

Commission Meeting Agenda



Mayor

Samuel D. Cobb

City Commission

Marshall R. Newman
Christopher R. Mills
Larron B. Fields
Joseph D. Calderón
Dwayne Penick
Don R. Gerth

Acting City Manager

Manny Gomez

June 1, 2020



Hobbs City Commission

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

Monday, June 1, 2020 – 6:00 p.m.

Virtual Meeting Held by Video Conference

Sam D. Cobb, Mayor

Marshall R. Newman
Commissioner – District 1

Joseph D. Calderon
Commissioner – District 4

Christopher R. Mills
Commissioner – District 2

Dwayne Penick
Commissioner – District 5

Larron B. Fields
Commissioner – District 3

Don R. Gerth
Commissioner – District 6

A G E N D A

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

CALL TO ORDER AND ROLL CALL

INVOCATION AND PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

1. Minutes of the May 18, 2020, Regular Commission Meeting

PROCLAMATIONS AND AWARDS OF MERIT

PUBLIC COMMENTS *(Citizens who wish to speak must sign the Public Comment Registration Form located in the Commission Chamber prior to the beginning of the meeting.)*

Due to the current COVID-19 State of Emergency and the orders of the New Mexico Department of Health, public comment should be submitted in writing via email to the City Clerk at jfletcher@hobbsnm.org or via fax at (575) 397-9334 no later than 4:30 p.m. on June 1, 2020.

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. 6941 – Authorizing Opening a Special Revenue Fund in Accordance with State Audit Rule 2.2.2.10 (O) *(Toby Spears, Finance Director)*

DISCUSSION

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

3. Resolution No. 6942 – Authorizing a First Amendment to Memorandum of Agreement with the New Mexico Department of Transportation Regarding CARES Act Funds for the Hobbs Express Public Transportation Program *(Jan Fletcher, City Clerk)*
4. Resolution No. 6943 - Approving a Development Agreement with ABS Homes Concerning the Development of Market Rate Single-Family Housing *(Kevin Robinson, Planning Department)*

COMMENTS BY CITY COMMISSIONERS, CITY MANAGER

5. Next Meeting Date:
 - City Commission Regular Meeting
June 15, 2020, at 6:00 p.m.

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



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 1, 2020

SUBJECT: City Commission Meeting Minutes

DEPT. OF ORIGIN: City Clerk's Office
DATE SUBMITTED: May 27, 2020
SUBMITTED BY: Jan Fletcher, City Clerk

Summary:

The following minutes are submitted for approval:

- Regular Commission Meeting of May 18, 2020

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, May 18, 2020, in Hobbs, New Mexico. This was a virtual meeting held by video conferencing and viewable to the public via Livestream on the City's website at www.hobbsnm.org.

Call to Order and Roll Call

Mayor Cobb called the virtual meeting to order at 6:00 p.m. and welcomed everyone viewing through Livestream. Mayor Cobb called the roll and the following identified themselves as participating remotely through video conferencing and answered present:

Mayor Sam D. Cobb
Commissioner Marshall R. Newman
Commissioner Christopher Mills
Commissioner Larron B. Fields
Commissioner Joseph D. Calderón
Commissioner Dwayne Penick
Commissioner Don Gerth

The following staff members and presenters participated remotely in the meeting via video conference:

Manny Gomez, Acting City Manager/Fire Chief
Efren Cortez, City Attorney
Kevin Robinson, Development Director
Toby Spears, Finance Director
Jan Fletcher, City Clerk
Missi Currier, CEO with EDC
Patty Collins, Executive Director of HCC
Ms. Rachel Moon, President of HHCC
Danielle Hernandez, Board Member of HHCC

Mayor Cobb explained the guidelines issued by the New Mexico Attorney General's Office, Open Government Division (OGD), regarding the virtual public body meeting through video conferencing. He stated the following guidelines must be followed:

- At the start of the meeting, the Mayor should announce the names of those members of the public body participating remotely.
- All members of the public body participating remotely must identify themselves whenever they speak and must be clearly audible to the other members of the public body and to the public.
- Members of the public should be afforded remote access, via livestream.
- Mayor should suspend discussion if the audio or video is interrupted.
- All votes of the public body must be a roll call vote.

- The public body should produce and maintain a recording of the open session of the meeting.

**For the record, it is noted that all of these guidelines were strictly followed during the entire City Commission meeting.

Invocation and Pledge of Allegiance

Commissioner Fields delivered the invocation and Mayor Cobb led the Pledge of Allegiance.

Approval of Minutes

Commissioner Calderón moved that the minutes of the regular meeting held on Monday, May 4, 2020, be approved as presented. Commissioner Newman seconded the motion and the roll call vote was recorded as follows: Mills yes, Fields yes, Newman yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried.

Closed Session

The City Commission convened in a virtual closed session on Monday, May 18, 2020, at 5:15 p.m., for the discussion of the purchase, acquisition or disposal of real property, specifically related to the disposal of City-owned real property located northeast of the intersection of Texas and Dal Paso Streets. The matters discussed in the closed meeting were limited only to that specified above. No action was taken during the meeting.

Proclamations and Awards of Merit

Recognition of City Employees - Milestone Service Awards for the Month of May, 2020

Acting City Manager/Fire Chief Manny Gomez recognized the employees who have reached milestone service awards with the City of Hobbs for the month of March, 2020, which total 15 years of service worked. Acting City Manager/Fire Chief Gomez read their names, job titles and gave a brief summary of the job duties performed by each of the following employees:

- 5 years – Gary Hendley, Traffic Department
- 10 years – William Griffin, W.W.T.P.

