312)	x	
20	Alternate light fixture package (design team to review)	1	(\$34,738)	(\$34,738)	x			
22	Alternate light fixture package (design team to review)	1	(\$112,651)	(\$112,651)	x			
24	Change security camera to Panasonic WV-SFV631L and server to Video Insight NVR-R-1-1-36TB	1	(\$17,237)	(\$17,237)	x			
26	In area A with ceilings: Only take sheetrock to deck one side and leave other side 6" above ceiling	1	(\$33,362)	(\$33,362)	x			
28	Change seat walls from concrete to split faced masonry with PC top	1	(\$29,970)	(\$29,970)	x			
29	Change Vapor Barrier under slab from 15 mil to 10 mil	1	(\$8,340)	(\$8,340)	x			
31	Consolidate slab-on-grade areas that are to be 5" to 4" by occupancy vs fin	1	(\$36,698)	(\$36,698)	x			
34	Change SAT-2 from Armstrong Cirrus to Armstrong Dune 1774 at Admin A	1	(\$4,727)	(\$4,727)	x			
42	Eliminate Myrtha head wall	1	(\$82,625)			(\$82,625)	x	
47	Reduce enclosed portion of 54" raft slide from 282' back to 151' rockwork on the middle of the island. Keep multi-layered rock look throughout	1	(\$94,691)	(\$94,691)	x			
48	Reduce enclosed portion of 54" raft slide from 282' back to 151' rockwork on the middle of the island. Keep multi-layered rock look throughout	1	(\$58,194)	(\$58,194)	x			
50	Eliminate the winches for overhead water feature maintenance	1	(\$53,156)	(\$53,156)	x			

**ATTACHMENT E**  
**Alternate Prices**

51	Reduce Geo-Sphere from (17) to (12) Geo-Sphere cluster	1	(\$33,095)	(\$33,095)	x			
52	Eliminate (2) of (10) Erosion Cloud rings and adjust the scale of the remaining to make size difference	1	(\$64,499)	(\$64,499)	x			
54	Redesign the Ocotillo Fountain. Replace cast translucent flower and LED lights for stainless stylized flowers	1	(\$21,574)	(\$21,574)	x			
56	Eliminate down lighting / fog lights on the waterslide tower	1	(\$26,912)	(\$26,912)	x			
32	Change gym equipment controllers from touch screens to electric wall switch	2	(\$9,564)				(\$9,564)	x
39	Use ADA pool lift in lieu of the specified Glacier elevator	2	(\$11,788)				(\$11,788)	x
46	Eliminate the dispatch system to both waterslides	2	(\$9,786)				(\$9,786)	x
53	Eliminate the remote control interface for feature controller	2	(\$9,786)				(\$9,786)	x
8	Use Leonard #4500 series shower valve and trim on all showers ILO specified product	2	(\$1,931)				(\$1,931)	x
11	Use "Belimo" for ALL control valves ILO "Danfos" for HVAC system	2	(\$4,448)	(\$4,448)	x			
15 a	Use 8mm ILO 10mm rubber flooring at fitness room 240	2	(\$3,485)				(\$3,485)	x
17	Change engineered quartz at Welcome Desk to solid surface	2	(\$16,550)				(\$16,550)	x
19	Delete "Waterfall" side panels at solid surface tops in rooms 126, 180, 195, 197, and 240	2	(\$2,891)	(\$2,891)	x			
21	Delete solid surface shelf and waterfall edge behind toilet in changing rooms. Raise plumbing wall to ceiling.	2	(\$28,841)	(\$14,000)	x			
10	Use "New Age" epoxy coated cast iron on all above ground W&V pipe	3	(\$50,042)	(\$50,042)	x			
12	Delete Gabion walls and associated site translucent wall	3	(\$62,883)					
16	Delete Sound Absorbing Plaster Ceiling in Rotunda	3	(\$42,982)				(\$42,982)	x
33	Change ceiling suspended Volleyball system to in-floor sleeve system	3	(\$29,558)				(\$29,558)	x
37	Pools to share (1) 500 gal chorine storage tank in lieu of one per pool	3	(\$9,788)				(\$9,788)	x
44	Use powder coated hot dipped galvanized waterslide tower railings ILO pultruded fiberglass railings	3	(\$60,718)				(\$60,718)	x
45	Eliminate the Top 5 timing system to body slide	3	(\$26,356)				(\$26,356)	x
49	Eliminate (2) of the (12) Gusher jets with LED lighting in the 22' rock island	3	(\$12,312)	(\$12,312)	x			
55	Eliminate the pool lighting package to include the controllable lights, on site programming and relay control	3	(\$128,775)				(\$128,775)	x
57	Eliminate the pool underwater lights	3	(\$73,949)				(\$73,949)	x
58	Landscape VE Changes / Allowance	3	(\$73,949)	(\$450,000)	x			
59	Reduce Contractor Contingency (reduced from 3% to 2.8%)		(\$100,000)	(\$100,000)	x			
<b>TOTAL TO DATE</b>				<b>(\$1,376,853)</b>		<b>(\$686,643)</b>		<b>\$0</b>
<b>Current GMP Construction Cost</b>				<b>\$54,841,086</b>				
<b>Items Incorporated</b>				<b>(\$1,376,853)</b>				
<b>Current Construction Budget w/ Incorporated Items</b>				<b>\$53,464,234</b>				
<b>Total Project Budget Recap - Design Development Stage</b>								
<b>Current Construction Cost and NMGRT with VE Incorporated</b>				<b>\$53,464,234</b>				
<b>Development Soft Costs</b>								
	Land Purchase			\$0				
	Public Art Allocation			\$50,000				
	Professional Fees			\$4,920,415				
	FFE - Furniture, Fixtures and Equipment			\$1,708,000				
	Gas Easement Documentation			\$1,200				
	CMAR Precon Fee			\$250,000				
	Plant Investment / Tap Fees			\$25,000				
	Construction Testing and Special Inspections			\$200,000				
	Reimbursable Expenses			\$255,919				
	Plan Review Fees			\$45,000				
	Owner Preconstruction / Other Costs (Branding, Video, Studies, Trips)			\$200,000				
	<b>Total Development Soft Costs</b>			<b>\$7,655,534</b>				
	NMGRT on Soft Costs	6.8125%		\$521,533		\$8,177,067	<b>&lt;&lt;Total Soft Cost and NMGRT</b>	
<b>Subtotal All Project Costs</b>				<b>\$61,641,301</b>				
<b>Owner Contingency</b>			<b>2.8000%</b>	<b>\$1,725,956</b>				
	NMGRT on Contingency	6.8125%		\$117,581		\$1,843,537	<b>&lt;&lt;Total Owner Contingency and NMGRT</b>	
<b>GRAND TOTAL PROJECT COST</b>				<b>\$63,484,838</b>				
<b>Target Budget</b>				<b>\$63,500,000</b>				
<b>Current vs Target</b>				<b>(\$15,162)</b>	<b>Under Budget</b>			

ATTACHMENT F  
Unit Prices



**HAYDON**

**Hobbs NM Health Wellness and Learning Center**

7/27/2016

**Unit Prices:**

- Not Applicable



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1, 2016

**SUBJECT: CONSIDERATION OF APPROVAL OF AUTHORIZATION LETTER No. 4 FOR RFP No. 464-15 to BRS (Barker Rinker Seacat Architecture) FOR CONSTRUCTION ADMINISTRATION SERVICES for a New Health Wellness & Learning Center (HWLC)**

**DEPT. OF ORIGIN:** Office of the City Manager  
**DATE SUBMITTED:** July 26<sup>th</sup>, 2016  
**SUBMITTED BY:** JJ Murphy, City Manager

**Summary:**

On Sept. 2, 2014 the City Commission awarded the HWLC Professional Designs Services to BRS (Barker Rinker Seacat Architecture) for the Schematic Design services. On April 20<sup>th</sup>, 2015 BRS was authorized to proceed with Design Development Plans. On December 7<sup>th</sup>, 2015 BRS was authorized to proceed with the Construction Documents and Bidding / Negotiation phase. For the Commission's consideration is authorization of the Construction Administration phase of the contract, which City Commission approval is required. The estimated breakdown of services is as follows:

<u>SD - Schematic Design:</u>	<u>\$785,460 &lt;Awarded Sept. 2, 2015 - Completed&gt;</u>
<u>DD - Design Development:</u>	<u>\$1,342,160 &lt;Awarded 4-20-15 - Completed&gt;</u>
<u>CD - Construction Documents:</u>	<u>\$1,559,630 &lt;Awarded 12-7-15 - Completed&gt;</u>
<u>BN - Bidding or Negotiation Phase:</u>	<u>\$158,000 &lt; Awarded 12-7-15 – Ongoing&gt;</u>
<b><u>CA - Construction Admin:</u></b>	<b><u>\$1,023,650 &lt;Consideration 8-1-16 &gt;</u></b>

<b>Total Base Contract Amount:</b>	<b>\$4,868,900.00</b>
Additional Services 1-6:	\$51,515
Total Estimated Reimbursables:	\$255,919.03 (Adjusted with this Authorization)
<b>Total Contract Amount:</b>	<b><u>\$5,176,334.03 (exclusive of GRT)</u></b>

The selected GC is **Haydon Building Corporation** (Awarded June 15<sup>th</sup>, 2015) for the preconstruction services and under consideration at the August 1<sup>st</sup>, 2016 City Commission meeting is the consideration of the GMP Contract Amendment for the construction of the HWLC.

The forth phase of awarding RFP 464-15 Barker Rinker Seacat Architecture would be **\$1,023,650 (exclusive of grt and reimbursables)**. The Construction Phase is anticipated to last 22 months and includes LEED certification of the building (NMJC GO Bond Requirement) and commissioning of the building, which will ensure that that mechanical system are operating and performing properly.

If approved, the execution of the letter authorization will be coordinated with Finance and FY17 fiscal budget approval by DFA on the overall City of Hobbs budget.

**Fiscal Impact:**

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

*Finance Department*

The FY17 Budget includes \$61M in expenditures for the HWLC design, construction and equipping the facility. In addition, \$4M has been budgeted for the off-site improvements associated with drainage, utility extension and roadway construction.

- **Budget Line Item:**
  - (FUND 01 - PROJ No. 200) HWLC Facility
  - (DESIGN/CONSTRUCTION): \$61M (FY 17 Budget)
  - (FUND 44 – PROJ No. 200) HWLC (INFR/UTIL) \$4M
- **SUERTE AGREEMENT (9-2-14 Comm. Meeting):**
  - Roadway / Utilities & RR Crossing: \$2,000,000
  - Drainage Improvements: \$2,000,000
- **ASSOCIATED REVENUE AND FUTURE COST SHARE:**
  - Developer Fair Share assessment: \$1,000,000
  - Drainage Pond Construction: \$250,000 (Est. Value)
  - RR License Agreement (Payment to COH) \$300,000
  - 25+ Acres Deeded or dedicated to COH (12+ acre drainage pond & 13 acres HWLC site)
- **HW&LC FACILITY (Final Programming TBD):**
  - 13+ Acre Site
  - Facility Size: 150,000+ sq. ft.
  - Cost of HWLC Facility: \$61M to \$63.5M (based on GMP and other Soft Costs)
  - Est. Off-Site Improvement (Noted above) \$4M
  - Est. Revenue (Annual) TBD \*
  - Est. Expenditures (Annual) TBD \*\*
  - Est. Net Reoccurring Costs \$1.4M / yr \*\*\*

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

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

\*\*\* \$1.3M in net reoccurring costs is a goal for this project, which would be shared costs with City of Hobbs, NMJC, Lea County and Hobbs Schools. This was reduced from \$1.4M to \$1.3M to reflect the proposed MOU's with other partners. Final programming and fee schedules for the proposed uses will determine final estimated revenue and expenditure for the on-going operational costs. Ballard King has been authorized to update the Feasibility Study and preliminary line item budget.

**Attachments:** BRS Authorization Letter

**Legal Review:**

*Approved As To Form:*

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

**Recommendation:**

**Commission consideration for the approval of the Letter Authorization No. 4 to Barker Rinker Seacat Architecture and contract adjustments for a total contract amount of \$5,175,334.03 (exclusive of GRT)**

*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. _____



**BARKER  
RINKER  
SEACAT**  
ARCHITECTURE

July 25th, 2016

Mr. Sam Cobb  
Mayor  
City of Hobbs  
200 E. Broadway  
Hobbs, NM 88240

Subject: Health Wellness and Learning Center, Hobbs, NM Authorization to Proceed into Contract Administration Services

Dear Mayor Cobb;

Thank you and your staff for reviewing the 100% Construction Document drawings we released on April 8th, 2016, as well as the ongoing Value Engineering participation review to confirm the project budget and scope.

Pursuant to Section 3.3.1 of our agreement, by signing below, the City of Hobbs authorizes the BRS-D/P/S design team to proceed into the following Professional Services phases:

Contract Administration services:	\$ 1,023,650
<u>CA expenses:</u>	<u>\$ 133,991</u>
Total CA fees and expenses:	\$ 1,157,641 exclusive of NMGRT

Please sign below and submit to my attention. We look forward to seeing you and the Quality of Life Committee again in the coming month at the Ground Breaking to the amazing project.

Respectfully submitted,

Agreed,

Steve Blackburn, AIA  
Principal  
Barker Rinker Seacat Architecture

\_\_\_\_\_  
Sam Cobb  
Mayor  
City of Hobbs

\_\_\_\_\_  
Date

**DENVER**  
3457 RINGSBY COURT  
UNIT 200  
DENVER, CO 80216

**DALLAS**  
129 S. MAIN ST.  
UNIT 230  
GRAPEVINE, TX 76051

**CONTACT**  
303.455.1366  
WWW.BRSARCH.COM



# Exhibit B - Architectural / Engineering Cost Summary

Hobbs Health, Wellness & Learning Center  
 Scope of Services - Fee Allocation

Prepared 8/26/2014  
 Revised .

7/25/2015

## Construction Budget

Construction Cost \$ 51,251,587

Includes Owner budgets for the following:  
 On Site Construction; Building Construction;  
 and Contingencies for Site, Estimating and Construction

## Design Fee Allocation

Design Fee Allocation			Breakdown by Phase				
	Total	%*	SD cost	DD cost	CD cost	BN cost	CA cost
Architect of Record	\$ 2,282,396	6.24%	\$ 388,525	\$ 751,030	\$ 917,250	\$ 10,682	\$ 214,910
Associate Architect	\$ 916,003		\$ 155,203	\$ 176,506	\$ 74,254	\$ 21,302	\$ 488,738
Civil	\$ 117,000		\$ 19,890	\$ 33,930	\$ 36,270	\$ 1,170	\$ 25,740
Landscaping	\$ 86,500		\$ 17,300	\$ 23,355	\$ 29,410	\$ 865	\$ 15,570
Structural	\$ 194,000		\$ 29,100	\$ 38,800	\$ 83,420	\$ 3,880	\$ 38,800
Mechanical / Plumbing	\$ 236,000		\$ 23,600	\$ 70,800	\$ 101,480	\$ 4,720	\$ 35,400
Electrical	\$ 185,050		\$ 27,758	\$ 55,515	\$ 55,515	\$ 3,701	\$ 42,562
Aquatics	\$ 125,315		\$ 25,063	\$ 37,595	\$ 43,860	\$ 6,266	\$ 12,532
Ice	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
Specifications	\$ 15,000		\$ 750	\$ 9,750	\$ 4,500	\$ -	\$ -
Additional Services included in proposal fee							
Interiors	\$ 188,500		\$ 32,045	\$ 37,700	\$ 75,400	\$ 1,885	\$ 41,470
Furniture Selection	\$ 24,600		\$ 4,182	\$ 7,134	\$ 7,626	\$ 246	\$ 5,412
Wayfinding Signage	\$ 16,000		\$ 2,720	\$ 4,640	\$ 4,960	\$ 160	\$ 3,520
Acoustics	\$ 24,000		\$ 2,400	\$ 8,160	\$ 8,640	\$ 480	\$ 4,320
Kitchen Design	\$ 15,000		\$ 1,500	\$ 5,100	\$ 5,400	\$ 300	\$ 2,700
Cost Estimator	\$ 27,000		\$ 4,000	\$ 6,000	\$ 17,000	\$ -	\$ -
Audio Visual Design	<i>included in Electrical</i>		\$ -	\$ -	\$ -	\$ -	\$ -
Security Design - Access Control	<i>included in Electrical</i>		\$ -	\$ -	\$ -	\$ -	\$ -
Tele / Data / TV Cabling Design	<i>included in Electrical</i>		\$ -	\$ -	\$ -	\$ -	\$ -
Auto Shade Design	<i>included in Electrical</i>		\$ -	\$ -	\$ -	\$ -	\$ -
Energy Modeling	\$ 19,625		\$ 11,775	\$ 7,850	\$ -	\$ -	\$ -
Daylight Analysis	\$ 11,000		\$ 7,040	\$ 3,960	\$ -	\$ -	\$ -
Commissioning - Fundamental	\$ 77,000		\$ -	\$ -	\$ 6,160	\$ 70,840	\$ -
Commissioning - Enhanced	\$ 34,500		\$ 2,070	\$ 10,005	\$ 7,935	\$ 14,490	\$ -
LEED Certification Submittal	\$ 103,961		\$ 13,864	\$ 24,495	\$ 38,518	\$ 15,184	\$ 11,900
Measurement & Verification	\$ 17,500		\$ -	\$ -	\$ 1,050	\$ -	\$ 16,450
Review of CMGC Submissions	\$ 1,500		\$ 1,500	\$ -	\$ -	\$ -	\$ -
CMGC On-Site Interviews	\$ 4,000		\$ 4,000	\$ -	\$ -	\$ -	\$ -
Lightning Dissipation System	\$ 2,000		\$ 340	\$ 580	\$ 620	\$ 20	\$ 440
Digital Signage Design	\$ 1,800		\$ 306	\$ 522	\$ 558	\$ 18	\$ 396
Emergency Power (\$4K to \$8K)	\$ 6,000		\$ 1,020	\$ 1,740	\$ 1,860	\$ 60	\$ 1,320
Elec. Coordination of PV array	\$ 7,000		\$ 1,190	\$ 2,030	\$ 2,170	\$ 70	\$ 1,540
Mech. Option A (Hydronic Heat)	\$ 39,000		\$ 3,900	\$ 11,700	\$ 16,770	\$ 780	\$ 5,850
Mech. Option B (Chilled Water Plant)	\$ 29,200		\$ 2,920	\$ 8,760	\$ 12,556	\$ 584	\$ 4,380
Mech. Option C (Hydronic Heat for VAV)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
Mech. Option D (Solar Performance & CA)	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
Mech. Option D1 (Solar Design Docs)	\$ 15,000		\$ 1,500	\$ 4,500	\$ 6,450	\$ 300	\$ 2,250
Additional Bid Packages	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -
Record Documents	\$ 47,450		\$ -	\$ -	\$ -	\$ -	\$ 47,450
<b>Subtotals</b>	<b>\$ 1,670,500</b>	<b>3.26%</b>	<b>\$ 785,460</b>	<b>\$ 1,342,160</b>	<b>\$ 1,559,630</b>	<b>\$ 158,000</b>	<b>\$ 1,023,650</b>

Total Fees **SD-CA** \$ 4,868,900

\* % of Construction Cost

Total CA fee of \$1,023,650 exclusive of NMGRT

**Assumptions:**

- 1 Assumes a two-story structure. New Construction of approximately, 156,000 sf., Should the above SF amount change more than 10%, the Design and Engineering fees will be adjusted accordingly.
- 2 Site is assumed to be approximately 13 acres and is free of development or environmental hazards and will not require demolition or clean up.
- 3 Please note these fees are exclusive of New Mexico Gross Receipts Tax (NMGR) which will be billed at the prevailing rate at the time of billing. Currently these are 6.8125% for the City of Hobbs but these can change twice a year. We invoice monthly based on our percentage of completion. Payments are due and payable thirty (30) days from the date of invoice. All amounts unpaid one month after invoice date shall accrue interest at a rate of 1.50% per month.
- 4 Owner will provide geotechnical and survey information
- 5 No traffic engineering study and no traffic signal design is anticipated.
- 6 A conventional foundation with slab on grade floors is anticipated. Structural floor at grade is not anticipated.
- 7 Construction documents are anticipated to be released in a single package. Issuing multiple packages to accelerate the construction schedule is an additional service.
- 8 All fees for permits and jurisdictional approvals, utilities and taxes have been excluded
- 9 Printing of review sets, agency submission sets and final construction set of drawings and specifications are not included but will be provided as a reimbursable expense. Exact number of sets and distribution will be coordinated by design team with Owner.
- 10 Kitchen design equipment is assumed to be residential in nature. No commercial kitchen services are assumed.
- 11 Design of any solar structure and equipment not located on the building is not included but can be provided as an additional service.
- 12 LEED Services assume a Silver certification level
- 13 USGBC fees to register this project for LEED are separate from fees and will be a reimbursable expense.