Acting City Manager/Fire Chief Gomez stated these employees are not present due to COVID-19 and social distancing requirements. He thanked the Commission for

recognizing the employees and their service to the City. He stated employees are the most important resource and asset within the organization. Acting City Manager/Fire Chief Gomez expressed thanks and appreciation to the employees and their families.

Proclamation Proclaiming the Week of May 17 - 23, 2020, as "Emergency Medical Services Week" with the Theme "EMS Strong: Ready Today. Preparing for Tomorrow".

Mayor Cobb proclaimed the week of May 17 - 23, 2020, as "*Emergency Medical Services Week*".

Acting City Manager/Fire Chief Gomez stated it is important to honor and celebrate Emergency Medical Service (EMS) professionals during this week. This year's theme was developed long before the COVID-19 crisis and is particularly meaningful now as the EMS community rallies to support those affected by this crisis, all while still responding to the everyday emergencies that continue to occur. Now more than ever, it is important to honor and celebrate all EMS professionals who are supporting the health and well-being of our nation. Acting City Manager/Fire Chief Gomez stated the City has been fortunate not to have any local EMS professionals test positive for COVID-19 but some have been quarantined due to having close contact with patients who have tested positive for COVID-19. Acting City Manager/Fire Chief Gomez stated all of the local fire stations will be open this week to do blood pressure tests by appointment only.

Proclamation Proclaiming Monday, May 18, 2020, as "Hobbs High School Class of 2020 Day - Light Up the Night".

Mayor Cobb proclaimed the week of May 18, 2020, as "*Hobbs High School Class of 2020 Day - Light Up the Night*".

Acting City Manager/Fire Chief Gomez stated the City has partnered with the Hobbs Municipal Schools (HMS) to honor and recognize the graduates of the Hobbs High School (HHS) Class of 2020 this evening by a "Light Up the Night" event. He stated from 7:00 p.m. to 10:00 p.m. tonight, the lights at Watson Stadium, Veterans Memorial Complex and the Jumbotron at the CORE will be lit up in honor of the graduates. Acting City Manager/Fire Chief Gomez stated photographs of the graduates will be on some of the area electronic billboards. He encouraged residents of the community to turn on their porch and patio lights in recognition of the graduates.

Commissioner Fields stated he is very happy for the HHS Class of 2020 Graduates but sad that COVID-19 interrupted their graduation. He also stated he is proud of the City for recognizing the graduates.

Commissioner Newman stated he received several calls from the community regarding the 2020 HHS Graduation. He thanked the City employees for hanging the graduates' pictures throughout the City.

Commissioner Calderón thanked the City for partnering with the HMS in recognizing the HHS Class of 2020 Graduates.

Commissioner Penick congratulated the HHS Class of 2020 Graduates and wished them well in the future.

Public Comments

The public was given the opportunity to submit public comments prior to the meeting in writing via email to the City Clerk at jfletcher@hobbsnm.org or via fax to (575) 397-9334 by 4:30 p.m., on May 18, 2020. There was one public comment submitted.

Mayor Cobb read a letter from T.J. Parks, Superintendent of HMS which stated:

"THANK YOU! Hobbs Municipal Schools is very appreciative of the City of Hobbs for your unending support of our staff and students. The resolution for our 2020 Seniors, CTE Facility, hanging the Senior banners across town as well as the multitude of shared services our community receives because of the partnership between City of Hobbs and Hobbs Municipal Schools makes Hobbs a great place to live. The City of Hobbs once again steps up to show the community, their tax dollars are used to provide resources we can all be proud of. Your leadership does not go unnoticed. These are difficult and unprecedented times, but your guidance takes some of the sting out of the current situation. Thanks again for all you do. Hobbs is blessed to have a visionary Mayor, hardworking City Manager and dedicated Commission".

Consent Agenda

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

Resolution No. 6937 - Authorizing Submission of the Fire Prevention and Safety Grant to the U. S. Department of Homeland Security.

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

Discussion

FY 20-21 Funding Requests by Economic Development and Marketing Entities (Exempt Entities, HMC 3.25.030).

➤ **Economic Development Corporation of Lea County (EDC)**

Ms. Missi Currier of the Economic Development Corporation of Lea County (EDC) thanked the Commission for its continuing investment and support of the EDC. She stated the EDC is dedicated to expanding and diversifying the economy in Hobbs and Lea County. She stated this is achieved through recruitment of new businesses such as Covenant Medical Hospital, Holtec and Eden Radioisotopes. Ms. Currier stated the EDC continues to promote "FlyHobbs". She stated the Hobbs economy has been hit hard by COVID-19 and the decline of the oil and gas industry. Ms. Currier stated the recovery is not an overnight fix to pick up where the City left off. She stated the EDC is requesting funding as follows:

- \$200,000.00 Professional Services
- \$ 50,000.00 Special Projects – Retail Recruitment
- \$200,000.00 Air Service (Lodgers' Tax)

Mayor Cobb stated he and Acting City Manager/Fire Chief Gomez are members of the EDC Board and the Board are brainstorming new ideas to promote Lea County.

➤ **Hobbs Chamber of Commerce**

Ms. Patty Collins, Executive Director of the Hobbs Chamber of Commerce (HCC) reviewed the HCC requested funds in the amount of \$75,000.00 as follows:

- \$17,500.00 for Find It in Hobbs Marketing;
- \$17,500.00 for Hobbs Jobs Marketing;
- \$30,000.00 for Welcome Services; and
- \$10,000.00 for administrative overhead.