## Health Wellness & Learning Center - Fee & Reimbursable Summary Analysis

Date: 7.25.2016

	Design Fee	Reimbursables
Base Contract	\$4,868,900.00	\$218,680.00
Gillette Trip		\$10,382.00
ASP #1 - Interior Renderings	\$9,930.00	
ASP #2 - Fitness Vendor Design	\$6,475.00	
ASP #3 - Revised Site Visit Schedule	\$0.00	\$4,782.00
ASP #4 - Night Scene Lighting	\$9,900.00	
ASP #5 - Marketing Video	\$25,210.00	
ASP #6 - Site Redesign	Included in site redesign target VE savings	
<b>Current Total Contract Amount</b>	<b>\$4,920,415.00</b>	<b>\$233,844.00</b>

Remaining Estimated Expenses to Complete the Work		
Group 14 Travel	\$13,000.00	13 trips
LEED Fees	\$7,750.00	
Elec. Comm fee (\$200/mth) 22mths	\$4,400.00	
Delivery Fees	\$500.00	
Consultant Misc. Reim	\$1,000.00	
CA Travel Expenses	\$95,636.75	See Attached Breakdown
CA close out Expenses	\$9,697.50	See Attached Breakdown
<b>Total</b>		<b>\$131,984.25</b>

Reimbursables Spend to date (7/25/16)	\$121,927.96
Reimbursables Remaining balance to date	\$111,916.04
Additional Estimated Reimbursable Expenses	<b>\$20,068.21</b>
10% Admin. Markup	<b>\$2,006.82</b>
Total Estimated Reimbursable Expenses	<b>\$22,075.03</b>
Revised Total Reimbursable Amount	\$255,919.03

# Hobbs Multi-Generational Facility

## Exhibit D: Project Reimbursable Expenses

Barker Rinker Seacat Architecture & Consultant Team Travel Budget

Prepared on: 3/10/2016 Revised: 7/25/2016

Consult. persons nights reimb airfare car hotel meals Notes

### Construction Administration

	Consult.	persons	nights	reimb	airfare	car	hotel	meals	Notes
CA Trip 1	1 JVA	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 2	2 JVA	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 3	2 JVA	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 4	2 JVA	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 5	2 JVA	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 6	2 JVA	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 7	2 JVA	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
Punch List	3 JVA	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 1	1 Ballard Grp	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 2	1 Ballard Grp	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 3	3 Ballard Grp	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
Punch List	4 Ballard Grp	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 1	3 REI - Elec	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 2	3 REI - Elec	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 3	3 REI - Elec	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
Punch List	3 REI - Elec	1	1	\$ 74	\$ 814	\$ 315	\$ 112	\$ 67	
CA Trip 1	1 WTI	1	1	\$ 74	\$ 1,215	\$ 315	\$ 112	\$ 67	
CA Trip 2	2 WTI	1	1	\$ 74	\$ 1,215	\$ 315	\$ 112	\$ 67	
CA Trip 3	3 WTI	1	1	\$ 74	\$ 1,215	\$ 315	\$ 112	\$ 67	
CA Trip 4	4 WTI	1	1	\$ 74	\$ 1,215	\$ 315	\$ 112	\$ 67	
Punch List	5 WTI	1	1	\$ 74	\$ 1,215	\$ 315	\$ 112	\$ 67	
CA Trip 1	1 Norris	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$ 101	
CA Trip 2	2 Norris	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$ 101	
Punch List	3 Norris	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$ 101	
CA Trip 1	1 Norris-Hydro	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$ 101	
Punch List	2 Norris-Hydro	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$ 101	
CA Trip 1	BRSA	2	2	\$ 194	\$ 1,628	\$ 473	\$ 449	\$ 202	
CA Trip 2	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$ 101	
CA Trip 3	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$ 101	
CA Trip 4	BRSA	2	2	\$ 194	\$ 1,628	\$ 473	\$ 449	\$ 202	
CA Trip 5	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$ 101	
CA Trip 6	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$ 101	

# Hobbs Multi-Generational Facility

Exhibit D: Project Reimbursable Expenses  
 Barker Rinker Seacat Architecture & Consultant Team Travel Budget  
 Prepared on: 3/10/2016 Revised: 7/25/2016

	Consult.	persons	nights	reimb	airfare	car	hotel	meals	Notes
CA Trip 7	BRSA	2	2	\$ 194	\$ 1,628	\$ 473	\$ 449	\$202	
CA Trip 8	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$101	
CA Trip 9	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$101	
CA Trip 10	BRSA	2	2	\$ 194	\$ 1,628	\$ 473	\$ 449	\$202	
CA Trip 11	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$101	
CA Trip 12	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$101	
CA Trip 13	BRSA	2	2	\$ 194	\$ 1,628	\$ 473	\$ 449	\$202	
CA Trip 14	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$101	
CA Trip 15	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$101	
CA Trip 16	BRSA	2	2	\$ 194	\$ 1,628	\$ 473	\$ 449	\$202	
CA Trip 17	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$101	
Punch List		2	3	\$ 240	\$ 1,628	\$ 630	\$ 674	\$269	
DPS Punch List	DPS	2	3			\$ 630	\$ 674	\$269	in Hobbs
DPS CA Trips 22	DPS 2 per trips	1	1			\$ -	\$ 2,472	\$1,478	in Hobbs
DPS CA Trips 1-41	DPS 1 per trip	1	1			\$ 3,280	\$ 4,606	\$2,755	in Hobbs
<b>CA Total</b>		<b>55</b>	<b>73</b>	<b>\$ 4,497</b>	<b>\$ 43,508</b>	<b>\$ 21,550</b>	<b>\$ 17,077</b>	<b>\$ 9,005</b>	<b>\$ 95,637</b>

## Post Occupancy

Grand Opening	BRSA	4	2	\$ 387	\$ 3,255	\$ 473	\$ 899	\$403	
Grand Opening	DPS	3	2			\$ 473	\$ 674	\$302	in Hobbs
1 Year Warranty	DPS	2	2			\$ 473	\$ 449	\$202	in Hobbs
1 Year Warranty	BRSA	1	2	\$ 97	\$ 814	\$ 473	\$ 225	\$101	
<b>PO Total</b>		<b>10</b>	<b>8</b>	<b>\$ 484</b>	<b>\$ 4,069</b>	<b>\$ 1,890</b>	<b>\$ 2,247</b>	<b>\$ 1,008</b>	<b>\$ 9,698</b>



**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1, 2016

SUBJECT: Adoption of an ordinance repealing the current Hobbs Municipal Code Chapter 10 in its entirety; AND repealing Hobbs Municipal Code Section 1.12.100; AND enacting a new Chapter 10 adopting the Uniform Traffic Ordinance 2010 Compilation (through July, 2015) with the exception of Article II and Sections 12-6-4.1(D), 12-6-6.13(B), 12-6-12.2(N), 12-6-12.7, 12-8-13, 12-8-14, 12-8-15, 12-8-16, 12-8-17, 12-8-18, 12-8-19, 12-8-20, 12-8-21, 12-8-22, 12-9-1, 12-9-2, 12-9-3, 12-9-4, 12-9-5, 12-9-6, 12-9-7, 12-9-8, 12-12-18(B), 12-12-18(D)(1)(f), and 12-12-18(D)(1)(g); AND adopting a Penalty Assessment Program.

DEPT. OF ORIGIN: Hobbs Police Department

DATE SUBMITTED: July 25, 2016

SUBMITTED BY: Michael Walker, Cpt. HPD / Efren Cortez, Assistant City Attorney

Summary:

City of Hobbs has previously adopted the Motor Vehicle Code (NMSA 1978, §66-1-1, et seq.). NMSA 1978, §3-17-6(A)(8), allows a municipality to adopt its own traffic code. The traffic code utilized by New Mexico municipalities is the Uniform Traffic Ordinance (UTO). NMSA 1978, §3-17-6(B), allows a municipality that adopts the UTO to exclude certain provision of the UTO if there is no Motor Vehicle Code equivalent. The UTO allows a municipality to adopt a Penalty Assessment Program which allows the municipality to set fixed fines for Penalty Assessment Misdemeanors.

Hobbs Municipal Code Section 1.12.100 sets out the process for payment of traffic fines which the new Chapter 10 will cover in detail. Notice of this proposed change has been published in the Hobbs News-Sun on July 10, 2016 and July 17, 2016.

Fiscal Impact:

No foreseeable fiscal impact.

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

*Debra Corral*  
Finance Department

Attachments:

Copy of the proposed Ordinance

Legal Review:

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

*EAC*  
City Attorney

Recommendation: The Commission should approve adoption.

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

*EAC*  
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. 1095

AN ORDINANCE REPEALING CHAPTER 10 OF THE HOBBS MUNICIPAL CODE IN ITS ENTIRETY, REPEALING HOBBS MUNICIPAL CODE SECTION 1.12.100, ADOPTING A NEW CHAPTER 10 TITLED THE "UNIFORM TRAFFIC ORDINANCE," AND ADOPTING A PENALTY ASSESSMENT PROGRAM

WHEREAS, the City of Hobbs has previously adopted the Motor Vehicle Code to govern the traffic laws within the municipal limits of the City of Hobbs, New Mexico, through enactment of Chapter 10 of the Hobbs Municipal Code; and

WHEREAS, NMSA 1978, §3-17-6(A)(8) allows a municipality to adopt its own traffic code to govern the traffic laws within the municipal limits of said municipality; and

WHEREAS, the Uniform Traffic Ordinance is a traffic code frequently used by New Mexico municipalities and affords a municipality the authority to adopt a penalty assessment program; and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that Chapter 10, Sections 10.04, 10.08, 10.12, and 10.16 of the Hobbs Municipal Code are hereby repealed in their entirety; and

BE IT FURTHER ORDAINED that Section 1.12.100 of the Hobbs Municipal Code is hereby repealed in its entirety; and

BE IT FURTHER ORDAINED that a Penalty Assessment Program is hereby adopted and set out in Section 10.04.050 of the new Chapter 10 outlined herein; and

BE IT FURTHER ORDAINED that a new Chapter 10 adopting the Uniform Traffic Ordinance, is hereby enacted and pursuant to the Uniform Traffic Ordinance Section 12-13-6 shall take effect on the 5<sup>th</sup> day of September, 2016, and is more specifically described as follows:

TITLE 10  
VEHICLES AND TRAFFIC

10.04 UNIFORM TRAFFIC ORDINANCE

10.04.010 Uniform Traffic Ordinance – Adopted.

Pursuant to NMSA 1978, §3-17-6(A)(8), the New Mexico Uniform Traffic Ordinance, 2010 Compilation (current through July, 2015), is adopted by reference except as otherwise provided in this chapter.

10.04.020 Uniform Traffic Ordinance – Provisions not adopted.

Pursuant to NMSA 1978, §3-17-6(B), the following provisions of the Uniform Traffic Ordinance are not adopted: Article II; Section 12-6-4.1(D); Section 12-6-6.13(B); Section 12-6-12.2(N); Section 12-6-12.7; Section 12-8-13; Section 12-8-14; Section 12-8-15; Section 12-8-16; Section 12-8-17; Section 12-8-18; Section 12-8-19; Section 12-8-20; Section 12-8-21; Section 12-8-22; Section 12-9-1; Section 12-9-2; Section 12-9-3; Section 12-9-4; Section 12-9-5; Section 12-9-6; Section 12-9-7; Section 12-9-8; Section 12-12-18(B); Section 12-12-18(D)(1)(f); Section 12-12-18(D)(1)(g).

10.04.030 Uniform Traffic Ordinance – Amendments.

Amendments to the Uniform Traffic Ordinance, as may be from time to time proposed by the New Mexico Municipal League, shall only be adopted by ordinance through an affirmative vote of the City Commission. Upon adoption, amendments shall be available for inspection in the City Clerk's office.

10.04.040 Uniform Traffic Ordinance – Inspection and copying.

The Uniform Traffic Ordinance, so adopted (including all adopted amendments thereto), shall be available for inspection during normal business hours in the City Clerk's office. A printed copy of the Uniform Traffic Ordinance shall be available upon request and payment of a reasonable charge.



10.04.050 Penalty Assessment Program – Adopted

- A. As used in the Uniform Traffic Ordinance, a Penalty Assessment Program is hereby adopted.
- B. A “penalty assessment misdemeanor” means violation of any of the following listed sections of the Uniform Traffic Ordinance for which, except as provided in Subsection E of this Section, the listed penalty assessment is established:

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
Obedience to Officers	12-3-2	45.00
Use of Coaster Wagons and Similar Devices	12-3-6	45.00
Obedience to Required Traffic Control Device	12-5-3	45.00
Red Light	12-5-6	45.00
Pedestrian Control Signals	12-5-7	45.00
Flashing Signals	12-5-8	45.00
Lane Control Signals	12-5-9	45.00
Display of Unauthorized Signs, Signals or Markings	12-5-10	45.00
Interference with Official Traffic Control Devices or Railroad Signals	12-5-11	45.00
Traffic Lanes	12-5-14	45.00
Basic (Speeding) Rule	12-6-1.1	45.00
Speed Limits	12-6-1.2	
(1) Up to and including 10 miles per hour above the speed limit		45.00
(2) From 11 and up to and including 15 miles per hour above the speed limit		60.00
(3) From 15 and up to and including 20 miles per hour above the speed limit		95.00
(4) From 21 and up to and including 25 miles per hour above the speed limit		130.00
(5) From 26 and up to and including 30 miles per hour above the speed limit		155.00
(6) From 31 and up to and including 35 miles per hour above the speed limit		180.00
Minimum Speed Regulation	12-6-1.5	45.00
Special Speed Limitations	12-6-1.7	45.00
Improper Passing	12-6-2.1 through 12-6-2.7	45.00

Obedience to Signs Designating One Way Streets and Alleys	12-6-2.9	45.00
Rotary Traffic Islands	12-6-2.10	45.00
Driving on Streets Laned for Traffic	12-6-2.12	45.00
Following Too Closely	12-6-2.13	45.00
Driving on Divided Streets	12-6-2.14	45.00
Controlled Access Violation	12-6-2.15 through 12-6-2.16	45.00
Failure to Yield	12-6-4.1 through 12-6-4.2	45.00
Vehicles Entering Stop or Yield Intersections	12-6-4.3	45.00
Improper Turning	12-6-5.1 through 12-6-5.6	45.00
Starting Parked Vehicle	12-6-5.7	45.00
Turning and Stopping Movements and Required Signals	12-6-5.8	45.00
Signals by Hand and Arm or Signal Device	12-6-5.9 through 12-6-5.10	45.00
Parking Violations	12-6-6.1 through 12-6-6.14	25.00
Emerging from Alley, Building, Driveway or Private Road	12-6-7.1	45.00
Stop When Traffic Obstructed	12-6-7.2	45.00
Stopping for School Bus	12-6-7.3	150.00
Operation of Vehicle on Approach of Emergency Vehicle	12-6-7.4A	80.00
Railroad Grade Crossing Violations	12-6-7.5 through 12-6-7.8	45.00
Stopping, Standing or Parking in Passenger Curb Loading Zone	12-6-8.3	25.00
Stopping, Standing or Parking in Freight Curb Loading Zone	12-6-8.4	25.00
Stopping, Standing and Parking of Busses and Taxicabs	12-6-9.3	25.00
Restricted Use of Bus and Taxicab Stands	12-6-9.4	25.00
Operation Without Oversize-Overweight Permit	12-6-11.1	80.00
No Slow-Moving Vehicle Emblem or Flashing Amber Light	12-6-11.2	25.00
Operators and Chauffeurs Must Be Licensed	12-6-12.5 A, B, C	70.00
Unattended Motor Vehicle	12-6-12.8	45.00
Limitations on Backing	12-6-12.9	45.00
Obstruction to Driver's View or Driving Mechanism	12-6-12.10	45.00

Restriction on Use of Television in Motor Vehicles	12-6-12.11	45.00
Coasting Prohibited	12-6-12.12	45.00
Following Fire Apparatus Prohibited	12-6-12.13	115.00
Crossing Fire Hose Prohibited	12-6-12.14	115.00
Driving Through Safety Zones Prohibited	12-6-12.15	45.00
Vehicles Shall Be Driven Only on Streets, Private Roads, and Driveways	12-6-12.16	45.00
Driving on Sidewalk and Private Property	12-6-12.17	45.00
Prohibited Activities While Driving	12-6-12.18	80.00
Processions	12-6-12.20	45.00
Offenses by Persons Owning or Controlling Vehicles	12-6-12.22	70.00
Permitting Unauthorized Persons to Drive	12-6-12.23	70.00
Unlawful Riding	12-6-13.2	45.00
Unhitched Trailer on Street	12-6-13.3	45.00
Littering	12-6-13.5	300.00
Trains and Buses Not to Obstruct Streets	12-6-13.6	45.00
Boarding or Alighting from Vehicles	12-6-13.7	45.00
Improper Opening of Doors	12-6-13.8	25.00
Occupied Moving House Trailer	12-6-13.9	25.00
Animals on Street	12-6-13.10	25.00
Driving on Steep Grades	12-6-13.11	45.00
Child Restraint	12-6-13.12	45.00
Seat Belts	12-6-13.13	45.00
Open Container (1st Offense)	12-6-13.14	45.00
Pedestrian Obedience to Traffic Control Devices and Regulations	12-6-14.2 through 12-6-14.7	45.00
Drivers to Exercise Due Care	12-6-14.8	45.00
Electric Personal Assistive Mobility Devices	12-6-16	10.00
Prohibited Use of Electronic Device While Driving (First Offense)	12-6-18	80.00
Prohibited Use of Electronic Device While Driving (Second and Subsequent Offense)	12-6-18	130.00
Operating Motorcycles on Streets Laned for Traffic	12-7-2	45.00

Clinging to Other Vehicles	12-7-3	45.00
Riding on Motorcycles	12-7-4	45.00
Eye Protective Devices or Windshields	12-7-5	45.00
Mandatory Use of Protective Helmets	12-7-6	300.00
Footrests and Handlebars	12-7-7	45.00
Motorcycle Maneuverability	12-7-8	45.00
Off-Highway Motor Vehicles - Registration; Plate Requirement	12-7-9.1	20.00
Operation of Off-Highway Motor Vehicles on Streets or Highways	12-7-9.2 A, B, C, D	210.00
Operation of Off-Highway Motor Vehicles on Streets or Highways	12-7-9.2 E	60.00
Driving of Off-Highway Motor Vehicles Adjacent to Streets	12-7-9.3	20.00
Operation of Off-Highway Motor Vehicles on Private Lands	12-7-9.4	20.00
Off-Highway Motor Vehicle Safety Permit; Requirements, Issuance	12-7-9.8	60.00
Operating and Equipment - Safety Requirements	12-7-9.9 A (1, 12)	210.00
Operating and Equipment - Safety Requirements	12-7-9.9 A (3, 4, 5, 6, 9) B, C, D	110.00
Operating and Equipment - Safety Requirements	12-7-9.9A (7)	60.00
Operating and Equipment - Safety Requirements	12-7-9.9A (8, 11) E	20.00
Mopeds - Standards	12-7-10	45.00
Operation of Bicycles	12-8-3 through 12-8-12	25.00
Handicap Parking	12-9-9	500.00
Improper Equipment	12-10-1.1 through 12-10-1.51, excluding 12-10-1.12.1	45.00
Sun Screening Material on Windshields and Windows	12-10-1.12.1	75.00
Restrictions Upon Use of Streets by Certain Vehicles	12-10-3.1	45.00
Minimum Vehicle Size	12-10-3.2	45.00
Projecting Loads on Passenger Vehicles	12-10-3.3	45.00
Special Projecting Load Limits	12-10-3.4	45.00
Trailers and Towed Vehicles	12-10-3.5	45.00
Width of Vehicles	12-10-3.6	45.00
Height and Length of Vehicles and Loads	12-10-3.7	45.00

- C. The term "penalty assessment misdemeanor" does not include a violation that has caused or contributed to an accident resulting in injury or death to a person.
- D. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, a fine imposed upon later conviction shall not exceed the penalty assessment established for the particular penalty assessment misdemeanor and probation imposed upon a suspended or deferred sentence shall not exceed ninety days.
- E. The penalty assessment for speeding in violation of Section 12-6-1.2(A)(4), regarding speeding in a construction or safety zone posted as a double fine zone, shall be twice the penalty assessment for speeding for the equivalent miles per hour over the speed limit set out under the adopted Penalty Assessment Program contained herein.
- F. Nothing contained in this chapter is intended to diminish the Municipal Judge's authority to designate the specified offenses under the traffic ordinance to which fines may be accepted by the traffic violations bureau under Section 12-11-2 of the Uniform Traffic Ordinance.

#### 10.04.060 Uniform Traffic Ordinance – Fees

- A. As outlined in Section 12-12-1.3 of the Uniform Traffic Ordinance, and Section 1.16.020 of the Hobbs Municipal Code, any person convicted of violating any provision of the traffic ordinance shall be assessed the following fees in addition to the individual prescribed penalty for each violation:
  - 1. A Corrections fee of twenty dollars (\$20.00);
  - 2. A Judicial Education fee of three dollars (\$3.00);
  - 3. A Court Automation fee of six dollars (\$6.00).
- B. In addition to the fees outlined herein, any person convicted of violating any provision of the traffic ordinance shall be assessed a "penalty assessment fee" of ten dollars (\$10.00) which, upon collection, shall be deposited in a special fund in the municipal treasury for use by the municipality only for municipal jailer training; for the construction planning, construction, operation and maintenance of the municipal jail; for paying the costs of housing the municipality's prisoners in other detention facilities in the state; or complying with match or contribution requirements for the receipt of federal funds relating to jails. However, if the municipality has a balance in this special fund that is over the amount projected

to be needed for the next fiscal year for the purposes set forth in this subsection, the municipality may transfer the unneeded balance to its general fund.

- C. In addition to the fees outlined herein, and as outlined in Section 12-6-12.2(O) of Uniform Traffic Ordinance and Section 1.16.060 of the Hobbs Municipal Code, any person convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of 12-6-12.1(A), (B), (C), or (D) shall be assessed, in addition to any other fee or fine, the following fees:
1. a fee of eighty-five dollars (\$85.00) to defray the costs of chemical and other tests utilized to determine the influence of alcohol or drugs;
  2. a fee of seventy-five dollars (\$75.00) to fund comprehensive community programs for the prevention of driving while under the influence of intoxicating liquor or drugs or for other traffic safety purposes .

The municipality shall maintain these fees in separate funds and transfer the fees collected in this subsection to the administrative office of the courts for credit to the crime laboratory fund and the traffic safety fund. No reference to the State DWI provision (NMSA 1978, §66-8-102) in Section 1.16.060 of the Hobbs Municipal Code shall operate to conflict with or override this provision.

- D. As used in the Uniform Traffic Ordinance, "convicted" means the defendant has been found guilty of a criminal charge by the Municipal Judge, either after trial, a plea of guilty or a plea of nolo contendere, or has elected to pay the penalty assessment in lieu of trial.
- E. All fees outlined herein shall be distributed as prescribed by law and outlined in the Uniform Traffic Ordinance, the Hobbs Municipal Code, and State Statutes.

#### 10.04.070 Penalty Assessment Misdemeanors – Option and Effect

- A. Unless a warning notice is given, at the time of making an arrest for any penalty assessment misdemeanor the arresting officer shall offer the alleged violator the option of accepting a penalty assessment. The violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice.
- B. Payment of any penalty assessment must be made to the Hobbs Municipal Court either online, via mail, or in person at 301 N. Turner, Hobbs, New Mexico 88240. Payment of any penalty assessment must be made within thirty (30) days from the date of arrest. Payments of penalty assessments are timely if postmarked within thirty days from the date of arrest. The traffic violations bureau may issue a

receipt when a penalty assessment is paid by currency, but checks tendered by the violator upon which payment is received are sufficient receipt.

- C. No record of any penalty assessment payment is admissible as evidence in any court in any civil action.

#### 10.04.080 Penalty Assessment Misdemeanors – Failure to Pay / Failure to Appear

- A. If a penalty assessment misdemeanor is not paid within thirty (30) days of arrest, the violator shall be prosecuted for the violation charged on the penalty assessment notice in a manner as if a penalty assessment notice had not been issued. Upon conviction the Court shall impose the penalties provided in the traffic ordinance.
- B. In addition to the underlying penalty assessment misdemeanor and applicable fees, the violator may be charged with a misdemeanor when that individual has elected to pay a penalty assessment and fails to do so within thirty (30) days from the date of arrest.
- C. The Municipal Court shall notify the state division of motor vehicles when a violator fails to pay a penalty assessment imposed by the Court within thirty (30) days. The division of motor vehicles may suspend the instruction permit, driver's license or provisional license of the violator without preliminary hearing upon a showing by its records that the violator failed to pay the penalty assessment.
- D. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of accepting a penalty assessment, it is a misdemeanor for any person to violate his written promise to appear in court, given to an officer upon issuance of a uniform traffic citation, regardless of the disposition of the charge for which the citation was issued.

#### 10.04.090 Uniform Traffic Ordinance – Time of Taking Effect

Upon passage of the same, the Uniform Traffic Ordinance as outlined herein shall take effect on September 05, 2016, as allowed by the Uniform Traffic Ordinance Section 12-13-6. This ordinance does not have a retroactive effect and does not apply to any traffic accident, to any cause of action arising out of a traffic accident or judgment arising therefrom, or to any violation of the traffic ordinance of this municipality, occurring prior to the effect date of this ordinance, September 05, 2016.

PASSED, ADOPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2016.

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

ATTEST:

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





CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1, 2016

SUBJECT: AN ORDINANCE APPROVING A REAL ESTATE PURCHASE AGREEMENT TO SELL AND CONVEY A PARCEL OF LAND COMPRISED OF LOT 1 WITHIN THE HOBBS INDUSTRIAL AIRPARK SOUTH SUBDIVISION, CONTAINING 3.61 ACRES, MORE OR LESS, TO BRIDGEWAY PROPERTIES, LLC FOR THE PURCHASE PRICE OF \$83,200.00.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: July 25, 2016
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: An Ordinance to authorize the sell of a parcel of land comprised of lot 1 within the Hobbs Industrial Airpark South Subdivision, containing 3.61 acres, more or less, to Bridgeway Properties, LLC. The City of Hobbs is proposing to sell a municipally owned parcel comprised of Lot 1 in the Hobbs Industrial Air Park South Subdivision to Bridgeway Properties, LLC for the purchase price of \$83,200. A plat of the Industrial Subdivision with the parcel highlighted is attached. The purpose of the sale is Economic Development and the ordinance has been properly publicized.

Fiscal Impact:

Reviewed By: Deborah Corral
Finance Department

The revenue from this sale will be booked against the Land Acquisition Fund. Any future development of HIAP Projects will be budgeted in the Capital Projects Fund when identified.

Attachments: Ordinance; Site Map, Real Estate Purchase Agreement and Protective Covenants

Legal Review:

Approved As To Form: M. H. Stone
City Attorney

Recommendation:

Staff recommends consideration to approve publication of the Ordinance.

Approved For Submittal By:

Kevin Robinson
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, NEW MEXICO

ORDINANCE NO. 1096

**AN ORDINANCE APPROVING A REAL ESTATE PURCHASE AGREEMENT TO SELL AND CONVEY A PARCEL OF LAND COMPRISED OF LOT 1 WITHIN THE HOBBS INDUSTRIAL AIRPARK SOUTH SUBDIVISION, CONTAINING 3.61 ACRES, MORE OR LESS, TO BRIDGEWAY PROPERTIES, LLC FOR THE PURCHASE PRICE OF \$83,200.00.**

WHEREAS, the City of Hobbs, a municipal corporation, is the owner of a parcel of land comprised of lot 1 within the Hobbs Industrial Airpark South Subdivision, containing 3.61 acres, more or less, in the Hobbs Industrial Air Park South Subdivision; and

WHEREAS, the HIAP industrial areas have been designated by the City of Hobbs Industrial Air Park Master Plan for commercial and industrial development; and

WHEREAS, unless a referendum election is held, the Ordinance authorizing the sale of this property shall be effective forty-five (45) days after its adoption.

WHEREAS, inclusive in this Ordinance are the following:

1. **Terms of Sale:** The City proposes to sell a parcel of land comprised of lot 1 within the Hobbs Industrial Airpark South Subdivision, containing 3.61 acres, more or less for the purchase price of \$83,200.00.

The Sale of the City owned Real Property must be approved by City Ordinance pursuant to NMSA Section 3-54-1 et. seq., as amended.

An Agreement for the Purchase of Real Estate concerning terms of the sale and Protective Covenants for the property are part of the Proposed Ordinance.

2. **Appraised Value of Municipally Owned Real Property:** The property has a new appraisal placing value at \$25,070 per acre or \$90,503 for the 3.61 acre parcel. The municipality has received a viable offer at 92% of appraised value and 9% higher per acre of past sales.
3. **Schedule of Payments:** The Purchase Price is to be paid with an earnest money deposit (escrowed upon acceptance of purchase agreement) with the balance to be paid as follows:

Earnest Money Deposit:	\$ 10,000
At Closing Balance of Cash	\$ 73,200
Total Payments	\$ 83,200

4. **The Amount of Purchase Price:** \$ 83,200

5. **Purchaser of Property:** Bridgeway Properties, LLC

6. **Purpose of Municipal Sale:** Industrial and Economic Development - Site acquisition for company providing Bus Services to the Hobbs School District.

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

(I)

That the City of Hobbs hereby approves the sale of the Property as described as follows:

**LEGAL DESCRIPTION**

A parcel of land comprised of lot 1 within the Hobbs Industrial Airpark South Subdivision, containing 3.61 acres, more or less.

Subdivision Plat is attached hereto to this Ordinance as Exhibit #1, and made a part of this Ordinance. Subject to the conditions and terms in Exhibit "2", Agreement for The Purchase of Real Estate, as attached hereto and made a part of this Ordinance.

(II)

That this Ordinance has been published prior to its adoption and shall be published at least once after adoption, pursuant to Sections 3-2-1, et. seq., and 3-54-1, et. seq., NMSA 1978, as amended.

(III)

That the effective date of this Ordinance shall be forty-five (45) days after its adoption by the governing body of the City of Hobbs, unless a referendum election is held.

(IV)

That City staff and officials are hereby authorized and directed to do all acts and deeds necessary in the accomplishment of the above.

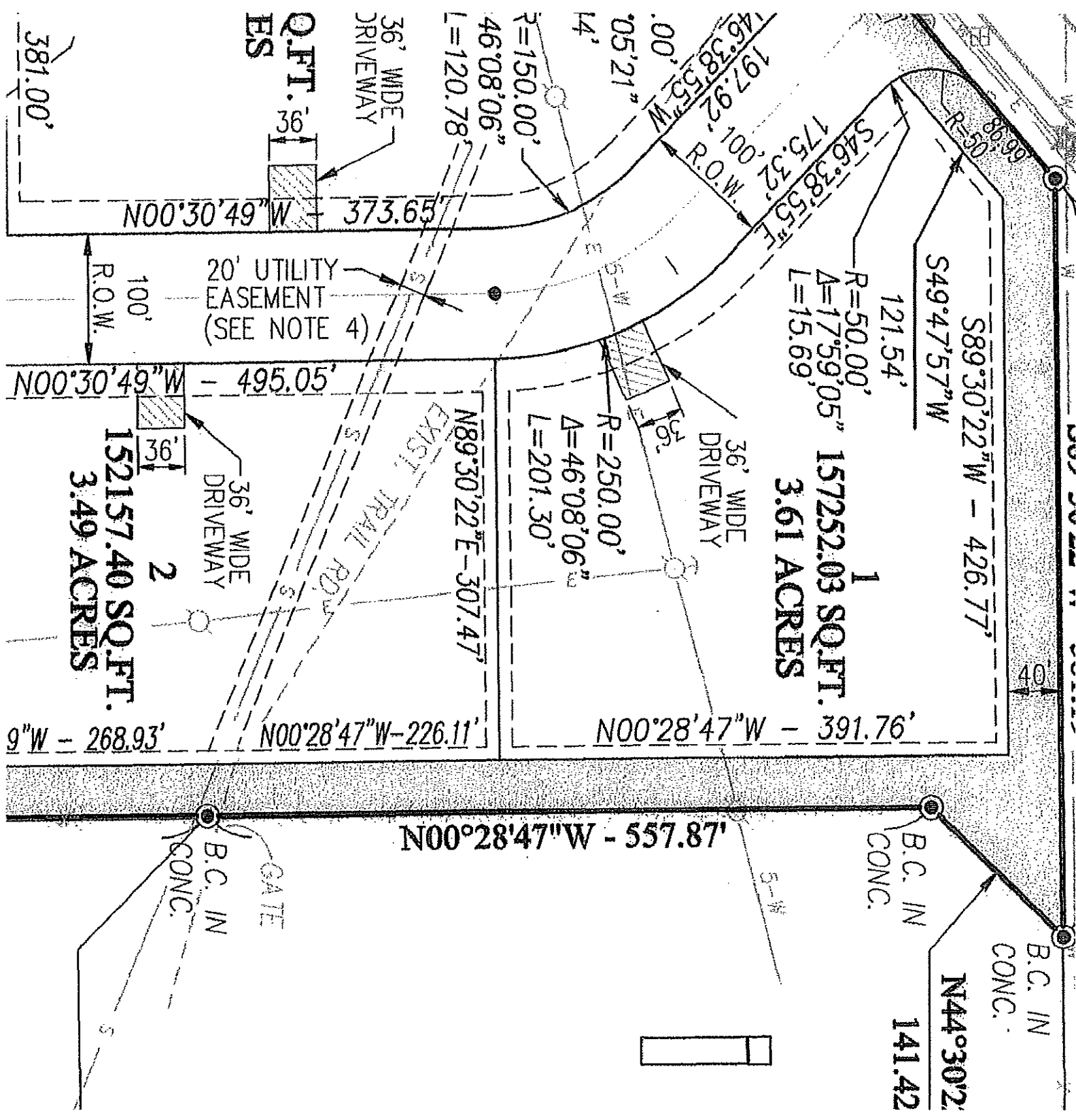
PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF HOBBS, NEW MEXICO

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

ATTEST:

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



**REAL ESTATE PURCHASE AGREEMENT  
CITY OF HOBBS AND BRIDGEWAY PROPERTIES, LLC**

THIS REAL ESTATE PURCHASE AGREEMENT (hereinafter "Agreement"), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, between Bridgeway Properties, LLC, P.O. Box 247, Hobbs, New Mexico 88241 (hereinafter "Purchaser"); and the City of Hobbs, New Mexico, a New Mexico Municipal Corporation (hereinafter "City").

**RECITALS:**

A. The City, in consideration of the mutual covenants herein contained, agrees to sell and convey, and Purchaser agrees to purchase the real estate described below, together with all buildings and improvements and all rights, hereditaments, easements and appurtenances thereunto belonging, property located in the Hobbs Industrial Airpark South Subdivision, more particularly described as follows, and referred to hereinafter as "Property, " on the terms and conditions set forth herein.

B. The City entered into that certain Lease dated August 23, 1973 (the "1973 Ground Lease") with the Industrial Development Corporation of Lea County, predecessor in interest to the Economic Development Corporation of Lea County (the "EDC") wherein the City leased to the EDC certain real property more particularly described therein and containing the Property (as hereinafter defined).

C. The City entered into that certain Lease dated May 2, 1983 (the "1983 Ground Lease") with the EDC wherein the City leased to the EDC certain real property more particularly described therein and containing a portion of the Property (as hereinafter defined).

D. The interests of the EDC in the 1973 Ground Lease and the 1983 Ground Lease with respect to the Property have been relinquished to Owner, or, prior to the Closing Date, will be relinquished to Owner.

**PARCEL DESCRIPTION – BRIDGEWAY PROPERTIES, LLC PARCEL:**

Lot 1 of the Hobbs Industrial Airpark South Subdivision, City of Hobbs, Lea County, New Mexico. Subdivision Plat is attached hereto as Exhibit #1.

**NOW THEREFORE THE FOLLOWING IS AGREED BY THE PARTIES:**

1. **Earnest Money Deposit.**

Purchaser will make an earnest money deposit with the Closing Agent in the sum of Ten Thousand Dollars (\$10,000.00), within 24 hours of Commission Approval of this agreement.

**2. Purchase Price.**

A. The purchase price for the Property shall be Eighty Three Thousand Two Hundred Dollars (\$83,200.00) of which the amount paid as earnest money shall be a part.

B. The Purchase Price includes standard City Industrial Park infrastructure and utility services pursuant to the City Utility Service Policy as adopted November 2014.

**3. Property Survey.**

Within thirty (30) days following the execution of this Agreement, the City will provide Purchaser with a current boundary survey of the Property prepared by a surveyor licensed in the State of New Mexico.

**4. Closing Date.**

Closing for the sale of the Property shall occur on a mutually agreeable date, at least forty-five (45) days, but not more than one hundred eighty (180) days after the adoption of the ordinance authorizing the sale by the City, unless a referendum election is held pursuant to 3-54-1, NMSA, 1978, as amended. The parties may extend the Closing Date by mutual agreement, not to exceed 365 days following the date of the ordinance.

**5. Review of Title.**

As soon as reasonably possible following the execution of this agreement, the City shall furnish Purchaser a commitment for owner's policy of title insurance ("Commitment") for the Property together with full copies of all exceptions set forth therein, including but not limited to covenants, conditions, restrictions, reservations, easements, rights of way, assessments, liens and other matters of record. Purchaser shall have fifteen (15) days from receipt of the Commitment and copies of said exceptions within which to notify the City of Purchaser's disapproval of any exceptions shown in the Report.

The City shall have until the date for closing to eliminate any disapproved exception(s) or patent reservations(s) from the policy of title insurance to be issued in favor of Purchaser, and if not eliminated, then the earnest money deposit shall be refunded, unless Purchaser then elects to waive his prior disapproval. Failure of Purchaser to disapprove any exception(s) or patent reservation(s) within the aforementioned time limit shall be deemed an approval

of such exception or patent reservation. The policy of title insurance shall be a standard coverage policy in the amount of the total purchase price and shall be paid for by Purchaser.

In the event this contingency or any other contingency to this contract has not been eliminated or satisfied within the time limits and pursuant to the provisions herein, and unless Purchaser elects to waive the specific contingency by written notice to the City, this Agreement shall be deemed null and void, the earnest money deposit shall be returned to the Purchaser, and neither party shall have any rights or liabilities under this Agreement.