Ms. Collins reviewed the activities of the Chamber and stated the mission of the Chamber is to provide the tools and create an environment for Hobbs-area businesses to thrive. She states over 300 welcome packets have been mailed and more than 300 packets distributed locally. Ms. Collins stated during the health pandemic, they have been working from home to continue distributing information to businesses. She expressed appreciation to Mayor Cobb for serving on the Task Force to promote re-opening businesses in Hobbs.

In reply to Commissioner Penick's inquiry, Ms. Collins stated the HCC has not asked for a funding increase since 2013. In 2012, HCC was funded \$90,000.00 by the City and she did not know why it was decreased in 2013. Ms. Collins stated she will ask

Acting City Manager/Fire Chief Gomez, after the meeting, if he remembers why it was decreased.

➤ Hobbs Hispano Chamber of Commerce

Ms. Rachel Moon and Ms. Danielle Hernandez with the Hobbs Hispano Chamber of Commerce (HHCC) presented the FY 21 funding request. Ms. Moon reviewed the events HHCC hosted for FY 20. She stated some of the events will be postponed and rescheduled in the future due to COVID-19. Ms. Hernandez stated the HHCC has created new program "Local Support Local" which local businesses donate to promote shopping with local vendors. Ms. Moon stated the HHCC is requesting funds in the amount of \$64,000.00 for operations which is the same amount requested last year. She thanked the Commission for its continuous support of the HHCC.

Action Items

Resolution No. 6938 - Adopting Preliminary Budget for FY 2020-2021.

Mr. Toby Spears, Finance Director, presented the FY 2020-21 Preliminary Budget for formal approval by the Commission. He stated this proposed preliminary budget was presented to the Commission on May 4, 2020, and there have been no changes since that presentation. Mr. Spears stated citizens may view the complete budget flipbook consisting of 200 pages on the City webpage at www.hobbsnm.org.

Mr. Spears stated the preliminary budget includes \$60,216,908.66 in proposed General Fund expenditures and \$114,915,274.70 in proposed expenditures for all funds. He stated revenues in the General Fund are projected at \$48,102,308.70 and total revenue projections for all funds are set at \$100,690,471.61. The current projected General Fund cash reserve is set at 41% with a preliminary ending cash balance of \$64,812,849.45 for all funds. Mr. Spears stated there is a projected 39% decrease in gross receipts tax received from the State.

After a short discussion regarding the financial position of the City as compared to some other communities, Commissioner Calderón moved that Resolution No. 6938 be approved as submitted. Commissioner Newman seconded the motion and the vote was recorded as follows: Newman yes, Mills yes, Fields yes, Calderon yes, Penick yes, Gerth yes, Cobb yes. The motion carried. A copy of the resolution and supporting documentation is attached and made a part of these minutes.

Resolution No. 6939 - Authorizing FY 20-21 Funding Appropriations to Various Social Service Agencies.

Mayor Cobb explained the resolution to appropriate funds for social service agencies and stated he, Commissioner Fields and Commissioner Gerth met as a review

committee to evaluate the funding requests. He stated the committee's goal is to keep the funding intact, as last years. Mayor Cobb stated some agencies requested less funding for FY 20-21. He further stated the Committee recommends funding for social service agencies in the amount of \$389,000.00 as follows:

• CASA	\$ 20,000.00
• Faith in Action	\$ 13,500.00
• Isaiah's Kitchen	\$ 14,000.00
• Legacy Pregnancy Resource Center	\$ 7,500.00
• My Power, Inc.	\$ 35,000.00
• Option	\$ 19,000.00
• Opportunity House	\$ 9,500.00
• Palmer Drug Abuse Program	\$ 50,000.00
• Salvation Army	\$ 8,500.00
• Southwest Symphony	\$ 5,000.00
• Teen Court	\$ 32,000.00
• Weekend Hunger Initiative	\$ 20,000.00
• Community Drug Coalition	\$ 155,000.00

There being no discussion, Commissioner Fields moved that Resolution No. 6939 be approved as submitted. Commissioner Gerth seconded the motion and the vote was recorded as follows: Newman yes, Mills yes, Fields yes, Calderon yes, Penick 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. 6940 - Approving a Development Agreement with ALJO, LLC, for Market Rate Family Housing in the Amount of \$200,000.00.

Mr. Kevin Robinson, Development Director, stated ALJO, LLC has requested a development agreement concerning the development of single-family housing units located within the municipal boundaries. He stated the developer proposes to produce market rate single-family units and is requesting infrastructure incentives in the amount of \$200,000.00. Mr. Robinson stated the units will be located at the Tanglewood Subdivision, northeast intersection of East Bender and Ranchland Road.

In response to Mayor Cobb's question, Mr. Robinson stated all units which have received a Certificate of Occupancy are either already occupied or ready to be occupied.

There being no further discussion, Commissioner Calderón moved that Resolution No. 6940 be approved as submitted. Commissioner Gerth seconded the motion and the vote was recorded as follows: Newman yes, Mills yes, Fields yes, Calderon yes, Penick yes, Gerth yes, Cobb yes. The motion carried. A copy of the resolution and agreement are attached and made a part of these minutes.