#### **6. Environmental Assessment.**

If requested by Purchaser, City shall furnish Purchaser within 40 days following the execution of this agreement, a Phase I Environmental Site Assessment Report, prepared by a licensed environmental professional engineer or geologist on the Property proposed for purchase. The environmental assessment shall include but not be limited to research of previous activities that may present potential hazards, examination of potential groundwater contamination, and other related activities. The cost of the Phase I Environmental Assessment shall be paid by Purchaser in addition to the purchase price noted above. The Site Assessment Study will not include soil boring and soil analysis, unless requested by Purchaser. Purchaser shall have fifteen (15) days from receipt of the Environmental Assessment Report to advise City of any disapproval of any exceptions or environmental conditions indicated in the Report.

#### **7. Title.**

At closing, the City shall execute and deliver a Special Warranty Deed conveying the Property to the Purchaser and/or his assigns, in fee simple, subject to all patent reservations and to all other existing liens, encumbrances and other exceptions of record except those exceptions and reservations which are disapproved by Purchaser and eliminated by the City as noted above.

#### **8. Oil and Gas Activities.**

The parties acknowledge and understand seller does not own any mineral interest in the property being conveyed. The extraction of any mineral interest shall be subject to all federal, state and municipal rules, regulations and Ordinances concerning such.

#### **9. Risk of Loss.**

All risk of loss or damage to the Property will pass from the City to Purchaser at closing. In the event that material loss or damage occurs prior to closing,



Purchaser may, without liability, refuse to accept the conveyance of title, in which event the earnest money deposit, if any, shall be refunded. Possession of the Property by Purchaser shall occur at closing. Before closing, Purchaser shall be solely responsible to insure Purchaser's interest in the Property if Purchaser so chooses.

#### **10. Default and Remedy.**

A. **Default by City.** If City defaults in the performance of this Agreement, Purchaser may terminate this Agreement and receive a refund of the earnest money deposit, if any, or may waive default, enforce performance of this contract, and seek whatever legal remedy may be provided by law.

B. **Default by Purchaser.** If Purchaser defaults in the performance of this Agreement prior to closing, City may terminate this Agreement and retain the earnest money deposit.

C. **Notice and Demand for Performance.** In the event that either party fails to perform such party's obligations hereunder (except as excused by the other's default), the party claiming default will give written notice of demand for performance. If the party to whom such notice and demand is given fails to comply with such written demand within ten (10) days after receipt thereof, the non-defaulting party may pursue the remedies provided in this paragraph.

#### **11. Costs and Fees.**

The closing costs shall be paid as follows:

A. The City shall pay for survey, title insurance binder for the value of the purchase price, title company closing fees and recording fees.

B. All other closing costs shall be paid by the Purchaser, including title insurance premium costs up to or in excess of the purchase price, additional survey costs, if Purchaser requests an ALTA survey, and environmental assessment cost, if an environmental assessment is requested by Purchaser.

C. The Purchaser and City shall each pay for their respective legal fees.

#### **12. Notice.**

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by certified mail, postage prepaid, to the City, at City of Hobbs, ATTN: City Manager, 200 East Broadway, Hobbs, NM 88241; and to Purchaser, at P.O. Box 247, Hobbs, NM 88241, or to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

**13. Attorney's Fees and Costs.**

Both parties agree that if either is found by a court to have breached this agreement, the other party may recover reasonable attorney's fees and cost of litigation, including the costs of a City Attorney as a staff person.

**14. Counterparts.**

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.

**15. Successors and Assigns.**

This Section refers to assignability of this Purchase Agreement and not to assignability of the Property after the land purchase has been completed. This Agreement may not be assigned by Purchaser without the prior written consent of the City. 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. Except that Purchaser is permitted, upon City approval, to assign its interest to a Partnership or Corporation in which he is the principal party. Consent shall not unreasonably be withheld by either party.

**16. Compliance with New Mexico State Statutes.**

The City states that it has complied with the requirements of Section 3-54-1, NMSA, 1978, as amended, and that it has authorization to sell property pursuant to the Hobbs Municipal Code, as amended.

**17. 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.

**18. State Permits and Licenses.**

Purchaser agrees that City has no direct responsibility for Purchaser to make application and obtain required New Mexico State permits and licenses for

industrial facility expansion on the Property. Purchaser agrees to indemnify and hold City harmless from and against all liability, claims, demands, damages or costs of any kind arising from or connected with any New Mexico State permit or license application for activities and uses on the property.

**19. Protective Covenants.**

Purchaser agrees to comply with terms and conditions as stated in the previously recorded Protective Covenants for the Property. These Protective Covenants are attached hereto as Exhibit "2", and made a part of this agreement.

**20. Termination.**

This agreement shall be terminated on the closing date for sale of property, unless either party ends the agreement prior to that date pursuant to Section 9 of this Agreement. All of the City's warranties, representations, certifications, and agreements contained herein shall be and remain true at the time of closing.

**21. City Permits.**

Purchaser must be responsible to apply for all required City permits, including a City Business Registration or License Fee and building permits.

**22. Rights of the City and Conditions and Requirements of the Purchaser.**

**A. Right of Repurchase If Development (Permit and Construction) Has Not Started Within Six Month Period Following Closing Date.**

Subject to the rights of any mortgagees under any mortgages on the Property, the City retains the right to repurchase the property, for the same price paid by the Purchaser, if Purchaser has not begun development within six (6) months of the date of purchase, or if Purchaser defaults prior to completing development within eighteen (18) months following the closing date. Development is hereby defined as the Purchaser's completion of construction of the complete main building suitable to Purchaser's needs including on-site improvements of paved access street and parking areas, utility service lines, landscaping, and foundations, according to City Design Standards and Building Code Ordinances. Development also includes Purchaser's operation of an industrial development on site suitable to Purchaser's needs, which meets agreed upon minimum economic development goals of job creation. The Purchaser must make a good faith effort to begin and continue development. Upon compliance with the development responsibility of Purchaser and at Purchaser's request, the City shall provide a written, recordable release or certificate of compliance with this paragraph, and a waiver of its right to re-purchase. In the event that the City

does not exercise any right to repurchase the Property within three years of the date of such right arises, then that right to repurchase shall lapse and expire.

B. HIAP Property – Real Estate Purchase & Long Term Lease. Agreement Provisions: To ensure creation of new jobs to Lea County, to attract new industry to Lea County and to guard against speculation, the following provisions are required by the City Commission to be incorporated into all new land purchase agreements and long term leases:

1) No re-sale of the Property is to be allowed for the five (5) year period following the date of closing, except Purchaser may transfer the Property to a wholly owned corporation or entity for the specific purpose of financing improvements on the property.

2) Pursuant to the recorded Protective Covenants, the main building must be completed within eighteen (18) months, and be equal in value to at least four times the purchase price of the land.

3) To provide security for enforcement of these covenants, purchaser agrees to a municipal lien to be filed by the City in second position, but in no case no later than six months from closing, equal to one hundred fifty percent (150%) of the purchase price paid to the city, until Purchaser has expended four (4) times the purchase price developing the industrial site. Purchaser agrees that this lien shall remain enforceable and be subject to foreclosure if the covenants and/or purchase agreement are violated at any time within the first five (5) years following the date of closing.

C. Building and Site Development Policies:

1) Completion of the building and site improvements, including the main building, shall be completed and placed in service within eighteen (18) months of the purchase. The purpose of this requirement is to insure the property is sold to someone that intends to utilize the industrial park and create jobs and not hold the property for speculation.

2) Retail uses are not permitted except for a factory outlet store as a minor part of the industrial operations to sell goods manufactured on site. Residential uses are not permitted.

3) As the specific property in the Industrial Park is a highly visible site, appropriate landscaping should be required as part of the building permit, such that the appearance of the industrial park is enhanced in an effort of attract other HIAP users. If truck parking is proposed adjacent to Energy Place frontage, the site design must include buffering and screening according to City policy.

D. The proposed sale is subject to approval by the City Commission. The sale is subject to the approval of a partial release of the leasehold interests currently

held on the property by the EDC of Lea County. The sale is also subject to HUD Economic Development Initiative grant conditions.

E. Purchaser shall be required to construct access driveway(s) to the site boundary on City right-of-way to meet applicable City regulations for property access. Typical drawings showing detail for drainage piping are available for review.

F. Purchaser must be responsible for acquiring all local, state and federal permits and licensing. City staff will assist purchaser in processing appropriate permits for the site. Front setback landscaping treatments of a xeriscape landscape planting theme is recommended in the frontage on Energy Place and around the main building and customer service parking areas. A suggested plant list can be provided. A "caliche" yard of compacted crusher fines or compacted gravel will be allowed if the area is treated to reduce blowing dust.

G. All activities must meet all local, state and federal regulations, including those related to environmental issues.

### **23. Conditions For Completing The Purchase.**

The following actions must occur and be performed prior to Purchaser satisfactorily closing on the Property:

A. The City Commission must have approved the necessary Ordinance for the Sale of the Property, subject only to the referendum election issue as specified in 3-54-1 et. seq., NMSA, as amended.

B. Purchaser must have received, reviewed and approved the survey prior to Closing. Purchaser shall have survey documents for review prior to intended date of Closing. Purchaser shall have until the date of closing to raise any objections with City, or request changes on the survey.

C. If a request for a Phase I Environmental Site Assessment, Purchaser must have received, reviewed and approved the Phase I Environmental Assessment Report for the Property prior to Closing. Purchaser shall have the Environmental Assessment Report for review at least thirty (30) calendar days prior to the intended date of Closing; and Purchaser shall have twenty (20) days from receipt of the Report to raise any objections with City.

D. The EDC shall have executed a relinquishment of the 1973 Ground Lease and 1983 Ground Lease, as related to this property, prior to closing.

E. There shall be no material adverse change in the condition of the Property as of closing.

F. The representations and warranties contained in this Agreement are true and correct as of the date of closing.

G. If any of the conditions set forth in this Section are not satisfied to the sole discretion of the Purchaser prior to closing, or waived by the time specified therefor, or, if no time is specified, then by the closing date, then the Purchaser shall receive a refund of the earnest money deposit plus interest earned.

**24. Representations and Certifications Made By The City As A Part Of This Agreement.**

The City represents and warrants to the Purchaser that the following shall be true and correct, as of the date hereof and as of the date of closing:

A. The City owns title to the Property subject only to easements, restrictions and reservations of record as disclosed in the title commitment.

B. There are no public improvements which have been commenced or completed for which special real property tax assessments may be or have been levied against the Property.

C. There are no known existing violations of applicable law with respect to the Property.

D. There is no litigation pending or threatened against the Property which might result in a lien on the Property, or might interfere with the City's ability to sell or convey the Property, or which might have a material adverse change upon the Property.

E. The execution and delivery of the Purchase Agreement and closing of the sale by the City will not result in the breach of any agreement, decree or order to which the City is a party or by which the Property is bound.

F. There are no condemnation proceedings pending or threatened with respect to all or any portion of the Property.

G. To the best knowledge of the City as of the date hereof, the following statement is made regarding the Property:

To the best knowledge of the City, there are no past or present investigations, proceedings, litigation or regulatory hearings with respect to the Property alleging non-compliance with or violation of any federal or state law regarding environmental matters. To the City's actual knowledge, there has not now, nor have there been, any above ground or underground storage tanks located in or under the Property. To the City's actual

knowledge, the Property has previously been owned by the US Government Land Office, the City of Hobbs, the US Hobbs Army Airfield, and the City of Hobbs, New Mexico. The only known prior uses of the Property are 1) open range grazing by local ranches from 1880 through the 1940's time period; and 2) use of the area as a portion of the Hobbs Army Airfield operation during W.W.II.

The complete environmental record and clean-up report of City remediation projects is available for review by the Purchaser. To the best knowledge of the City, the Property presently is not and has never been used for any other storage, manufacture, disposal, handling, transportation or use of any hazardous substances in violation of any law, other than those connected with the Hobbs Army Airfield.

H. The City is not a party to any contracts relating to the Property, except for this Agreement.

**25. Representations and Certifications Made By The Purchaser As Part Of This Agreement.**

The Purchaser represents and warrants to the City that the following shall be true and correct, as of the date hereof and as of the date of closing:

A. The Purchaser is a viable company with its corporate offices in Hobbs, New Mexico.

B. The Purchaser intends to construct an industrial complex with structures within the eighteen (18) months following closing.

C. Purchaser shall obtain a City Building Permit and begin building on the site at closing or as soon as possible following closing.

D. The Purchaser agrees to all economic development goals within this Agreement for economic development in Hobbs for the five (5) year period following closing. Purchaser has sufficient financial resources available to complete all of the above building, development and operation goals.

**26. Time of Essence.**

Time is declared to be of the essence of this Agreement.

**27. Additional Documents.**

The parties agree to execute further documents as may be reasonably required to effectuate the purchase and sale of the Property as provided by this Agreement.

**28. Entire Document.**

This instrument constitutes the entire agreement between the City and the Purchaser, and there are no agreements, understandings, warranties, or representations between the Purchaser and the City except as set forth herein. This Agreement cannot be amended except in writing executed by the Purchaser and the City.

Done and approved on the date first written above.

THE CITY OF HOBBS

PURCHASER  
BRIDGEWAY PROPERTIES, LLC

\_\_\_\_\_  
Mayor Sam Cobb

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

*Mike Whitbread*

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

*President*

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Mike H. Stone, City Attorney



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PROTECTIVE COVENANTS AND DESIGN STANDARDS FOR THE HOBBS  
INDUSTRIAL AIR PARK SOUTH SUBDIVISION PROPERTY.

GENERAL CONDITIONS PART I

This Declaration, made the 11<sup>th</sup> day of July, 2011, by the City of Hobbs, hereafter referred to as "Declarant" or "City".

1. Purpose.

A. Declarant is the owner of certain real property in the within the City limits of Hobbs in the County of Lea, State of New Mexico, referred to as "HOBBS INDUSTRIAL AIRPARK SOUTH SUBDIVISION", described as follows and more particularly in "Exhibit A" which is attached hereto and by reference made a part hereof, more commonly known as a portion of the Hobbs Industrial Air Park, (hereafter referred to as the Property.)

**LEGAL DESCRIPTION - "HOBBS INDUSTRIAL AIRPARK SOUTH SUBDIVISION:**

THE FOREGOING SUBDIVISION OF A CERTAIN TRACT OF LAND SITUATED WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO, LYING IN THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 18 SOUTH, RANGE 38 EAST AND THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 37 EAST, N.M.P.M., AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A BRASS CAP IN CONCRETE FOUND FOR THE SOUTHWEST CORNER OF SAID SECTION 7 AND THE SOUTHEAST CORNER OF SAID SECTION 12, THEN N89°30'09"E ALONG THE SOUTH LINE OF SAID SECTION 7 A DISTANCE OF 629.90 FEET; THEN N00°30'49"W A DISTANCE OF 2023.59 FEET TO A BRASS CAP IN CONCRETE; THEN N00°28'47"W A DISTANCE OF 557.87 FEET TO A BRASS CAP IN CONCRETE; THEN N44°30'22"E A DISTANCE OF 141.42 FEET TO A BRASS CAP IN CONCRETE ON THE SOUTH BOUNDARY OF PHASE ONE OF THE HOBBS INDUSTRIAL AIRPARK SUBDIVISION TO THE CITY OF HOBBS; THEN S89°30'22"W ALONG SAID BOUNDARY A DISTANCE OF 581.19 FEET; THEN S49°47'57"W ALONG SAID BOUNDARY A DISTANCE OF 1044.46 FEET; THEN N45°25'39"W ALONG SAID BOUNDARY A DISTANCE OF 165.03 FEET; THEN S42°59'13"W A DISTANCE OF 1277.69 FEET; THEN S00°35'25"E A DISTANCE OF 59.36 FEET; THEN S42°59'13"W A DISTANCE OF 280.35 FEET; THEN S00°35'25"E A DISTANCE OF 943.07 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 12, TOWNSHIP 18 SOUTH, RANGE 37 EAST; THEN N89°26'52"E ALONG THE SOUTH LINE OF SAID SECTION 12 A DISTANCE OF 1842.36 FEET TO THE POINT OF BEGINNING AND CONTAINING 116.90 ACRES MORE OR LESS.

B. The purpose of these Protective Covenants is to establish and maintain a planned business and industrial center with certain design standards which may be in addition to those development regulations imposed by the City of Hobbs, and other governmental entities having jurisdiction over the Property.

C. In order to establish general rules and guidelines for the improvement and development of the Property, Declarant desires to impose upon it mutual and beneficial restrictions for the benefit of all lands in the Property and for the benefit of all future

owners of lands in the Property.

2. **General Provisions.**

A. Declarant, owner of the Property, hereby declares that the Property is now held, and shall be transferred, sold, leased, conveyed, and occupied subject to the Protective Covenants herein set forth, each and all of which shall inure to the benefit of and pass with each and every parcel of the Property, and apply and bind the heirs, assignees, and successors in interest of each and every owner of a parcel or parcels of the Property.

B. Each purchaser of any parcel of the Property covenants and agrees with Declarant, its successors and assigns to use the property only in accordance with the Protective Covenants herein set forth, and to refrain from using the Property in any way inconsistent with or prohibited by the provisions of this Declaration.

C. Each purchaser or user of any parcel of land in the Property shall comply with all applicable laws of the City of Hobbs, Lea County, the State of New Mexico and the United States of America.

D. **Building and Development Performance Goals.** The purpose of these requirements is to insure the Property is sold to and developed by someone that intends to utilize the industrial park and create jobs and not hold the property for speculation. Each initial purchaser of any parcel of the Property directly purchasing from the Declarant covenants and agrees with Declarant, its successors and assigns to develop each parcel or property within eighteen (18) months following the date of purchase. Building construction shall be started on each parcel within six (6) months of the date of closing for all parcels. The main building on each parcel shall be completed within 18 months. For developments on multiple lots exceeding 12.0 acres total, the City Manager is authorized to consider and may grant variances to allow a time extension of the completion date to 30 months for larger buildings and complexes; or if an owner experiences unforeseen problems during the construction which cause serious and unavoidable delays.

E. **Economic Development and Private Investment Performance Goals.** For all Real Estate Purchase & Long Term Leases in excess of 5 years in the Property, each initial Purchaser or Lessee of any parcel of the Property directly purchasing or leasing from the Declarant covenants and agrees that in order to ensure creation of new jobs to Hobbs and Lea County, to attract new industry to the area and to guard against speculation, that some or all of the following provisions may be incorporated by the City into all new land purchase agreements and long term leases:

To provide security for enforcement of these covenants, purchaser agrees that a municipal lien shall be filed by the City in second position, within six months following the purchase of the Property, in an amount equal to one hundred fifty percent (150%) of the purchase price paid to the city, until Purchaser has expended a minimum threshold of four (4) times the purchase price in developing

the industrial site, at which time the lien shall be released by the City. Said lien shall be foreclosed should the aforesaid four (4) times threshold of capital investment is not satisfied within thirty-six (36) months of possession of a property.

F. Land speculation and holding vacant parcels off the market is not permitted and is inconsistent with the City's goals to develop a vibrant industrial area to promote economic development of Hobbs.

G. Right of Repurchase. If any owner does not comply with the above covenants, the City may exercise re-purchase powers or take other legal actions as necessary. The purchase agreements will contain re-purchase clauses if development and building has not started according to the requirements. The City shall also specify conditions regarding economic development and job creation; private investment; prohibition of land speculation; inflating future sale prices; etc. in each real estate purchase agreement.

H. Variances to Specific Requirements Herein This Section 2. For good cause shown, the City Manager is authorized to consider and may grant variances to the requirements of Section 2 above, if unforeseen problems may occur on a Property.

**3. Design Review Board.**

A. Declarant hereby designates the Hobbs Planning Board of not less than six (6) persons, to function as the Design Review Board, hereafter referred to as the "Board". Composition of and membership of the Hobbs Planning Board shall be determined and appointed by the City of Hobbs City Commission. Declarant shall appoint all members of the Board, and may expand the number of members, possibly including other land owners, as may be decided in the future solely by the Declarant, for purposes limited solely to HIAP Design Review Board agenda items.

B. Declarant shall establish rules and procedures for the Board, including but not limited to procedures for the submittal and review of plans. Declarant may amend these procedures and rules, but shall publish any amendment according to Section 3-1-2, et. seq. NMSA 1978, as amended. The approval and consent of the Board shall not be unreasonably withheld on matters properly coming before the Board.

C. The Board shall exist as long as Declarant owns any parcel or portion of the Hobbs Industrial Air Park, within which the Property is encompassed.

D. There shall be no charge for services rendered and reviews undertaken by the Board.

E. All decisions of the Board shall be rendered in written format to the applicant.

F. Except with respect to land owned by the City of Hobbs, no building site or parcel of land within the Property may be divided, subdivided or fractional part thereof sold, leased or conveyed so as to create a new parcel, or combined with any building site or

parcel of land without the prior written consent of the Board.

G. All Site Development Plans, subdivision plats, and construction plans requiring a building permit or fence permit upon the Property shall be submitted to the Board for review and approval, prior to review by the appropriate City office and other reviewing agencies. Except that the Declarant may file subdivision plat revisions and City infrastructure plans, which are exempt from the Board's review. All Site Development Plans shall include all drainage structures, building locations, access driveways, truck loading and parking facilities and any other proposed facilities on the site. A conceptual grading and drainage plan shall be submitted to the City Engineer for review and approval at the same time the Site Development Plan is submitted. Plans submitted for review by the Board, if submittal is complete, accurate and in compliance with submission requirements of the Board, shall be deemed approved by the Board, if no action shall be taken within thirty (30) working days from the date of submittal. All plans to be submitted for review by the Board shall be submitted to the Planning Department of the City of Hobbs, at 200 E. Broadway, Hobbs, NM 88240.

H. Decisions by the Board shall not be construed as professional expertise and no warranty or liability for construction according to such plans shall be placed on the Board or Declarant.

I. No building permit, subdivision of land or any other type of development permit shall be approved for any parcel in the Property, unless said Site Development Plan submittal has first been submitted to the Hobbs Planning Department and presented to the Board for review and recommendations.

J. For good cause shown, the Board may approve variances to these Protective Covenants, except for Section 2 above in its entirety.

K. The City Commission may also approve variances to these protective covenants, in the exercise of its discretion to approve plans, to permit, or to consent to approve a variance from the specific requirements or effect of a particular covenant herein contained.

L. Any aggrieved person that is affected by an administrative decision of any City Board or official may appeal that decision to the City Commission. The appeal must be presented in writing to the City within fifteen (15) days of the action causing the appeal. Appeals of the City Commission must be filed with the District Court.

**4. Permitted, Regulated and Non-Permitted Uses.**

A. The Board may impose any reasonable condition on activities, such as landscaping, or regulation of grading during certain months of the year, to mitigate the effects of the activity's appearance, noise, traffic, dust and similar impact(s). Any aggrieved person affected by such a decision may file an appeal with the City Commission pursuant to Section 3L above.

B. Activities and uses on the Property shall be constructed, used or occupied to insure that there is no excess noise, vibration, toxic or noxious matter, humidity, heat or glare, liquid or solid waste, at or beyond any lot line of the parcel on which it is located. No activity or use shall emit air pollutants to such an extent that such use is classified as a "Major Stationary Source" by New Mexico Air Quality Control Regulation #707 and/or 40 CFR Part 51 of the U. S. Environmental Protection Agency.

C. No parcel or structure on the Property shall be used for any heavy manufacturing use and the following specific uses listed below:

- \*\* Smelling of Ores.
- \*\* Glue Manufacture.
- \*\* Fertilizer Manufacture.
- \*\* Airport or Heliport.
- \*\* Fat Rendering.
- \*\* Explosive Manufacture or Storage of large quantities of explosives.
- \*\* Junk Yards, Salvage or Wrecking Yards.
- \*\* Cement, Lime, Gypsum or Plaster Manufacturing.
- \*\* Raw Materials Extraction.
- \*\* Exterior Storage of Raw Materials without sight buffers.
- \*\* Excavation, Grinding, or Extraction of Gravel, Road Base, Pit Run, or Operation of a Quarry.
- \*\* Stockyards or Slaughter of Animals.
- \*\* Telecommunications Towers for rental to off-site operators.
- \*\* Acid Manufacture or Storage of large quantities of Acid on site (In excess of 500 gallons), or those industries with large quantities of hazardous chemicals, liquid fuel, compressed elements or gases or other similar uses.
- \*\* Wastewater Treatment Facilities.
- \*\* Truck Stop.
- \*\* Recycling or Abatement Facilities.
- \*\* Dry-cleaning Establishments or Industrial Cleaning Operations.
- \*\* Any industry or use that generates excess noise, vibration, toxic or noxious matter, humidity, heat or glare, at or beyond any lot line of the parcel on which it is located.

D. No on-site billboard for either off-premise or on-premise advertising, and other outdoor advertising for off-premise advertising shall be permitted on any parcels in the Hobbs Industrial Air Park.

**5. Construction of Improvements.**

A. After plans for construction are submitted and approved by the Board and other appropriate reviewing agencies, owner shall begin construction of buildings and improvements in a timely manner, not to exceed six (6) months after approval, unless further time for construction is requested and approved by the Board.

B. If any owner fails to complete construction of required and approved improvements, including but not limited to utility lines, paved streets, parking areas, landscaping, Declarant may, after giving due legal notice, construct the required improvements. The costs for Declarant's construction activities shall be recovered by Declarant in accordance with New Mexico State Statutes. After the start of construction, each project should be completed in a timely manner normally within 12 months, except for unusually large buildings, when the Board may allow additional construction time.

C. The City is responsible for maintaining cultural resources in the Industrial Park and certain parcels on the Property may require set-a-side preservation easements.

D. The City requires all property owners to limit grading and clearing activities on a site to the actual physical area planned for development to limit soil erosion.

**6. Maintenance of Premises.**

A. All owners and other users of the Property are obligated to keep and maintain the buildings, structures, parking areas, landscaping, signs and other entities of the parcel in an orderly and well maintained condition.

B. All landscaped areas shall be appropriately irrigated with an automated system and plants, grasses and trees shall be orderly and well maintained. Any areas of newly disturbed earth not in landscaped areas shall be planted with appropriate plant materials to reduce blowing dust. As an option, an owner may also construct and use a truck parking and storage yard area with a caliche material base or gravel base, with compaction of materials as required to support the stored vehicles.

C. All waste, rubbish or surplus materials shall be stored in properly screened enclosures and removed regularly. No materials, supplies, equipment, finished or semi-finished products are permitted to be stored outdoors, except in areas approved on the Site Development Plan.

D. If any owner or other user of a parcel on the Property fails to adequately maintain a building, structure, landscaping, parking lot or other premises, Declarant may, after giving appropriate legal notice, undertake maintenance of that parcel. The cost of Declarant's maintenance activities shall be recovered by Declarant in accordance with New Mexico State Statutes and City Ordinances.

**7. Enforcement of Covenants.**

In the event of a violation of these Protective Covenants, it shall be lawful for Declarant to prosecute proceedings at law, or in equity, according to New Mexico State Statutes and City Ordinances, against any owner or user of a parcel in the Property who is violating or attempting to violate any such restriction and covenant, either to prevent any owner or user of a parcel from so doing, or to correct such violation, or to recover damages or other relief for such violation.

**8. Severability.**

Invalidation of any one or part of any one of these covenants and restrictions by court order shall in no way affect any of the other provisions or parts of provisions which shall remain in full force and effect.

**DESIGN STANDARDS PART II**

**A.** The following standards are conditions for the allowed placement, use and occupancy of parcels and structures erected on the parcels within the Property (see Exhibit A, attached) to be followed in conjunction with the Protective Covenants, and applicable ordinances of the City of Hobbs.

These standards can only be amended or revised by the Declarant or their successors and assigns. All parcels in the Property shall meet minimum City standards for infrastructure construction, including water, waste water, streets, drainage, signs, landscaping, private utilities for natural gas, electric power and telecommunications, and other construction; building code, if applicable; subdivision regulations; and any other regulations, as required by the Hobbs Municipal Code.

**B. Noise Levels:**

1. Noise level emissions for all parcels in the Property shall not exceed New Mexico State Occupational, Health and Safety Standards and City of Hobbs standards per the City Noise Ordinance.

2. All owners and users of parcels in the Property are hereby notified that a private airport exists in the nearby vicinity, and that noise levels consistent with an airport, and occasional aircraft operations may exist in the vicinity of their Property. This disclosure statement shall be placed on the deed as a matter of notice for all parcels in the Hobbs Industrial Air Park.

**C. Development Standards:**

**1. Parcel Area:**

There shall be the following minimum lot area requirements for parcels in the Hobbs Industrial Air Park:

Category:	Minimum Lot Size:
Commercial/All Categories	0.4 acre
Light Industrial/All Categories	1 acre
All lots fronting on major Arterials and Collectors	1 acre

Other Uses

Minimum lot size to be determined by Board

No parcel shall have a lot depth that is greater than 4 times its width, unless specifically approved by the Board.

2. Building Setbacks:

Minimum street frontage setback from property lines for the placing of structures shall be twenty-five (25) feet. No uses shall be made of said setback except for driveways; steps and walkways; landscaping and planters; flag poles; roof overhangs, and entrance signage for larger properties. Visitor parking areas are permitted within the front setback area, except these shall have a minimum fifteen (15) foot setback from the front property line.

The setback line shall be fifteen (15) feet from all rear and side property lines. No six (6) foot height security fences or walls are to be placed within the twenty-five (25) foot front setback. The Board may approve decorative fencing not to exceed three (3) feet in height in the front setback. Regarding Business Park Boulevard and Millen Drive, there shall be a twenty-five (25) foot side yard setback on corner lot frontages for all buildings.

3. Landscaping Requirements:

A. All landscaping shall be defined per City Code. All landscaping shall be in setbacks, parking lots according to City ordinance, and other areas, as necessary. The City requires the use of plant landscaping materials and/or structural walls to buffer parcels and land uses in the Park.

Landscaping requirements for all parcels in the Hobbs Industrial Air Park shall be as required in the City Landscaping Ordinance for Industrial parcels, unless a commercial use is proposed. The City encourages that the full front setback for all parcels fronting on arterials and collectors be landscaped and permanently maintained. In addition, that portion of any building facing a side street other than the street on which the building fronts is also to be landscaped in an attractive manner. The parkway area shall be landscaped and permanently maintained, if a parkway area exists between the front set back of the parcel and the constructed street.

B. Landscaping Standards For Industrial Parcels: At a minimum, all general industrial parcels shall maintain landscaping in the customer service areas, front parking lots and in the front of the main site buildings.

4. Screening and Building Site Appearance.

The purpose of the screening rules is to avoid placement of trash receptacles or other unsightly equipment in the front or visible side yards of buildings. The Site Development Plan must show that all rubbish, trash, garbage, debris and other wastes, all loading



docks and garbage collection facilities, and all other articles, goods, materials, incinerators, trash bins, storage tanks or like equipment open or exposed to public view or to a view from adjacent buildings, are stored at the side or rear of the building and the improvements with which same are associated; and these shall be screened from view. Screening materials shall be constructed and designed in such a manner so that they equal a height equal to that of the materials or equipment being stored. The screening should shield said material and equipment from both public view and view from adjacent buildings as much as possible. After construction, such screening must be maintained in a sound condition with acceptable visual appearance for so long as screening shall be required under the terms hereof. All trash and debris must be contained in enclosed containers to prevent blowing trash.

5. Signage and Lighting Standards:

A. Signage Standards. All temporary and permanent signs and graphics shall be of a size and nature so as to preserve the quality and atmosphere of the Property. The design, material, location and placement of all signs shall be approved as such in writing by the Board prior to their erection. Further, all temporary signs must comply substantially, in the sole judgment of the Board, with the standards and criteria therefor promulgated by the Board.

A single sign shall be permitted on the front of each facility (facing the roadway), stating only the name or identification of the occupant and street address of that facility. One company or product trademark or company logo design is also permitted but not to exceed a total of 60 square feet.

Directional Signs for parking lots, entrances, exits, etc., shall not exceed 30 inches in height and 10 square feet maximum, except for truck entrances, where the directional signs shall be allowed up to 48" in height and 32 square feet maximum.

Free standing signs will be permitted only upon written approval of the Board, and only for Commercial Land Uses. Signs located other than on the main building (gateways, concrete or masonry yard enclosures) shall be subject to the written approval of the Board, but are encouraged in landscaped setback areas for larger industrial and commercial parcels.

Indirect lighting of signs may be permitted, subject to approval by the Board. All indirect lighting shall be constructed so that illumination is at the top of the sign, to reduce reflected light emitted into the atmosphere. Except as may be approved in writing by the Board, no sign shall be painted on any building wall or placed on any building so as to extend above the top of the roof or parapet wall, whichever is higher. Painted corporate logos or trademarks may be approved by the Board, based on size and designs submitted.

Real estate broker signs advertising any premises shall be permitted, with the following exceptions: 1) there shall be only one (1) sign per parcel; 2) there shall be no off premise

real estate signs; 3) for parcels less than 10 acres in size, the maximum size shall be 8 square feet; 4) for parcels greater than 10 acres, the maximum size shall be 32 square feet; and 5) the height of all real estate signs shall not exceed 7 feet.

The City as owner and developer of the Industrial Park Property may erect a sign or signs identifying, describing or advertising the Hobbs Industrial Air Park or any of its available land or buildings, including listings of individual lessees and owners, subject to approval of the Board.

**B. Illumination Standards.**

1) Exterior illumination, if such is to be provided, shall be designed to light only buildings, parking areas and walkways and shall not produce glare on adjacent streets or building sites. All floodlighting fixtures shall be depressed ground level or screened from public view in a manner approved by the Board. Parking area lighting units, arcade lighting and other illumination of a "Pedestrian Scale" shall be in a style approved in writing by the Board. Flood light fixtures mounted on the building to shine away from the building are prohibited.

2) Flood light fixtures mounted on the building to shine away from the building are not permitted unless wall pack lighting fixtures are installed with appropriate glare shields. 400 Watt lighting and greater wattage bulbs are not permitted. All parcels must comply with the New Mexico Night Sky Act.

**6. Off-Street Parking and Loading.**

Off-street parking shall be required according to the City of Hobbs Municipal Code or Building Code, as applicable. No truck loading or unloading area shall be located on a building wall fronting on a major arterial or collector, or in the front setback of the parcel.

**7. Utility Construction.**

All Utilities to be constructed in the Hobbs Industrial Air Park, including telephone, electric and cable TV, shall be constructed underground, unless approved in writing by the Board.

**D. Architectural Guidelines:**

**1. Site and Building Design Guidelines.**

In general terms, the Board's overall goal for building and site standards is to achieve a unified site and building design concept which will be an asset to the Industrial Park. At the same time, the building must function in an efficient manner for its intended purpose; the design should be cost effective; and the facility will help improve the economy of Hobbs. The Board does not impose specific building or site details and enhancements, leaving specifics up to the owner/builder. However, some of the possible design improvements and architectural details available to consider are:

The site plan including landscaping placement and materials should present "a unified site and building concept" in such a manner that the overall site appearance is consistent with the Hobbs Industrial Air Park development guidelines. For all parcels on HIAP Entrance Road, the intent is for design and use of an industrial design and uses on the frontage of HIAP Entrance Road. The front of the building and the portion of the side exterior walls adjoining the front that will be easily visible from HIAP Entrance Road shall contain design and architectural features meeting these design standards.

Architectural details such as screening or parapet walls; contrasting color trim areas for trim areas, roof canopies, exterior doors; etc. should be utilized. Building trim and design features such as orientation to the visible side of the site for the building(s), with these areas allowed to be constructed of a pre-finished color metal should be considered. The exterior building color(s) and roof color should blend with the natural environment, with bright and shiny materials discouraged. Parapet or screening walls are encouraged to screen roof or ground mounted equipment easily visible from the street. The use of highly reflective roofing material is not acceptable unless screened from view by parapet walls.

For any specific site development, the building entryway should be visible with architectural accents from the street. Design features should be oriented to the visible side of the site. The visible side of the structures should be addressed with refinements constructed of a pre-finished color metal exterior material(s) or stucco or masonry with landscaping enhancements or screening walls encouraged along to shield any stand alone metal equipment buildings, transformers or trash dumpsters which are visible from the perimeter streets. Truck loading areas and employee parking areas greater than 10 parking spaces should be located on the least visible side if possible. Landscaping is not required in truck parking and storage areas.

2. Standards for Construction on Major Arterials and Collectors Streets.

The front of all buildings located on parcels on and fronting on a major arterial or a collector street, as defined by the Circulation Plan, shall be of brick, masonry, stone, stucco or a pre-finished color metal or other material approved by the Board.

3. Standards for Construction on Minor Streets.

The front of all buildings—that is, the side facing the street on which the building is deemed to front—shall be faced with concrete or brick masonry, stone, or other material approved by the Board. The facing shall be to a minimum height of four (4) feet and extend across the full front of the building. That portion of any building facing a side street other than the street on which the building fronts shall be finished in an attractive manner in keeping with the accepted standards used for industrial buildings, but need not be finished in a like manner as that portion of the building referred to as the front. It is the intent of this provision that all structures shall be designed and constructed in such a manner as to provide an aesthetically pleasing and harmonious overall development of the industrial park. Except as otherwise provided herein, the sides and rear of all buildings shall be

finished in an attractive manner in keeping with the accepted standards used for industrial buildings subject to the approval of the Board.

3. Height of Buildings.

Buildings shall normally not exceed 50 feet in height, except in airport height zoning areas. The Board may consider reasonable requests for height variances, depending on the need of the particular industrial application or building requirement.

4. Exceptions.

Exceptions to the above construction standards shall be made for parcels serving the agri-business light industrial (green houses) and for airplane hangers to be constructed on Air Oriented Parcels.

5. Temporary Structures.

No temporary building or structure other than construction offices and structures for related purposes during the construction period shall be installed or maintained on any Building Site without the prior written approval of the Board. All temporary structures used for construction purposes must receive approval by the Board with regard to location and appearance, and must be removed promptly upon completion of construction and that portion of the Building Site from which same are removed, restored to its original condition or to such condition as is otherwise required by this Declaration.

6. FAA Regulations.

All construction must comply with Federal Airport Authority regulations.

**E. Submission Requirements For Plan Submission.**

The Site Development Plan shall include:

- Parcel boundaries;
- North Arrow;
- Graphic scale;
- Existing topography at one- foot contour intervals;
- Proposed building locations, identities, drawings and square footages;
- Locations of walls and fences;
- Location of screening or buffering and type;
- Parking location, arrangement, aisles, number or spaces;
- Driveways, entrances, and exits;
- Grading plan (proposed topography and drainage courses);
- Streets (Right of Way, pavement widths) if any proposed;
- Sidewalk and paths;
- Existing and proposed utilities;
- Existing and proposed easements;

Landscaped areas outlined with general description  
Type of plant materials and irrigation system proposed;  
Drainage Plans as required by the City Engineer; and  
Traffic Plans or Study, if deemed necessary by the City Engineer.