Comments by City Commissioners, City Manager

Acting City Manager/Fire Chief Gomez stated the City created a nine member committee to create a plan to re-open all City facilities. He stated you can access the City of Hobbs Re-Open Plan on the City of Hobbs website at www.hobbsnm.org. Acting City Manager/Fire Chief Gomez clarified that the City's re-opening plan is strictly for City of Hobbs' facilities and not private businesses. He stated the City continues to provide services to the community. Acting City Manager/Fire Chief Gomez stated the Fire Marshal's Office will assist City departments with determining the maximum occupancy at various percentages. He continued to state the City seeks to utilize a "phased approach" in reopening City services. Acting City Manager/Fire Chief stated the phased approach will largely follow the timelines outlined by the State of New Mexico's plan to reopen the State. He stated the phased approach will be based on current data and readiness and will be aimed at mitigation of risk of a resurgence of COVID-19. Acting City Manager/Fire Chief Gomez stated the protection of the most vulnerable citizens in Hobbs is paramount. The phased re-open plan will be implemented on a City-wide basis at the discretion of the City Manager. He stated the City believes the phased approach is the safest and most effective way to proceed during this pandemic.

Commissioner Mills stated he recently had lunch at the City Park and viewed that the park was in great shape. He thanked the Parks and Open Spaces staff for all of their hard work in keeping the City's parks looking good.

Commissioner Mills thanked the City for partnering with the HMS in assisting to celebrate graduation for the 2020 Hobbs High School Seniors during the COVID-19 epidemic.

Commissioner Mills stated we all need to respect the opinions of others and come together so we will be better off during the COVID-19 epidemic.

Commissioner Calderón stated he does not understand why people refuse to wear a mask. He stated some may have medical conditions but others just do not care.

Commissioner Fields commended City employees for reaching their milestone service awards. He thanked Acting City Manager/Fire Chief Gomez for all of his assistance to any request he has made.

Commissioner Penick thanked the EMS and medical staff across the United States for keeping us safe and putting themselves in harm's way. He also thanked the City employees for going above and beyond to hang the HHS Senior pictures throughout the community.

Commissioner Penick also thanked the Hobbs Chamber of Commerce and the Hobbs Hispano Chamber of Commerce for all they do in the community. Once the health

pandemic has passed, he suggested holding a City-wide picnic to bring the community back together.

Commissioner Penick expressed his appreciation to Mr. Spears and the Finance staff for their hard work in preparing the budget. He stated Acting City Manager/Fire Chief Gomez has done a great job with the City's finances.

Commissioner Penick stated it his desire for all businesses to be able to re-open as he feels everyone is essential.

Mayor Cobb stated he received a call from the Governor's Office during this meeting and they are working together daily to get all businesses open in a safe manner. He stated the Governor does care about the safety of New Mexico citizens. Mayor Cobb stated there needs to be mutual respect between business owners and patrons to ensure there is not another COVID-19 spike.

Adjournment

There being no further business or comments, Commissioner Calderón moved that the meeting adjourn. Commissioner Newman seconded the motion and roll call vote was recorded as follows: Newman yes, Mills yes, Fields yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried. The meeting adjourned at 7:20 p.m.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



CONSENT AGENDA



CITY OF HOBBS

COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 1, 2020

SUBJECT: Opening a special revenue funds in accordance with State Audit Rule 2.2.2.10(O).
DEPT. OF ORIGIN: Finance Department
DATE SUBMITTED: May 20, 2020
SUBMITTED BY: Deborah Corral, Assistant Finance Director

Summary:

A new special revenue funds need to be opened for FY2021:

- Fund 210 – Legislative Appropriation Fund

State Audit Rule 2.2.2.10(O) mandates that authority must be granted for the creation of a special revenue funds. The creation of this funds will allow for good accounting practices for audit and reporting purposes.

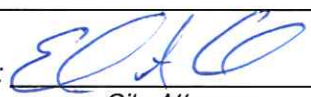
Fiscal Impact:

FY21 Preliminary Budget included a revenue and expense budget for future legislative appropriations. Any expense above the grant funded revenue will need to be funded as a transfer from the general fund. There are currently no budgeted transfers into this account – should one be needed it will be included in a future BAR.

Reviewed By: 
Finance Department

Attachments: Resolution

Legal Review:

Approved As To Form: 
City Attorney

Recommendation:

Approve the resolution to open the funds listed above in accordance with GASB No. 54.

Approved For Submittal By:


Department Director

City Manager

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

CITY OF HOBBS

RESOLUTION NO. 6941

A RESOLUTION AUTHORIZING THE OPENING OF
1 NEW SPECIAL REVENUE FUND IN ACCORDANCE WITH
STATE AUDIT RULE 2.2.2.10 O

WHEREAS, in order to maintain good accounting practices for audit and reporting purposes, one new special revenue funds would be beneficial.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor be and hereby is authorized and directed to effectuate this resolution authorizing the opening of Fund 210 – Legislative Appropriation Fund in accordance with State Audit Rule 2.2.2.10 O.

PASSED, ADOPTED AND APPROVED THIS 1st day of June, 2020.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

ACTION ITEMS



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 1, 2020

SUBJECT: Resolution Authorizing a First Amendment to Memorandum of Agreement with the New Mexico Department of Transportation for Public Transportation for FY 19-20 Regarding FTA CARES Act

DEPT. OF ORIGIN: City Clerk's Office
DATE SUBMITTED: May 20, 2020
SUBMITTED BY: Jan Fletcher, City Clerk

Summary:

The attached First Amendment to Memorandum of Agreement is necessary as a result of FTA CARES Act funding which has become available for New Mexico Section 5311 recipients. The balance of the FTA Section 5311 grant as of March 1, 2020, is now eligible for reimbursement at 100% funding. This will cover the costs of administrative leave, fuel, cleaning, sanitizing vehicles, etc. Any expenses that are eligible for Section 5311 administrative or operating funding are also eligible for CARES Act funds. Initial funding levels and the new funding levels for the remainder of FY 19-20 are itemized below:

Initial MOA	Total	Federal	Local
Administration (80/20) Section 5311	\$ 87,886.40	\$ 70,309.12	\$ 17,577.28
Operating (50/50) Section 5311	\$ 765,246.00	\$ 382,623.00	\$ 382,623.00
Capital to Subgrantee (80/20) Section 5339	\$ 126,299.74	\$ 101,039.79	\$ 25,259.95
TOTAL ADMIN, OPER AND CAPITAL	\$ 979,432.14	\$ 553,971.91	\$ 425,460.23

Revised MOA for CARES Funding	Total	Federal	Local
Administration (80/20) Section 5311	\$ 30,753.20	\$ 24,602.56	\$ 6,150.64
Operating (50/50) Section 5311	\$ 298,752.32	\$ 149,376.16	\$ 149,376.16
Administration (100%) Section 5311 <i>balance of unused grant as of 3/1/20</i>	\$ 57,133.20	\$ 57,133.20	-
Operating (100%) Section 5311 <i>balance of unused grant as of 3/1/20</i>	\$ 466,493.68	\$ 466,493.68	-
Capital to Subgrantee (80/20) Section 5339	\$ 126,299.74	\$ 101,039.79	\$ 25,259.95
TOTAL ADMIN, OPER AND CAPITAL	\$ 979,432.14	\$ 798,645.39	\$ 180,786.75

Fiscal Impact:

Reviewed By: 
Finance Department

The overall total Federal grant award remains the same at \$979,432.14. The City's local match for FFY 19-20 has been reduced from \$425,460.23 to \$180,786.75 resulting in potential additional revenue to the City in the amount of **\$244,673.48**.

Attachments:

Resolution Authorizing the Mayor to Execute a First Amendment to Memorandum of Agreement with NMDOT

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

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

CITY OF HOBBS

RESOLUTION NO. 6942

**A RESOLUTION AUTHORIZING A FIRST AMENDMENT TO
MEMORANDUM OF AGREEMENT WITH THE
NEW MEXICO DEPARTMENT OF TRANSPORTATION
REGARDING CARES ACT FUNDS FOR THE
HOBBS EXPRESS PUBLIC TRANSPORTATION PROGRAM**

WHEREAS, the City of Hobbs and the New Mexico Department of Transportation entered into a Memorandum of Agreement on September 12, 2019, providing for the operation of the Hobbs Express public transportation program; and

WHEREAS, due to the COVID-19 health pandemic, the parties desire to amend the agreement to provide for additional funding available under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

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 First Amendment to Memorandum of Agreement with the New Mexico Department of Transportation. A copy of the First Amendment to Memorandum of Agreement is attached hereto and incorporated herein by reference.

PASSED, ADOPTED AND APPROVED this 1st day of June, 2020.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, CITY CLERK

FISCAL YEAR 2020 (FY20)
FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT
BETWEEN
THE NEW MEXICO DEPARTMENT OF TRANSPORTATION
AND
CITY OF HOBBS

This First Amendment is to the Memorandum of Agreement between the **STATE OF NEW MEXICO**, acting through its **DEPARTMENT OF TRANSPORTATION** (Department) and **CITY OF HOBBS**, (Subrecipient). This first amendment is effective as of the date of the last party to sign it on the signature page below.

Recitals

Whereas, the Department and the Subrecipient entered into a Memorandum of Agreement designated as Contract No. **M01654**, on **September 12, 2019**;

Whereas, Section 48 allows the parties to alter the Agreement by written consent of both parties hereto;

Whereas, Due to COVID-19 pandemic and due to unexpected revenue losses due to reduced service operations during an emergency;

Whereas, The Subrecipient has additional costs for administrative leave for transit personnel due to reduced operations as well as additional costs to prevent, prepare for, and respond to COVID-19;

Whereas, 49 U.S.C. 5311 Program funds are now available at 100% federal share to assist the Subrecipient in supporting transit operations under this program to prevent, prepare for and respond to COVID-19.

Now, Therefore, pursuant to NMSA 1978; Section 67-3-69, the parties agree as follows:

A. Replace Section 2. Cost of Program of the original Agreement with the following:

2. Cost of Program.

The Department shall provide partial federal funding to the Subrecipient to cover expenses of the Program as described in the approved Operations Profile from October 1, 2019 to February 29, 2020 for Program Administration in the amount of **\$24,602.56** at 80/20 match ratio and Operating Assistance in the amount of **\$149,376.16** at 50/50 match ratio. The Department shall provide additional federal funding at 100% federal share to the Subrecipient to cover expenses of the Program from March 1, 2020 to September 30, 2020 for Program Administration in the amount of **\$57,133.20** and Operating Assistance in the amount of **\$466,493.68**. Total federal funds amount is not to exceed **\$798,645.39**, as described below:

Subaward FY 20

City of Hobbs	Total	Federal	Local
Administration (80/20) Section 5311	\$ 30,753.20	\$ 24,602.56	\$ 6,150.64
Operating (50/50) Section 5311	\$ 298,752.32	\$ 149,376.16	\$ 149,376.16
Administration (100%) Section 5311	\$ 57,133.20	\$ 57,133.20	
Operating (100%) Section 5311	\$ 466,493.68	\$ 466,493.68	
Capital to Subrecipient (80/20) Section 5339	\$ 126,299.74	\$ 101,039.79	\$ 25,259.95
Total Administration, Operating and Capital	\$ 979,432.14	\$ 798,645.39	\$ 180,786.75

Any remaining federal funds that are not expended by September 30, 2020 will revert to the Department.