**F. Design Standards for Specific Land Use Categories**

**1. Industrial - General**

A. Land Use: Most common light industrial and manufacturing activities permitted in the City of Hobbs Industrial Air Park. As applicable, the City of Hobbs HIAP Industrial Park may specify additional parameters. The following uses are permitted, including but not limited to the following:

Oil Field Services; Assembly of Electronic or Mechanical Parts and Equipment; Electrical Construction and Electrical Service Facilities; Fabrication Shop; Freighthouse or Truck Terminal; Warehouse; Laboratory; Manufacturing of Consumer Goods to include but not be limited to appliances, garments, and similar products; furniture manufacturing, including finishing of furniture products; packaging of consumer goods as follows, but not limited to food products, cosmetics, pharmaceuticals, toiletries, etc.; processing and manufacture of food products to include bakery goods, candy, beverages, etc.; storage of products including but not limited to merchandise, domestic goods, raw materials, etc.; warehousing or wholesale distribution of goods; metal work and machine shops; heavy equipment sales, service and repair; telecommunications towers and structure, except that these shall only be located within areas that do not conflict with Airport Zoning Regulations and for on-site communication use only – no rental tower facilities are allowed; newspaper, printing shop and distribution of printed materials; sign construction and sales; and plant nursery; and all other types of light industry and warehousing.

Commercial uses may be allowed by the Board, however, each industrial parcel and activity may contain up to twenty percent (20%) of the gross floor area of the building to be used for associated commercial purposes to the specific industrial use. These uses could include, but are not limited to a sales office; factory outlet store; commercial sales of products manufactured or housed on the industrial site.

Residential uses are not permitted. All other uses or activities not specifically listed herein must be approved by the Board.

THE CITY OF HOBBS

Gary Don Reagan  
MAYOR GARY DON REAGAN

ATTEST:

APPROVED AS TO FORM:

JAN FLETCHER  
JAN FLETCHER, City Clerk

Mike H. Stone  
Mike H. Stone, City Attorney

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

The foregoing instrument was acknowledged before me on this day of July 11, 2011, by Gary Don Reagan, as Mayor, of the City of Hobbs, to me personally known, who being by me duly sworn did say that he is the duly elected Mayor and signing officer of the City of Hobbs, and that said instrument was signed on behalf of said City, and Gary Don Reagan acknowledged said instrument, and acknowledged that he executed the same as his free act and deed and on behalf of the City.

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

Notary Public Sandra Boltshauser

My Commission Expires: 

35256

STATE OF NEW MEXICO  
COUNTY OF LEA  
FILED  
SEP 21 2011  
at 10:48 o'clock A M  
and recorded in Book \_\_\_\_\_  
Page \_\_\_\_\_  
Pat Chappelle, Lea County Clerk  
By CS Deputy





**CITY OF HOBBS**  
COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1, 2016

**SUBJECT: NAVAJO ANNEXATION--ADOPTION OF THE ORDINANCE TO APPROVE THE NAVAJO ANNEXATION.**

DEPT. OF ORIGIN: Planning Division  
DATE SUBMITTED: July 25, 2016  
SUBMITTED BY: Kevin Robinson – Planning Department

**Summary:** The Navajo Annexation area contains 1.3169 +/- acres and is located northwest of the intersection of E. Navajo Drive and the projection of Ranchland. The annexation is comprised of 1.3169 +/- acres of petitioned property.

The annexation proposal was presented to the Planning Board at the June 21, 2016 meeting. After review the Planning Board recommended approval to the Commission with a 5-0 vote. The Commission authorized publication of the Ordinance on July 5, 2016.

**Fiscal Impact:**

Reviewed By: *Deborah Conal*  
Finance Department

The positive financial impact of GRT generated by the proposed businesses located within the annexation should offset any expenses that the City will incur.

**Attachments:** Annexation Ordinance; Annexation Plat and Petition; and Planning Board Minutes.

**Legal Review:**

Approved As To Form:  
*M. H. Stone*  
City Attorney

**Recommendation:**

Staff recommends that the Commission consider approval of the Ordinance Consenting to the Navajo Annexation.

Approved For Submittal By:

*Kevin Robinson*  
Department Director

City Manager

CITY CLERK'S USE ONLY  
COMMISSION ACTION TAKEN

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

CITY OF HOBBS  
ORDINANCE NO. 1097

**AN ORDINANCE CONSENTING TO THE NAVAJO ANNEXATION, WHICH IS PRESENTLY NOT INCLUDED IN THE CITY LIMITS, AS REQUESTED BY THE OWNERS OF THE MAJORITY OF PROPERTY, AND AS RECOMMENDED BY THE PLANNING BOARD.**

WHEREAS, the owners of the majority of property have petitioned the City of Hobbs to annex to the City an area in Section 23, Township 18 South, Range 38 East, N.M.P.M Lea County, New Mexico , and containing 1.3169 +/- acres; and more particularly described as follows:

LEGAL DESCRIPTION

A tract of land located in the Northeast quarter of the Northeast quarter of Section 23, Township 18 South, Range 38 East, N.M.P.M., Lea County, New Mexico and being more particularly described as follows:

Beginning at a being the Northeast corner of said Section 23; Thence S.00°39'38"E. along the East line of said Section 23 a distance of 238.46 feet; Thence N.64°20'51"W., 536.74 feet to a point on the North line of said Section 23; Thence N.89°16'33"E. along the North line of said Section 23 a distance of 481.13 feet. Said tract of land containing 1.3169 acres, more or less.

WHEREAS, the properties are contiguous to the present corporate limits of the City, and the Petitioners comprise the majority of land owned within the annexation boundary; and

WHEREAS, the Planning Board conducted a Public Hearing on June 21, 2016 regarding the annexation, and after discussion of the proposal, the Planning Board unanimously recommended approval of the Annexation by a 5-0 vote; and

WHEREAS, The City Commission has determined that it is in the best interests of the City of Hobbs to annex such territory.

NOW, THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, as follows:

1. That the petitions requesting annexation of property in, which lands are presently outside of the City limits hereby is approved and such territories are shown and described upon the Annexation Plat attached as Exhibit A, which is incorporated herein, hereby is annexed to the City of Hobbs.
2. That the Hobbs City Clerk will file the Annexation Ordinance and Plat with the Lea County Clerk after approval by the City Commission.

PASSED, ADOPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
SAM D. COBB, MAYOR

ATTEST:

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



**ANNEXATION PLAT**  
**SECTION 15, TOWNSHIP 18 SOUTH, RANGE 38 EAST,**  
**N.M.P.M., LEA COUNTY, NEW MEXICO.**

**LEGAL DESCRIPTION**

Tract 3\*  
 A tract of land located in the Northwest quarter of the Northwest quarter of Section 22, Township 18 South, Range 38 East, N.M.P.M., Lea County, New Mexico and being more particularly described as follows:  
 Beginning at a being the Northwest corner of said Section 22, Thence South 89° 15' 00" West 1,316.00 feet to a point on the North line of said Section 22, Thence N 89° 15' 00" West 471.13 feet, 32nd tract of land containing 1,216.00 acres, more or less.

**CERTIFICATE OF MUNICIPAL APPROVAL**

I, Jan Frederick, the duly appointed City Clerk of the City of Hobbs, Lea County, New Mexico, do hereby certify that the foregoing instrument was approved by the Commission of the City of Hobbs by Ordinance No. \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ 2016.

Jan Frederick, City Clerk

**STATE OF NEW MEXICO**

County of Lea ) ss  
 I, \_\_\_\_\_, Notary Public, do hereby certify that the foregoing instrument was approved before me this \_\_\_\_ day of \_\_\_\_\_ 2016 by Jan Frederick.

**By commissions expires \_\_\_\_\_**

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

**CERTIFICATE OF APPROVAL BY THE CITY PLANNING BOARD**

The Plan, Restrictions and Easements approved and accepted the \_\_\_\_ day of \_\_\_\_\_ 2016 by the City Planning Board of Hobbs, New Mexico.

**WILLIAM NICHOLS - Chairman**

**STATE OF NEW MEXICO**

County of Lea ) ss  
 The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2016, by William Nichols.

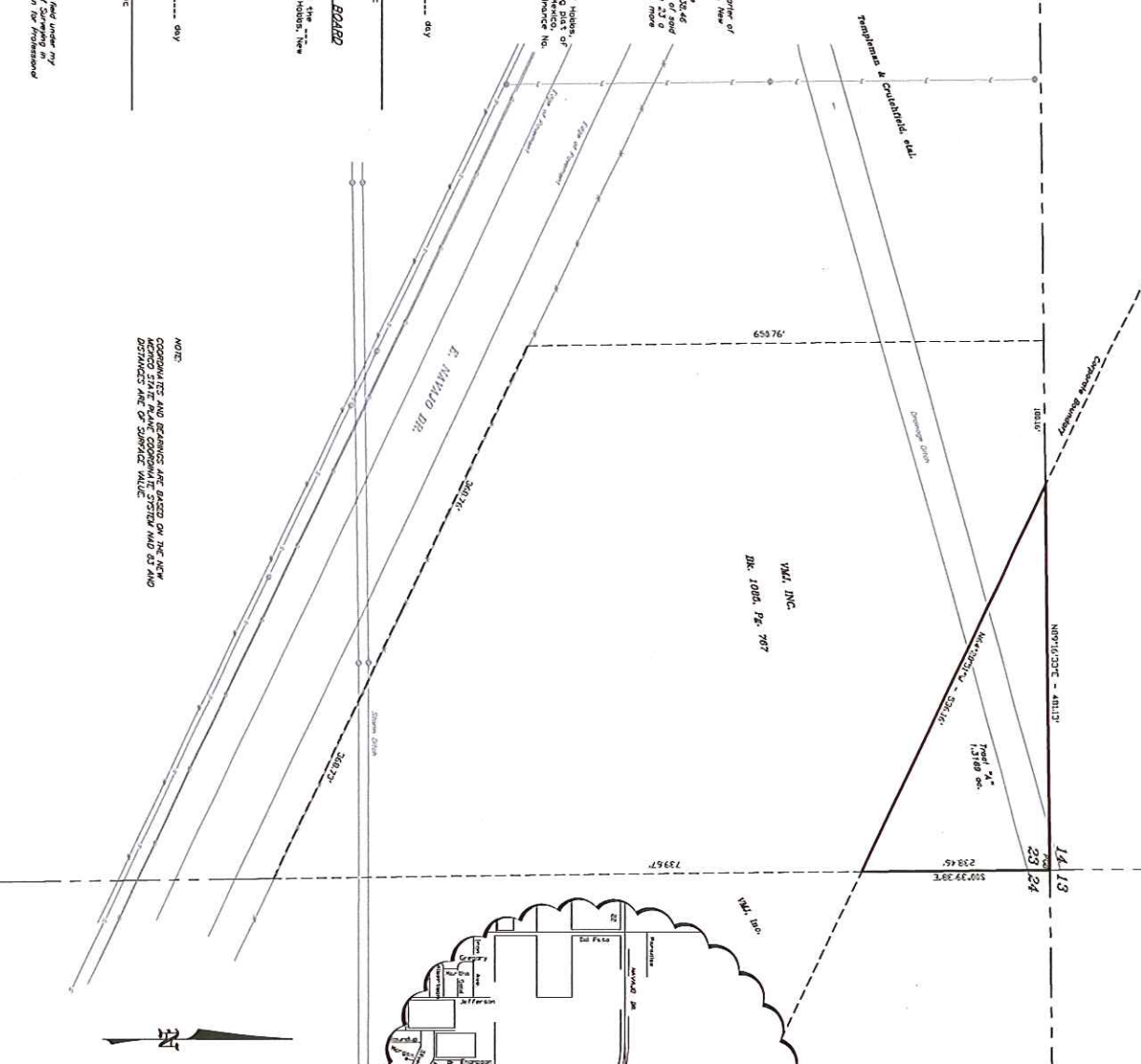
**By commissions expires \_\_\_\_\_**

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

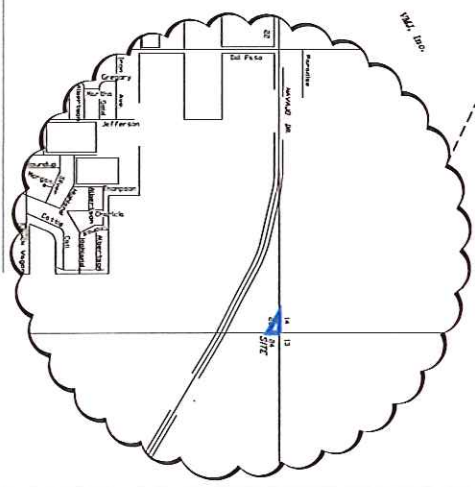
**CERTIFICATE OF SURVEY**

I hereby certify this plat to be a true copy of a survey made in the field under my personal supervision and in accordance with the laws of the State of New Mexico and the rules and regulations of the New Mexico State Board of Registration for Professional Engineers and Surveyors.

Gary L. Jensen, N.M.P.S. 7077



NOTE:  
 BEARINGS AND DISTANCES ARE GIVEN ON THE NEW  
 CORNER LINE AND ON THE OLD CORNER LINE AND  
 DISTANCES ARE OF SURFACE VALUE.



100 0 100 200 FEET  
 SCALE 1" = 100'

Designed by  
**BASIN SURVEYS**  
 1120 N. West County Rd.  
 Hobbs, New Mexico 88240  
 Ph: (775) 255-5316 Fax: (775) 255-2007  
 P:\MEMBER\B\B\BASIN-SURVEYS

STATE OF NEW MEXICO  
 COUNTY OF LEA  
 FILED

AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M  
 AND RECORDED IN BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
 PAT CHAPPELLE, LEA COUNTY CLERK  
 BY \_\_\_\_\_ DEPUTY

PETITION FOR ANNEXATION

COMES NOW, VMS, Inc (PETITIONER), and petitions the governing body of the City of Hobbs for its consent by ordinance for the annexation of that portion of a tract of land to the City of Hobbs, more particularly described as follows:

REFER TO ATTACHED MAP & DEED

and Petitioner states in support of such Petition, pursuant to Section 3-7-17.1 of the New Mexico Statutes Annotated (1978) that:

1. The property petitioner wishes to be annexed and the real property is contiguous to the present municipal boundary of the City of Hobbs.
2. The petitioner is owner of a majority of the number of acres in the proposed annexation territory.
3. An Annexation Plat is attached hereto showing the boundaries of the real property proposed for annexation and the relationship of such property to the present municipal boundaries of the City of Hobbs.

Petitioner: VMS, Inc. / Kress Jones  
By: Kress Jones  
Its: President/Owner

June 15, 2016  
Date

residential with a required setback of 21' from the property line; the proposed structure will be located 4' from the property line requiring a 19' variance. The existing structure was placed on the property without receiving a building permit.

Mr. Robinson said this is an item that was tabled at last month's meeting. He said staff sent out letters to each of the 14 property owners that are adjacent within the block. He said they did receive back 10 responses and of those there was 71% in favor of the variance. He said it has been the history of the Board to deny these types of variances when the block has been devoid of setback variances.

Mr. Robinson said this carport was built without a permit. He said granting of this variance will let any other person within the block build a carport. He said there have been several carports that have been denied. He said will it be the policy in the future to query every property owner within the block? Mr. Hicks said he would like to put that question off until they address this issue. Mr. Hicks asked if the minimum distance was 5 feet. Mr. Robinson said yes. Mr. Hicks said it is not about carports, it is about protecting the aesthetics of the neighborhoods and safety. Mr. Kesner asked if the restrictive covenants have been broken? Mr. Robinson said yes. Mr. Ramirez asked how far was it from back of curb? Mr. Randall said 14 feet which would be four and a half feet from the property line.

Mr. Kesner made a motion to approve the variance, seconded by Mr. Ramirez. Mr. Kesner told Mr. O'Boyle that he wants to make sure he understands that the Planning Board can allow the variance to take place but the restrictive covenants may be in violation and he could still be sued by his neighbors for violation of his restrictive covenants. The vote on the motion was 5-0 and the motion carried.

**6) Review and Consider Proposed Annexation of 1.3169 +/- acres of property located northwest of the intersection of E. Navajo Drive and the projection of Ranchland.**

Mr. Robinson said this is the annexation of a piece of property in the section corner of Navajo. He said this was part of the Western States annexation. He said the municipality did annex this from Navajo Road but it did not encompass the entirety of this property. He said this is to encompass the entirety of that property within the municipal boundaries. He said it was petitioned by Mr. Cress Jones. Mr. Shaw made a motion, seconded by Mr. Ramirez to approve the annexation. The vote on the motion was 5-0 and the motion carried.

**7) Review Proposed HOA Gated Community sketch plan located Southeast and Southwest of the intersection of Millen Road and Paddock Road.**

Mr. Robinson said this is a sketch plan of an HOA gated community to be located in Zia Crossing. He said what is in front of you is read lines from staff after being reviewed in a DRT meeting. Mr. Kesner asked where the gates would be? Mr. Robinson said they will be located on Paddock Road south of the majority of the subdivision to the east and west. Mr. Robinson said there will not be a right-of-way the property will be owned and maintained by the home owners association. He said the municipality will have a subsurface easement for the placement of municipal water and sewer lines. Mr. Ramirez made a motion, seconded by Mr. Drennan to approve the sketch plan with the comments of staff. The vote on the



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1, 2016

SUBJECT: Resolution Authorizing a Memorandum of Agreement Between the New Mexico Department of Transportation and the City of Hobbs for Public Transportation for FY 16-17

DEPT. OF ORIGIN: City Clerk's Office
DATE SUBMITTED: July 21, 2016
SUBMITTED BY: Jan Fletcher, City Clerk

Summary:

The attached Memorandum of Agreement is for continued operation of Public Transportation Services for FY 16-17 beginning October 1, 2016, through September 30, 2017.

This is a formulary grant whereby the costs of the program are shared as follows:

Table with 3 columns: Category, City, State. Rows: Administrative (20% City, 80% State), Operating (50% City, 50% State), Capital (20% City, 80% State)

Fiscal Impact:

Reviewed By: [Signature] Finance Department

The City's FY 16-17 Revised Budget (subject to DFA approval) includes \$1,245,502.17 for personnel, operating and capital expenditures. The total grant revenue and fares for FY 16-17 are projected at \$805,731.18.

Attachments:

Resolution Authorizing the Mayor to Execute a Memorandum of Agreement with NMDOT

Legal Review:

Approved As To Form: [Signature] City Attorney

Recommendation:

Motion to approve the resolution.

Approved For Submittal By:

[Signature] Department Director
[Signature] City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 6469

A RESOLUTION AUTHORIZING AN AGREEMENT  
FOR FY 16-17 WITH THE NEW MEXICO DEPARTMENT OF  
TRANSPORTATION (NMDOT), TRANSIT AND RAIL DIVISION,  
FOR PUBLIC TRANSPORTATION SERVICES

WHEREAS, the State of New Mexico, under 49 U.S.C. Section 5311, authorizes Federal assistance to local communities for public transportation in rural and non-urbanized areas; and

WHEREAS, the City of Hobbs applied for financial assistance for administrative, operating and capital funding for public transportation services, which was approved by the NMDOT and the Federal Transit Administration (FTA).

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be, and he hereby is, authorized and directed to take all necessary and appropriate action to effectuate this resolution and specifically to execute, on behalf of the City of Hobbs, a Memorandum of Agreement with the NMDOT for funding for public transportation services. A copy of the Memorandum of Agreement is attached hereto and incorporated herein by reference.

PASSED, ADOPTED AND APPROVED this 1<sup>st</sup> day of August, 2016.

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

ATTEST:

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

FISCAL YEAR 2017 (FY 17)

MEMORANDUM OF AGREEMENT

BETWEEN

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

AND

CITY OF HOBBS

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This Agreement is between the **STATE OF NEW MEXICO**, acting through its **DEPARTMENT OF TRANSPORTATION**, Transit and Rail Division, (Department), and the **CITY OF HOBBS** (Subgrantee). This Agreement is effective as of the date of the last party to sign it on the signature page below

**RECITALS**

Whereas, 49 U.S.C. §5311 provides federal assistance for public transportation in rural and non-urbanized areas by way of a formula grant program administered by each state; and

Whereas, the State of New Mexico participates in the 49 U.S.C. §5311 Program (Program); and,

Whereas, the Governor of the State of New Mexico designated the Department to administer the Program funds; and,

Whereas, the Subgrantee applied for financial assistance for public transportation services, which was approved by the Department and the Federal Transit Administration (FTA).