This program is funded with grants provided by the FTA Section 5311 Rural Transit Funds, Catalog of Federal Domestic Assistance number 20.509 and FTA Section 5339(a) Buses and Bus Facilities Formula, Catalog of Federal Domestic Assistance number 20.526 (See Attachment A). 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 Subrecipient. The Subrecipient shall take all actions necessary to fund its share of the Program.

B. Replace Attachment A-1 to the original agreement with Attachment A-1 revised, replace Attachment A-2 to the original agreement with Attachment A-2 revised and add Attachment A-4 as attached to this amendment.

All other obligations set forth in the original Agreement shall remain in full force and effect unless expressly amended or modified by this **First Amendment**.

The remainder of this page is intentionally left blank.

In Witness Whereof, each party is signing this Agreement on the date stated below that party's signature.

**NEW MEXICO DEPARTMENT OF
TRANSPORTATION**

CITY OF HOBBS


Justin Reese (May 13, 2020)

Michael Sandoval, Cabinet Secretary or
Designate

Signature

Name/Title (please print)

May 13, 2020

Date

Date

Approved as to Form and Legal Sufficiency by the Department's Office of General Counsel.


Assistant General Counsel

5/4/2020

Date





FY 2020 - Section 5311 CARES Act Amendment City of Hobbs

Final Audit Report

2020-05-13

Created:	2020-05-13
By:	Deborah Bach (deborah.bach@state.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAQ7bR9xiXLariXSYkr00kmWUxbdjpYLL

"FY 2020 - Section 5311 CARES Act Amendment City of Hobbs" History

-  Document created by Deborah Bach (deborah.bach@state.nm.us)
2020-05-13 - 3:26:36 PM GMT - IP address: 73.98.2.198
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-  Document e-signed by Justin Reese (Justin.Reese@state.nm.us)
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-  Signed document emailed to Deborah Bach (deborah.bach@state.nm.us) and Justin Reese (Justin.Reese@state.nm.us)
2020-05-13 - 3:35:50 PM GMT

ATTACHMENT A-1 REVISED

§200.331 Requirements for pass-through entities.

All pass-through entities must:

Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

Federal Award Identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Hobbs, City of
(ii) Subrecipient's unique entity identifier (DUNS);	079339222
(iii) Federal Award identification Number (FAIN);	NM-2018-016-00
(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	7/16/2018
(v) Subaward Period of Performance Start and End Date;	10-01-2018 thru 02-29-2020
(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;	Administrative \$24,602.56 Operating \$149,376.16
(vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;	Administrative \$24,602.56 Operating \$149,376.16
(viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;	Administrative \$24,602.56 Operating \$149,376.16
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	FY18 5311 Rural Transit Appropriation for FY19 Program Funding Award
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;	Federal Transit Administration, New Mexico Department of Transportation David Harris - 505 -699-4350, DavidC.Harris@state.nm.us P.O. Box 1149 Santa Fe, NM 87501-1149
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	20.509
(xii) Identification of whether the award is R&D; and	No R&D
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	N/A

ATTACHMENT A-2 REVISED

§200.331 Requirements for pass-through entities.

All pass-through entities must:

Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

Federal Award Identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Hobbs, City of
(ii) Subrecipient's unique entity identifier (DUNS);	079339222
(iii) Federal Award Identification Number (FAIN);	NM-2020-004-00
(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	7/3/2019
(v) Subaward Period of Performance Start and End Date;	10-01-2019 thru 02-29-2020
(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;	Administrative \$0.00 Operating \$0.00
(vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;	Administrative \$0.00 Operating \$0.00
(viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;	Administrative \$0.00 Operating \$0.00
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	FY19 5311 Rural Transit Appropriation for FY20 Program Funding Award
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;	Federal Transit Administration, New Mexico Department of Transportation David Harris - 505 -699-4350, DavidC.Harris@state.nm.us P.O. Box 1149 Santa Fe, NM 87501-1149
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	20.509
(xii) Identification of whether the award is R&D; and	No R&D
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	N/A

ATTACHMENT A-3

§200.331 Requirements for pass-through entities.

All pass-through entities must:

Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

Federal Award Identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Hobbs, City of
(ii) Subrecipient's unique entity identifier (DUNS);	079339222
(iii) Federal Award Identification Number (FAIN);	NM-2019-022-00
(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	7/16/2018
(v) Subaward Period of Performance Start and End Date;	10-01-2019 thru 09-30-2020
(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;	Capital \$101,039.79
(vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;	Capital \$101,039.79
(viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;	Capital \$101,039.79
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	FY18 5339(a) Buses and Bus Facilities Formula Appropriation for FY20 Program Funding Award
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;	Federal Transit Administration, New Mexico Department of Transportation David Harris - 505 -699-4350, DavidC.Harris@state.nm.us P.O. Box 1149 Santa Fe, NM 87501-1149
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	20.526
(xii) Identification of whether the award is R&D; and	No R&D
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	N/A

ATTACHMENT A-4

§200.331 Requirements for pass-through entities.