Now, therefore, pursuant to Section 67-3-69 NMSA 1978, the parties agree as follows:

**1. Scope of Program.**

**A. Operations Profile**

The Subgrantee shall provide transportation services to the public within its service area as specified in the Operations Profile, which is incorporated by reference and is on file with the Department and the Subgrantee.

**B. Use of Capital Equipment**

The Subgrantee agrees that any capital equipment, purchased under this Agreement, shall be used to provide public transportation service within the area described in the Operations Profile. If the equipment is not used in this manner or withdrawn from service, the Subgrantee shall notify the Department verbally and in writing, either hand-delivered or send by U.S. certified mail, five (5) working days of such event, and shall return the Program equipment in accordance with *Section 15. Use of Program Equipment*.

**C. Use of Program Funds**

The services described in the Operations Profile shall remain intact throughout the term of this Agreement. The Subgrantee must notify and seek approval from the Department if there will be an elimination or a reduction of services greater than 20%. Notice must be verbal and in writing, either hand delivered or sent by U.S. Certified Mail, five (5) working days prior to the reduction or elimination services. Failure to provide notice shall give the Department cause for termination, as described in *Section 7. Termination for Cause*.

**D. Policy Manuals**

The Subgrantee shall develop, adopt, and publish a Drug and Alcohol Policy Manual as described in *Section 30. Drug and Alcohol Testing*.

E. Fare Schedule

The fare schedule, which must be approved by the Subgrantee's governing body, shall be stated in the approved Operations Profile. The Department must also approve all fare schedules in writing.

F. Advertising

The Subgrantee shall conduct an advertising program to increase ridership on all trips. Acceptable advertising includes but is not limited to: fliers and handbills; signs and posters; radio announcements; press releases and articles in local and organization newspapers, bulletins, and newsletters. In addition, the name of the service together with the words "Public Transportation" shall be prominently displayed on all vehicle(s) and be readable at a distance of no less than 30 feet. Painted or affixed signing with a decal is acceptable. Magnetic signs are not acceptable. The name shall indicate that the service is a transportation system open to the public. The Subgrantee must have a telephone number established and operative during hours of transportation services so that the public can access information. All methods of advertising and the signs on the vehicles shall include the telephone number.

G. Personnel

The Subgrantee shall provide to the Department the name of the Program Director and a list of primary duties within fifteen (15) days of execution of this Agreement. If the program director should change, the Subgrantee shall inform the Department verbally and in writing, either hand-delivered or send by U.S. certified mail, fifteen (15) working days prior to the personnel change.

2. Cost of Program.

The Department shall provide partial funding to the Subgrantee to cover expenses of the Program as described in the approved Operations Profile from October 1, 2016 to September 30, 2017 in an amount not to exceed \$697,653.58, as described below:

Category/Match Ratio FY 17

City of Hobbs	Total	Federal	Local
Administration (80/20)	\$ 83,701.33	\$ 66,961.06	\$ 16,740.27
Operating (50/50)	\$ 688,585.04	\$ 344,292.52	\$ 344,292.52
Capital to Subgrantee (80/20)	\$ 358,000.00	\$ 286,400.00	\$ 71,600.00
<b>Total Administration, Operating and Capital</b>	<b>\$ 1,130,286.37</b>	<b>\$ 697,653.58</b>	<b>\$ 432,632.79</b>

Vehicle purchases must be under contract with a vendor by March 31, 2017, with a copy of the contract and buyer's order provided to the Department. Vehicle purchase funds that are not obligated by contract by March 31, 2017, may revert to the Department. Any remaining federal funds that are not expended by September 30, 2017 will revert to the Department.

This program is funded with grants provided by the FTA, Catalog of Federal Domestic Assistance number 20.509. The Department's share of Program expenses shall be obtained from the federal government. State funds will not be earmarked or disbursed to fund the Program. The Department shall not be responsible for any other costs incurred by the Subgrantee. The Subgrantee shall take all actions necessary to fund its share of the Program.

3. Method of Payment.

The Department shall either reimburse the Subgrantee or pay the vendor on behalf of the Subgrantee for the Department's share of the Program costs upon receipt of invoices, with sufficient supporting documentation as determined and approved by the Department, indicating that expenses have been paid and/or money is owed.

For Subgrantees that receive operating assistance, invoices are to be submitted on a monthly basis, and received by the Department by the 25th day of the following month. These invoices shall be submitted to the Department utilizing the spreadsheet the Department provides to the Subgrantee. All expenses must be actual and listed on the invoice as charged. Rounding up or down, other than the total, is not permitted. Only those expenses or

percentage thereof, properly documented and deemed eligible, shall be reimbursed. The Department may withhold payment of monthly invoices that are incorrect and/or incomplete.

**4. Eligible Costs.**

Eligible Costs are those costs attributable to and allowed under the Program and the provisions of 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards.

Capital costs incurred by the Subgrantee prior to the effective date of this Agreement or after termination are not eligible for reimbursement. However, operating and administrative costs incurred retroactive to October 1, 2016, the Agreement initiation date, are eligible for reimbursement. Operating or administrative costs incurred after the termination date shall not be eligible for reimbursement.

Within 45 days after completion of this Agreement, the Subgrantee shall submit a final invoice to the Department for Administration and Operating expenses and a financial statement showing the total expense of the Program. Subgrantee shall have the twenty percent (20%) matching capital funds encumbered at the time the vehicle order is placed with the vendor and a copy of the Purchase Order must to be sent to the Department under this active Agreement. The Subgrantee's twenty percent (20%) match for capital expenses shall be provided in cash from sources other than federal funds.

**5. State General Appropriation Funds Not Obligated.**

Nothing in this Agreement shall be construed as obligating state general appropriation funds for payment of any debt or liability arising under this Agreement. The parties expressly acknowledge that all payments made under this Agreement are from federal funds appropriated for these purposes.

**6. Term.**

This Agreement becomes effective upon the signature of all parties. The effective date is the date the last party signed the Agreement on the signature page below. All costs incurred under this agreement from October 1, 2016 to September 30, 2017 may be reimbursed. This Agreement shall expire September 30, 2017 or when Federal funding is expended, whichever occurs first.

**7. Termination for Cause.**

The Department has the option to terminate this Agreement if the Subgrantee fails to comply with any provision. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Subgrantees breaches on which the termination is based.

The Department may provide the Subgrantee a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Subgrantee has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Subgrantee has not begun and proceeded in good faith to correct the breach, the Department may declare the Subgrantee in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law. Upon termination of this Agreement, the Subgrantee shall return the Program equipment as specified in *Section 1. Scope of the Program*.

**8. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Congress of the United States. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice from the Department to the Subgrantee. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Subgrantee and shall be final.

**9. Termination Management, Allowable Costs.**

In the event of termination, neither party may nullify obligations already incurred for performance or failure to perform. The Subgrantee shall be paid for all the allowable costs incurred prior to the date of termination, subject to audit verification by the Department or its duly authorized representative.

The Subgrantee shall not be paid for any costs incurred that are inconsistent with, or contrary to, the terms and conditions of this Agreement.

**10. Breach and Dispute Resolution.**



Disputes which cannot be resolved informally by the parties shall be decided in writing by a representative of the Department's Transit and Rail Division. The Subgrantee has ten (10) days from receipt of the decision to file a written appeal with the Transit and Rail Division. Upon appeal, the Subgrantee will be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Transit and Rail Division on appeal shall be binding.

**11. Procurement Requirements and Buy America.**

The Subgrantee shall purchase Program equipment pursuant to procedures established by the United States Department of Transportation (U.S. DOT), the FTA, applicable New Mexico State Law, and the standards set forth in: Third Party Contracting Guidance, FTA Circular 4220.1F; Americans with Disabilities Act of 1990, Pub. L. No. 101-336; and Pre-Award and Post-Delivery Audits of Rolling Stock Purchases, 49 C.F.R. Part 663.

The Subgrantee agrees to comply with 49 U.S.C. §5323(j)(1) as amended by Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), Fixing America's Surface Transportation Act (FAST Act) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661 to the extent those regulations are consistent with MAP-21 and FAST Act provisions, and subsequent amendments to those regulations that may be promulgated.

Prior to awarding a bid award or execution of a contract for services or capital equipment in excess of \$2,500, the Subgrantee shall seek concurrence in writing from the Department.

**12. Rolling Stock.**

In acquiring rolling stock, the Subgrantee agrees as follows:

- A. **Method of Acquisition.** In compliance with 49 U.S.C. § 5325(f), the Recipient agrees that any third party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.
- B. **Multi-year Options.** In accordance with 49 U.S.C. § 5325(e)(1), a Recipient procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a multiyear contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts.
- C. **Pre-Award and Post-Delivery Audits.** The Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre Award and Post Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and any amendments to those regulations that may be promulgated.
- D. **Bus Testing.** To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

**13. Insurance.**

The Subgrantee shall maintain, satisfactory to the Department, liability, comprehensive, collision, and uninsured motorist insurance adequate to protect the Program equipment. The Department is to be named as an additional insured and a loss payee on Subgrantee's policy for each vehicle on which the Department has a lien. A certificate of insurance must be provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance. The Subgrantee shall provide the Department documentation of subsequent renewals and shall keep on file a copy of the insurance policy, which shall be accessible to the Department.

The Subgrantee shall require contractors hired to perform the services under this Agreement to have a commercial general liability insurance policy. The Department is to be named as an additional insured on the contractor's policy and a certificate of insurance must be provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance.

The Subgrantee shall require contractors hired to perform services under this Agreement to indemnify, defend and hold harmless the State of New Mexico, the Department, its officers, agents and employees from and

against all suits, actions or claims of any character brought because of any injury, including death or damages arising out of contractors' construction or maintenance activities pursuant to this Agreement, as memorialized herein and subject to any additional permit that may be required of the contractor to perform said activities.

**14. New Mexico Tort Claims Act.**

As between the Department and the Subgrantee, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et seq., NMSA 1978. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by the common law of the New Mexico Tort Claims Act.

**15. Use of Program Equipment.**

- A. A Program Vehicle Inventory must be completed for each vehicle that will be used in the Program. The Program Vehicle Inventory shall be returned with the signed Agreement.
- B. Each vehicle must contain a fire extinguisher, first aid kit (including a blood borne/biohazard kit), fluorescent triangles and/or safety flares, reflective vests for drivers, flashlights, and webcutters/seat belt cutters.
- C. The Program equipment shall be used to provide public transportation service within the described service area and in the manner described in *Section 1. Scope of Program*.
- D. Failure to use the equipment as described in *Section 1. Scope of Program* shall be considered a material breach of contract subject to the provisions of *Section 7. Termination for Cause*.
- E. The Subgrantee shall notify the Department immediately of vehicular accidents, thefts, or vandalism involving Program equipment. Failure to notify the Department shall be considered a material breach of contract subject to the provisions of *Section 7. Termination for Cause*.
- F. The Department may require that Program equipment purchased under FTA programs, on which liens are held, be returned to the Department. Such Program equipment shall be returned in good working condition within ten (10) working days or as stipulated by the Department. If the Subgrantee fails to return the equipment, the Department, as the recorded lien holder, shall have the right to immediately repossess the vehicle(s) by whatever means available to it under New Mexico law.
- G. Upon termination of the Agreement under *Section 7. Termination for Cause*, the Subgrantee shall not be eligible for reimbursement of any costs associated with the vehicle(s) purchase or be entitled to damages arising from Program operations, except that the Subgrantee shall be reimbursed for its pro-rata share of the Program equipment's depreciated value as determined by the Straight Line Depreciation method.
- H. The Subgrantee agrees that no modifications will be made to Program vehicle(s) with liens held by the Department without prior written approval of the Department. If unapproved modifications are made, the Subgrantee is responsible for the cost of restoring the vehicle(s) to its original condition.
- I. If the Subgrantee wants to remove any Program equipment from service or dispose of such equipment either as a result of planned withdrawal or casualty loss, the Subgrantee shall contact the Department to obtain specific disposition instructions.
- J. The Subgrantee shall follow the equipment manufacturer's minimum standards and recommended preventive maintenance schedules. The Subgrantee shall maintain the equipment in a clean, safe, and mechanically sound condition. The Department or its authorized representative has the right to conduct periodic inspections during normal business hours for the purpose of confirming property maintenance pursuant to this clause. The Subgrantee shall prepare reports describing usage, any modifications, and other related information for such periods of time and frequency as may be prescribed by the Department.

**16. Charter Bus Requirements.**

The Subgrantee agrees to comply with 49 U.S.C. §5323(d) and 49 C.F.R. Part 604, which provides that recipients and sub recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. Part 604.9. Any charter service provided under one of the exceptions must be "incidental." (For example, it must not interfere with or detract from the provision of mass transportation).

**17. School Bus Requirements.**

Pursuant to 49 U.S.C. §5323(f) and 49 C.F.R. Part 605, recipients and sub recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub recipients may not use federally funded equipment, vehicles, or facilities.

**18. Certificate of Title for Vehicles.**

Any title to capital equipment the Subgrantee purchases will reflect in a lien in favor of the Department. The liens will remain in effect for seven years from the date title is issued for light duty buses, cutaways and modified vans (designed to carry 10 to 22 passengers). The lien on light duty mid-sized buses (designed to carry 16 to 25 passengers) will remain in effect for eight years. The Subgrantee shall pay all costs associated with obtaining, securing, and maintaining titles and liens, including the payment of all applicable taxes and fees.

**19. Duration of Lien.**

The Subgrantee shall not pledge or collateralize any vehicles purchased under this Agreement without written authorization from the Department. This restriction is in effect from the date a title certificate is issued to when the Department releases the lien pursuant to *Section 18. Certificate of Title for Vehicles*. For specifics on disposition of vehicles after title lien is released, please refer to the Vehicle Title Release and Disposition sections of the *New Mexico State Management Plan* for the Administration of Federal Transit Grants.

**20. Operation Reporting Requirements.**

- A. Daily Pre/Post Trip Inspection Records — The Subgrantee shall keep daily Pre/Post Trip Inspection Records on the use of each transit vehicle and shall submit to the Department, upon request, such information.
- B. Monthly Reporting — A monthly invoice/report shall be submitted electronically by the Subgrantee to include financial expenditures and ridership, as described in *Section 3. Method of Payment*. This monthly invoice shall be submitted to the Department by the 25<sup>th</sup> of the following month.
- C. Annual Reporting — A certification that the Program equipment is still being used in accordance with the terms of the Agreement shall be submitted to the Department with the Certifications and Assurances during the application process.
- D. National Transit Database (NTD) Rural Report — the Subgrantee will provide an annual report as needed for the NTD Rural Report.

The Subgrantee's failure to submit reports in a timely manner on the dates specified shall be a material breach of this Agreement and shall be subject to termination as provided in *Section 7. Termination for Cause*.

**21. Retention of Records.**

The Subgrantee shall maintain all books, documents, papers, accounting records, reports and other evidence pertaining to costs incurred in the Program for three (3) years after the date of termination or expiration of this Agreement.

**22. Access to Records.**

The Subgrantee shall grant authorized representatives of the Department, the state and the federal government access to books, documents, papers, reports, and records of the Subgrantee or its subcontractors, which are directly pertinent to this Agreement, for the purpose of making audits, examination excerpts, and transcriptions. The Subgrantee agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Subgrantee shall reimburse the Department for any expenditure for which it received payment or reimbursement, as applicable, which is disallowed by an audit exception by the Department, the state or federal government.

**23. Privacy Act.**

The Subgrantee agrees to comply with, and to assure the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, the Subgrantee agrees to obtain the express consent of the federal government before the Subgrantee or its employees operate a system of records on behalf of the federal government. The Subgrantee understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Subgrantee agrees to include these requirements in each subcontract to administer any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by FTA.

**24. Audit.**

The Subgrantee shall ensure that an annual audit of the Program based on the Subgrantee's fiscal year shall be conducted pursuant to 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards. The Subgrantee, prior to initiation of the audit, shall seek written approval from the Department of the auditing firm. The Subgrantee agrees to provide the Department with a copy of the audit report concerning any portion of the Agreement period as soon as it is released, but in no case later than six months following the close of the local fiscal year. Audit costs are an eligible administrative expense. Should the Subgrantee fail to produce the annual audit, the Department may, at its option, commission such an audit payable out of Program funds.

**25. Audit Exceptions.**

If federal or state audit exceptions are made, the Subgrantee shall reimburse all costs incurred by the State and the Department associated with defending against the exceptions, which includes but is not limited to costs of performing a new audit or a follow-up audit, court costs, attorneys' fees, travel costs, penalty assessments.

Immediately upon notification from the Department, the Subgrantee shall reimburse the amount of the audit exception and any other related costs directly to the Department. In the notification, the Department may inform the Subgrantee of the Department's election to withhold an amount equal to the payment owed under this Section from any future distribution owed to Subgrantee under this Agreement.

**26. Third Party Beneficiaries.**

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**27. Contracting and Assignment.**

The Subgrantee shall not contract any portion of this Agreement without prior written approval of the Department. No such contracting shall relieve the Subgrantee from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Department.

Except to a successor in kind, the Subgrantee shall not assign or transfer any interest in this Agreement or assign any claim for money due or to become due under this Agreement without the prior written approval of the Department.

Should subcontract(s) or an assignment be authorized by the Department, the subcontractor(s) and assignor(s) shall be subject to all provisions of this Agreement. It shall be the Subgrantee's responsibility to duly inform the subcontractor(s) and assignor(s) by means of a contract or other legally binding document stipulating responsibility to this Agreement.

Subcontractors and Assignors of FTA funds must meet applicable Disadvantaged Business Enterprise (DBE) Program requirements when funds are used in whole or in part to finance procurements for applicable products and services. To that end, Subcontractors with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subgrantees*, which is attached as Certification 1.

**28. No Federal Government Obligation to Third Parties.**

- A. The Department and Subgrantee acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, Subgrantee, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Subgrantee agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It further agrees that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**29. Training.**

The Subgrantee shall ensure that all drivers described in the Operations Profile are trained in the following programs: first aid, cardiopulmonary resuscitation, blood borne pathogens, defensive driving, use of wheelchairs, passenger safety, sensitivity and crisis management. The Department's approved contractor will provide training in passenger safety, sensitivity and crisis management. All new drivers must be trained and certified in the above listed areas within six (6) months of their date of hire and recertified every three years. For the Cardiopulmonary Resuscitation (CPR) training, the drivers must be recertified every two years. All full time, part time, substitute/fill-in, or volunteer vehicle operators shall have in their possession valid certifications while operating a public transportation vehicle.

In addition, the Department may require specific training for the Subgrantee. Attendance is required and failure to attend shall result in a deduction in from the Subgrantee's next invoice. This deduction will be an amount equal to the Subgrantees's pro-rata share: total cost of training incurred by the Department divided by the total number of all individuals scheduled for training and multiplied by the total number of Subgrantee employees failing to attend the scheduled training.

Should the Subgrantee fail to satisfy the terms and conditions as outlined, the Subgrantee may be found to be in breach of contract and subject to the provisions of *Section 7. Termination for Cause*.

**30. Drug and Alcohol Testing.**

The Subgrantee will implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 40 and 655; produce documentation necessary to establish its compliance; permit authorized representatives of the U.S. DOT or the Department to inspect the facilities and records associated with the drug and alcohol testing program; and review the testing process. The Subgrantee agrees to certify annually its compliance with 49 C.F.R. Parts 40 and 655 by February 1, 2017, and to submit the Management Information System (MIS) reports before March 1, 2017, to the Department's Transit and Rail Division at 1350 Alta Vista (SB-4), Santa Fe, NM 87504. To certify compliance, the Subgrantee shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Subgrantee agrees further to submit for review and approval a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Subgrantee agrees to participate in the Department's consortium.

**31. Labor Warranty.**

The Subgrantee agrees that it will comply with the terms and conditions of the Special 49 U.S.C. §5333(B) Warranty for Application to the Small Urban and Rural Program. The Subgrantee will assume all legal and financial responsibility relative to compliance with the terms and conditions of the Warranty.

**32. Transit Employee Protection Guidelines.**

The Subgrantee agrees to protect transit employees pursuant to Section 5333(b) of Title 49 U.S. Code (formerly Section 13(c) of the Federal Transit Act). The Subgrantee shall provide for the preservation of rights and benefits of employees under existing collective bargaining agreements, continuation of collective bargaining rights, protection of individual employees against a worsening of their positions in relation to their employment, assurances of employment to employees of acquired transit systems, priority of reemployment, and paid training or retraining programs.

**33. Civil Rights Laws and Regulations Compliance.**

The Subgrantee shall comply with all federal, state and local laws and ordinances applicable to the work called for under this Agreement.

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Subgrantee shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The Subgrantee shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to this Agreement:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Subgrantee agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Subgrantee agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.

2. Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Subgrantee agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subgrantee shall comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, 42 U.S.C. § 12112, the Subgrantee agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.

C. The Subgrantee shall include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

- D. For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA HelpLine at [www.ftahelpline.com](http://www.ftahelpline.com).
- E. The Subgrantee also agrees to include these requirements in each contract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**34. Disadvantaged Business Enterprise (DBE) Policy.**

- A. This Agreement is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Department's proposed overall goal for FTA participation for the 2017 fiscal year is 1.22%, through race-neutral means.
- B. The Subgrantee shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The Subgrantee shall carry out applicable requirements of 49 CFR Part 26 in the administration of the Program. Failure by the Subgrantee to carry out these requirements is a material breach of the Agreement, which may result in the termination or other such remedy as the Department deems appropriate. Each contract the Subgrantee signs with a contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- C. The Subgrantee agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. DOT assisted contracts. The Subgrantee will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- D. The Subgrantee is required to pay its contractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the awarded contractor's receipt of payment for that work from the Department.
- E. The Subgrantee must promptly notify the Department, whenever a DBE contractor is terminated or fails to complete its work, and must make good faith efforts to engage another DBE contractor to perform at least the same amount of work. The Subgrantee may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Department.

A Subgrantee of FTA funds must meet applicable DBE requirements when funds are used in whole or in part to finance procurements of and contracts for applicable products and services. A Subgrantee with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subgrantees*, which is attached as Certification 1.

**35. ADA Access.**

The Subgrantee shall comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Subgrantee also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities.

**36. Program Fraud and False or Fraudulent Statements or Related Acts.**

- A. The Subgrantee acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this program. The Subgrantee certifies or affirms the truthfulness and accuracy of any statement it makes pertaining to the resultant contract or the FTA assisted program for which this work is being performed. The Subgrantee further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subgrantee to the extent the federal government deems appropriate.
- B. The Subgrantee also acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification to the federal government under a contract connected with a program that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the federal government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Subgrantee, to the extent the federal government deems appropriate.
- C. The Subgrantee certifies to abide by these clauses and include the clauses in each subcontract financed in whole or in part with Federal Transit Administration funds. Subgrantee further agrees that these clauses shall not be modified, except to identify the subcontractor subject to its provisions.
- D. All claims for compensation reimbursement and payment of any amounts due pursuant to this Agreement are governed by the Fraud Against Taxpayers Act, §§ 44-9-1 through 44-9-14 NMSA 1978.

**37. Lobbying.**

A Subgrantee receiving \$100,000 or more of 49 U.S.C. §5311 funds shall file the Lobbying Certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." The Lobbying Certification is attached as Certification 2. The Subgrantee must certify that it has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. §1352.

If the Subgrantee hires a contractor, the contractor must provide the Lobbying Certification to the Subgrantee. Each tier below the contractor shall also provide a Lobbying Certification. Such disclosures are forwarded from tier to tier up to the Subgrantee.

**38. Officials Not to Benefit.**

Neither any member of the New Mexico Legislature nor any member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom. The provisions of this clause shall be extended to all public employees, officers, or tribal council members.

**39. Energy Conservation.**

The Subgrantee agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**40. Clean Water and Air Requirements.**

- A. The Subgrantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, 33U.S.C. §§1251 et seq., and the Clean Air Act, 42 U.S.C. §§7401 et seq. The Subgrantee agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate United States Environmental Protection Agency Regional Office.
- B. The Subgrantee agrees to include these requirements in each subcontract exceeding \$100,000.00 and financed in whole or in part with federal assistance provided by the FTA.



**41. Debarment and Suspension.**

Executive Order 12549, as implemented by 49 C.F.R. Part 29, prohibits FTA Subgrantees from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts. Subgrantees shall include the certification and instruction language contained at 29 C.F.R. Part 29, Appendix B, in all Invitations for Bids and Requests for Proposals (for inclusion by contractors in their bids or proposals) for all contracts expected to equal or exceed \$25,000.00, regardless of the type of contract to be awarded.

The Subgrantee is required to verify that none of the Subgrantee's principals, as defined at 49 C.F.R. Part 29.995, or affiliates, as defined at 49 C.F.R. Part 29.905, are excluded or disqualified as defined at 49 C.F.R. Parts 29.940 and 29.945. By signing and submitting this Agreement, the Subgrantee certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder/Subgrantee or proposer/Subgrantee knowingly rendered an erroneous certification, in addition to remedies available to the Department, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder/Subgrantee or proposer/Subgrantee agrees to comply with the requirements of 49 C.F.R. Part 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder/Subgrantee or proposer/Subgrantee further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**42. Central Contractor Registration Requirements.**

Prior to payment of invoices and receipt of vehicles and equipment, Subgrantees must register and maintain current registration in the Central Contractor Registration website, <http://www.sam.gov>. Registration requires having a Dun and Bradstreet Data Universal Number (DUNS), see <http://www.dnb.com>. The Department will not provide vehicles, or make payments, until the Subgrantee demonstrates that it is registered with the System for Award Management (SAM) website.

**43. Federal Grant Reporting Requirements.**

Under the Federal Funding Accountability and Transparency Act, the Department is required to report on projects or activities, which are awarded federal grants of \$25,000 or more. This information will be made available to the public on [www.USASpending.gov](http://www.USASpending.gov).

The type of information the Department is required to report includes:

- Name of Subgrantee receiving the award
- Amount of Award
- Funding Agency
- NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants
- Program source
- Award title descriptive of the purpose of the funding action
- Location of the Subgrantee, which includes the Congressional District
- Place of performance of the program or activity, which includes the Congressional District
- Unique identifier—DUNS—of the Subgrantee and its parent organization, if one exists
- Total compensation and names of the top five executives of the Subgrantee. This information is required, if the Subgrantee in the preceding year received eighty (80) percent or more of its annual gross revenues in federal awards, which exceeds \$25 million annually, and the public has no access to this information under the Securities Exchange Act or the Internal Revenue Code.

The Department will extract as much information as possible from the Subgrantee's grant application and standard reports. However, the Subgrantee will be required to provide additional information, which includes the total compensation and names of the Subgrantee's top five executives, if applicable. As specified earlier in Section 42, "Central Contractor Registration Requirements," of this Agreement, the Subgrantee shall register with the SAM and DUNS websites and provide that information to the Department.

**44. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

**45. Scope of Agreement.**

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

**46. Applicable Law and Venue; Federal Changes.**

The Subgrantee shall comply with all federal, state and local laws, ordinances, rules, warranties, assurances, and regulations applicable to the performance of this Agreement. This includes all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current year's Master Agreement between the Department and the FTA. The Subgrantee shall make as part of this Agreement between the Department and the Subgrantee the assurances and warranties which were signed as part of the grant award. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

**47. Incorporation of FTA Terms.**

Provisions of this Agreement include, in part, certain Standard Terms and Conditions required by the U.S. DOT. All contractual provisions required by the U.S. DOT, as set forth in FTA Circulars 4220.1F, and 9040.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Subgrantee shall not perform any act, fail to perform any act, or refuse to comply with any Department request, which would cause the Department to be in violation of FTA terms and conditions, as referenced in the current Federal Transit Administration Master Agreement shall prevail and be the instrument governing the receipt of Federal assistance from the Federal Transit Administration. The Master Agreement can be viewed on the web at <http://www.fta.dot.gov/grants/15072.html>

**48. Amendment.**

The terms of this Agreement may be altered, modified or amended by an instrument in writing executed by the parties. Specifically excluded from this requirement are revisions to transportation services and fare schedules identified in the Operations Profile. *Section 1. Scope of Program, Paragraphs C and E*, details how such changes are to be approved and documented.

In witness whereof, each party is signing this Agreement on the date stated below that party's signature.

New Mexico Department of Transportation

*Loren D. Hatch*  
Loren D. Hatch, Deputy Secretary

City of Hobbs

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title (please print)

*10 July 2016*  
Date

\_\_\_\_\_  
Date

Approved as to Form and Legal Sufficiency by the Department's Office of General Counsel.

*Cynthia A. Christ*  
Cynthia A. Christ, Assistant General Counsel

*7-10-16*  
Date

**NEW MEXICO DEPARTMENT OF TRANSPORTATION  
TRANSIT AND RAIL DIVISION**

**DISADVANTAGED BUSINESS ENTERPRISE  
RACE-NEUTRAL IMPLEMENTATION AGREEMENT  
FOR  
FEDERAL TRANSIT ADMINISTRATION SUBGRANTEES**

**INTRODUCTION AND INSTRUCTIONS:**

The New Mexico Department of Transportation (NMDOT) Transit and Rail Division, through the NMDOT Office of Equal Opportunity Programs (OEOP), must ensure that Subgrantee of Federal Transit Administration (FTA) funds meet applicable DBE requirements when funds are used in whole or in part to finance procurement and contracts of products and service(s). To that end, Subgrantee with contracting opportunities must submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subgrantees* (Agreement).

Please read the entire Agreement before completing, and do not change or add to the wording of the Agreement. The Agreement is incorporated into and becomes a material part of your contract with NMDOT, and Subgrantees are responsible for complying with the requirements contained therein.

**DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT for the City of Hobbs; hereinafter referred to as "Subgrantee."**

**I. Definition of Terms**

The terms used in this agreement have the meanings defined in 49 CFR Part 26.5.

**II. OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)**

The Subgrantee intends to receive federal financial assistance from the U.S. Department of Transportation (USDOT) through the New Mexico Department of Transportation (NMDOT), and as a condition of receiving this assistance, the Subgrantee will sign the New Mexico Department of Transportation's Disadvantaged Business Enterprise Race Neutral Implementation Agreement (hereinafter referred to as Agreement).

The Subgrantee must implement a policy to ensure that DBEs, as defined in 49 CFR Part 26 (also referred to as the DBE Program), have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

To ensure nondiscrimination in the award and administration of DOT-assisted procurement and contracts of products and services contracts.

To create a level playing field on which DBE's can compete fairly for DOT-assisted procurement and contracts of products and services contracts.

To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.

To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.

To help remove barriers to the participation of DBEs in DOT-assisted procurement and contracts of products and services contracts.

To assist the development of firms that can compete successfully in the market place outside the DBE Program.

**III. Nondiscrimination (§26.7)**

Subgrantee will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. Subgrantee will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

**IV. Race-Neutral Means of Meeting the Annual DBE Goal (§26.51)**

Subgrantee will assist NMDOT to achieve its Overall Statewide DBE Goal by race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has been historically low;
8. Ensuring distribution of the New Mexico DBE directory, through print and electronic means, to the widest feasible universe of potential contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Subgrantee will encourage utilization of DBE contractors whenever possible on its USDOT-assisted contracts. New Mexico Certified DBE firms and the fields of work in which they participate are listed in the electronic web-based DBE Directory located at <https://nmdot.dbesystem.com>

#### **V. Quotas (§26.43)**

Subgrantee will not use quotas or set-asides in any way in the administration of the DBE Program.

**VI. DBE Liaison Officer (§26.25)**

Subgrantee must designate a DBE Liaison Officer (DBELO). The DBELO is responsible for implementing the DBE Program as it pertains to the Subgrantee and ensures that the Subgrantee is fully and properly advised concerning DBE Program matters.

**VII. Federal Financial Assistance Agreement Assurance (§26.13)**

The Subgrantee will sign the following assurance, applicable to and to be included in all USDOT-assisted procurements and contracts for products and services:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

**VIII. Required Contract Clauses (§§26.13, 26.29)**

Subgrantee assures that the following clauses will be included in each USDOT-assisted prime contract:

A. Contract Assurance

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted procurement and contracts of products and services contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

B. Prompt Payment

Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay to any subcontractor not later than 10 days of receipt of each progress payment. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the NMDOT's prior written approval. Any violation of this Section shall subject the violating contractor or subcontractor to penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### Prompt Payment of Retainage

Subgrantee shall include either (1), (2), or (3) of the following provisions in their USDOT-assisted contracts to ensure prompt and full payment of retainage (withheld funds) to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **IX. Bidders List (§26.11)**

The Subgrantee will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its USDOT-assisted procurement and contracts for products and services. The bidders list will include the name, address and telephone number of each quoting firm and whether the quoter is a New Mexico certified DBE. Subgrantee will include language in its procurement documents that requires each bidding Contractor, at the time that bids are submitted, to list the quotes received for the project as detailed above.



**X. Reporting**

Subgrantee will report bidders list and related DBE information to the NMDOT Transit and Rail Division or the NMDOT Office of Equal Opportunity Programs upon request.

Subgrantee will complete and submit annually to the NMDOT Office of Equal Opportunity Programs the NMDOT Annual Profile Registration Form. This Form will be mailed to Subgrantee.

Subgrantee will compile and provide such other information related to its procurements and the DBE Program as deemed necessary by the NMDOT Transit and Rail Division or the NMDOT Office of Equal Opportunity Programs.

**XI. Incorporation of Agreement**

This Agreement is incorporated into Subgrantee's financial assistance agreement with NMDOT by reference and made a part of that agreement.

Date:
Signature of Subgrantee Official
Phone Number:
Printed Name of Subgrantee Official

**LOBBYING CERTIFICATION**

*An Applicant that submits or intends to submit an application to FTA for Federal assistance exceeding \$100,000 is required to provide the following certification. FTA may not award Federal assistance exceeding \$100,000 until the Applicant provides this certification by selecting Category "02."*

- A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to FTA for Federal assistance exceeding \$100,000:
  - (1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and
  - (2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352; and
  - (3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts under grants, loans, and cooperative agreements).
  
- B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

**AFFIRMATION OF APPLICANT**

Name of Applicant: \_\_\_\_\_

Printed Name of Authorized Representative: \_\_\_\_\_

Relationship of Authorized Representative: \_\_\_\_\_

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

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

Printed Name of Signing Official: \_\_\_\_\_



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1, 2016

SUBJECT: CONSIDERATION TO APPROVE A DEVELOPMENT AGREEMENT WITH BLACK GOLD ESTATES, LLC CONCERNING THE DEVELOPMENT OF MARKET RATE SINGLE-FAMILY HOUSING.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: July 25, 2016
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: Black Gold Estates 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 \$200,000.00. The terms of the attached DA is based on the 2015 Housing Incentive Policy adopted per Resolution #6465.

Fiscal Impact:

Reviewed By: [Signature] Finance Department

FY17 Budget \$800,000.00 Carryover available. (pending DFA approval)

Single Family Housing #010100-44901-170

Attachments: Developers Proposal 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

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. 6470

**A RESOLUTION TO APPROVE A DEVELOPMENT AGREEMENT WITH BLACK GOLD ESTATES, LLC CONCERNING THE DEVELOPMENT OF MARKET RATE SINGLE-FAMILY.**

WHEREAS, the City of Hobbs is proposing to enter into a Development Agreement with Black Gold Estates, LLC 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 1<sup>st</sup> day of August, 2016.

\_\_\_\_\_  
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 \_\_\_\_\_ 2016 by and between the City Of Hobbs, New Mexico, a municipal corporation (hereinafter "City"); and Black Gold Estates, LLC, 4830 N. Zia Crossing, 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 various Subdivisions located within the Municipal Boundaries.

**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 2016 are eligible through 12/31/2016.

- 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 the City of Hobbs Annual Pavement/Concrete Work Program, Contract #1430-09, as updated or amended; and the City of Hobbs Annual Utility Work Program, Contract #1442-09, as updated or as amended.

**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 Two Hundred Thousand Dollars (\$200,000.00), 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.

**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 Black Gold Estates, LLC, 4830 N. Zia Crossing, 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.**

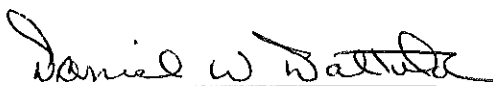
The foregoing constitutes the entire agreement between the parties hereto and may be modified only in writing by the parties hereto.

**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

DECLARATION OF RESTRICTIVE COVENANTS  
FOR LOT # \_\_\_\_\_, OF BLOCK # \_\_\_\_\_ WITHIN  
\_\_\_\_\_ SUBDIVISION

THIS DECLARATION made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

RECITALS:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and by this reference incorporated herein as the "Property"; and

WHEREAS, Declarant has requested incentive funds from the City of Hobbs, New Mexico, a New Mexico Municipal Corporation; and

WHEREAS, a proviso of receipt of such funds so requested is to restrict certain usage of the property to the benefit of the City.

NOW THEREFORE, Declarant on behalf of themselves, beneficiaries, personal representatives, successors and assigns does hereby make and establish for said property the following restrictive covenant which is to run with the land and shall be binding on all parties hereto, and all persons claiming by, through and under them until 2024.

1. The property as described herein shall not 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.

IN WITNESS WHEREOF, I hereby set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Declarant:  
\_\_\_\_\_

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

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he executed the same as his free act and deed.

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

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

My Commission Expires: \_\_\_\_\_



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: August 1, 2016

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: July 25, 2016
SUBMITTED BY: Kevin Robinson - Planning Department

Summary: French Brothers 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 \$200,000.00. The terms of the attached DA is based on the 2015 Housing Incentive Policy adopted per Resolution #6465.

Fiscal Impact:

Reviewed By: [Signature] Finance Department

FY17 Budget \$800,000.00 Carryover available. (pending DFA approval)

Single Family Housing #010100-44901-170

Attachments: Developers Proposal 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

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. 6471

**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 1<sup>st</sup> day of August, 2016.

\_\_\_\_\_  
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 \_\_\_\_\_ 2016 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 various Subdivisions located within the Municipal Boundaries.

**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 2016 are eligible through 12/31/2016.

- 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 the City of Hobbs Annual Pavement/Concrete Work Program, Contract #1430-09, as updated or amended; and the City of Hobbs Annual Utility Work Program, Contract #1442-09, as updated or as amended.

**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 Two Hundred Thousand Dollars (\$200,000.00), 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.

**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

DECLARATION OF RESTRICTIVE COVENANTS  
FOR LOT # \_\_\_\_\_, OF BLOCK # \_\_\_\_\_ WITHIN  
\_\_\_\_\_ SUBDIVISION

THIS DECLARATION made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

RECITALS:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and by this reference incorporated herein as the "Property"; and

WHEREAS, Declarant has requested incentive funds from the City of Hobbs, New Mexico, a New Mexico Municipal Corporation; and

WHEREAS, a proviso of receipt of such funds so requested is to restrict certain usage of the property to the benefit of the City.

NOW THEREFORE, Declarant on behalf of themselves, beneficiaries, personal representatives, successors and assigns does hereby make and establish for said property the following restrictive covenant which is to run with the land and shall be binding on all parties hereto, and all persons claiming by, through and under them until 2024.

1. The property as described herein shall not 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.

IN WITNESS WHEREOF, I hereby set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Declarant:  
\_\_\_\_\_

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

The foregoing instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he executed the same as his free act and deed.

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

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

My Commission Expires: \_\_\_\_\_