All pass-through entities must:

Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and

Federal Award Identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Hobbs, City of
(ii) Subrecipient's unique entity identifier (DUNS);	079339222
(iii) Federal Award Identification Number (FAIN);	NM-2020-005-00
(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	3/27/2020
(v) Subaward Period of Performance Start and End Date;	3-01-2019 thru 09-30-2020
(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;	Administrative \$53,646.55 Operating \$466,493.68
(vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;	Administrative \$53,646.55 Operating \$466,493.68
(viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;	Administrative \$53,646.55 Operating \$466,493.68
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	FY20 5311 Rural Area CARES Act Program Appropriation
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;	Federal Transit Administration, New Mexico Department of Transportation David Harris - 505 -699-4350, DavidC.Harris@state.nm.us P.O. Box 1149 Santa Fe, NM 87501-1149
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	20.509
(xii) Identification of whether the award is R&D; and	No R&D
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	N/A

Contract # 1101654
Vendor # 000034339

FISCAL YEAR 2020 (FY 20)
MEMORANDUM OF AGREEMENT
BETWEEN
THE NEW MEXICO DEPARTMENT OF TRANSPORTATION
AND
CITY OF HOBBS

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 (Subrecipient). 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. Section 5311 provides federal assistance for public transportation in rural and non-urbanized areas by way of a formula grant program administered by each state;

Whereas, 49 U.S.C. Section 5339 provides federal assistance for buses and bus-related equipment and facilities by way of a formula grant program administered by each state;

Whereas, the State of New Mexico participates in the 49 U.S.C. Section 5311 and 49 U.S.C. Section 5339 Programs collectively referred to herein as the Program;

Whereas, the Governor of the State of New Mexico designated the Department to administer the Program funds; and

Whereas, the Subrecipient 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 Subrecipient 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 Subrecipient.
 - B. **Use of Capital Equipment.** The Subrecipient 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 Subrecipient shall notify the Department in writing, 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 Subrecipient must notify and seek approval from the Department if there will be an elimination or a reduction of services greater than twenty percent (20%). Notice must be 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 Subrecipient 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 Subrecipient's governing body, shall be stated in the approved Operations Profile. The Department must also approve all fare schedules in writing.
- F. **Advertising.** The Subrecipient 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 thirty (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 Subrecipient 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 Subrecipient 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 Subrecipient shall inform the Department in writing, either hand-delivered or sent 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 Subrecipient to cover expenses of the Program as described in the approved Operations Profile from October 1, 2019 to September 30, 2020 in an amount described below:

Subaward FY 20

City of Hobbs	Total	Federal	Local
Administration (80/20) Section 5311	\$ 87,886.40	\$ 70,309.12	\$ 17,577.28
Operating (50/50) Section 5311	\$ 765,246.00	\$ 382,623.00	\$ 382,623.00
Capital to Subgrantee (80/20) Section 5339	\$ 126,299.74	\$ 101,039.79	\$ 25,259.95
Total Administration, Operating and Capital	\$ 979,432.14	\$ 553,971.91	\$ 425,460.23

Vehicle purchases must be under contract with a vendor by March 31, 2020, with a copy of the contract and signed buyer's order provided to the Department. Vehicle purchase funds that are not obligated by contract by March 31, 2020, may revert to the Department. Any remaining federal funds that are not expended by September 30, 2020 will revert to the Department.

This program is funded with grants provided by the FTA Section 5311 Rural Transit Funds, Catalog of Federal Domestic Assistance number 20.509 and FTA Section 5339(a) Buses and Bus Facilities Formula, Catalog of Federal Domestic Assistance number 20.526. (See Attachment A.) 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 Subrecipient. The Subrecipient shall take all actions necessary to fund its share of the Program.

3. Method of Payment.

The Department shall either reimburse the Subrecipient or pay the vendor on behalf of the Subrecipient 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.

Subrecipients that receive administration and/or operating assistance are to submit Budget Summary Reports on a monthly basis, to be received by the Department by the 25th day of the following month. These invoices shall be submitted electronically to the Department utilizing BlackCat. 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. Accurate ridership numbers documenting the service provided shall be submitted with each monthly invoice. The Department may withhold payment of monthly invoices that are incorrect and/or incomplete.

4. Costs.

- A. 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.
- B. Capital costs incurred by the Subrecipient 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, 2019, the Agreement initiation date, are eligible for reimbursement. Operating or administrative costs incurred after the termination date shall not be eligible for reimbursement.
- C. Within sixty (60) days after completion of this Agreement, the Subrecipient shall submit a final invoice to the Department for Administration and Operating expenses and a financial statement showing the total expense of the Program. Subrecipient 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 be sent to the Department under this active Agreement. The Subrecipient'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 or on October 1, 2019, whichever is later. 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, 2019 to September 30, 2020 may be reimbursed. This Agreement shall expire September 30, 2020 or when Federal funding is expended, whichever occurs first.

7. Termination for Cause.

The Department has the option to terminate this Agreement if the Subrecipient 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 Subrecipients breaches on which the termination is based.

The Department may provide the Subrecipient a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Subrecipient has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Subrecipient has not begun and proceeded in good faith to correct the breach, the Department may declare the Subrecipient 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 Subrecipient 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 Subrecipient. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient has ten (10) days from receipt of the decision to file a

written appeal with the Transit and Rail Division. Upon appeal, the Subrecipient 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 Subrecipient 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 Subrecipient agrees to comply with 49 U.S.C. Section 5323(j)(1) as amended by Moving Ahead for Progress in the 21st 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 \$10,000, the Subrecipient shall seek concurrence in writing from the Department.

12. Rolling Stock.

In acquiring rolling stock, the Subrecipient agrees that the parties are bound by the following provisions:

- A. **Method of Acquisition.** In compliance with 49 U.S.C. Section 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. Section 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. Section 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. Section 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 Subrecipient shall maintain liability, comprehensive, collision, and uninsured motorist insurance adequate to protect the Program equipment, and satisfactory to the Department. The Department shall be named as an additional insured and a loss payee on Subrecipient'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 Subrecipient 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 Subrecipient shall require contractors and subcontractors hired to perform the services under this Agreement to have a commercial general liability insurance policy. The Department shall be named as an additional insured on the contractor's and subcontractor'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 Subrecipient shall require contractors and subcontractors 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' or subcontractors' construction or maintenance activities pursuant to this

Agreement, as memorialized herein and subject to any additional permit that may be required of the contractor or subcontractor to perform said activities.

14. New Mexico Tort Claims Act.

As between the Department and the Subrecipient, 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, Sections 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 used in the program, within thirty (30) days of delivery. Post Delivery Inspection forms shall be completed before the vehicle is placed into service. The forms shall be uploaded to the corresponding vehicle inventory in BlackCat. Vehicle Inventory shall be reported and updated within BlackCat on a quarterly schedule, and as changes to the vehicle inventory occur.
- B. The Subrecipient shall maintain a current written fleet maintenance plan that includes procedures for preventive and defect maintenance, warranty tracking and claims recovery, and recall notification and follow-up. Warranty tracking and claims recovery shall be reported in BlackCat and updated as claims are processed. Recall notifications shall be reported in BlackCat as they are received and updated as repairs are completed.
- C. The Subrecipient shall follow the equipment manufacturer's minimum standards and recommended preventive maintenance schedules. The Subrecipient 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 Subrecipient 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.
- D. The Subrecipient shall keep daily Pre/Post Trip Inspection Records before and after the use of each transit vehicle.
- E. Each vehicle must contain a fire extinguisher, first aid kit (including a blood borne pathogens/biohazard kit), fluorescent triangles and/or safety flares, reflective vests for drivers, flashlights, and web cutters/seat belt cutters, while the vehicle is in operation.
- F. Program Facilities Inventory must be completed for each facility used in the Program. The Program Facility Inventory shall be reported and updated within BlackCat on an Annual schedule, and, as changes to the facility inventory occur.
- G. The Subrecipient shall maintain a current written facility maintenance plan that includes procedures for preventive and defect maintenance, warranty tracking and claims recovery, and recall notification and follow-up.
- H. 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*.
- I. 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*.
- J. The Subrecipient shall notify the Department immediately of vehicular/facilities accidents, thefts, or vandalism involving Program equipment. All supporting documentation relating to the incident, including police reports, damage assessments, insurance claims, shall be reported and uploaded in BlackCat to the

corresponding inventory record. Failure to notify the Department shall be considered a material breach of contract subject to the provisions of *Section 7. Termination for Cause*.

- K. All program equipment that is damaged in an accident, by vandalism, or weather is to be repaired or replaced depending on the physical and monetary extent of the damage and according to its scheduled final disposition.
- L. If the Subrecipient wants to remove any Program equipment from service or dispose of such equipment either as a result of planned withdrawal, casualty loss, or transfer, the Subrecipient shall submit a completed disposition or transfer request in BlackCat including all relevant and required supporting documentation. Subrecipients may also contact the Department to obtain specific disposition instructions.
- M. 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 Subrecipient 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.
- N. Upon termination of the Agreement under *Section 7. Termination for Cause*, the Subrecipient 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 Subrecipient shall be reimbursed for its pro-rata share of the Program equipment's depreciated value as determined by the Straight Line Depreciation method.
- O. The Subrecipient 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 Subrecipient is responsible for the cost of restoring the vehicle(s) to its original condition.

16. Charter Bus Requirements.

The Subrecipient agrees to comply with 49 U.S.C. Section 5323(d) and 49 C.F.R. Part 604, which provides that recipients and subrecipients 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. Section 5323(f) and 49 C.F.R. Part 605, recipients and subrecipients 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 Subrecipient purchases will reflect in a lien in favor of the Department. The liens will remain in effect according to the following schedule:

Category	Typical Characteristics		Minimum Life (either years or miles)	
	Approx. GVW	Average Cost	Years	Miles
Heavy-Duty Large Bus	33,000 to 40,000lbs	\$325,000 to over \$600,000	15	625,000
Medium-Duty and Purpose-Built Bus	16,000 to 26,000lbs	\$75,000 to \$175,000	10	285,000
Light-Duty Mid-Sized Bus	10,000 to 16,000lbs	\$50,000 to \$65,000	8	240,000
Light-Duty Small Bus, Cutaways, and Modified Van	6,000 to 14,000	\$30,000 to \$40,000	7	175,000

The Subrecipient 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 Subrecipient 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. **Monthly Budget Summary Reporting.** The Subrecipient shall submit a monthly invoice/report using BlackCat to include financial expenditures and ridership information, as described in *Section 3. Method of Payment*. This monthly invoice shall be submitted to the Department by the 25th of the following month.
- B. **Quarterly Vehicle/Facility Reporting.** The Program Vehicle/Facilities Inventory shall be reported and updated within the Electronic Grants Management Performance System (BlackCat) on a quarterly schedule, and as changes to the vehicle/facilities inventory occur.
- C. **Drug and Alcohol Quarterly Testing Report.** The Subrecipient will submit a quarterly Testing Report in BlackCat for each quarter of the calendar year. Reports are due January 10, April 10, July 10, and October 10 respectively.
- D. **Semi-annual DBE Reporting.** The Subrecipient will submit to the Department a semi-annual DBE Report due May 15 (for the period October 1 to March 31) and due November 15 (for the period April 1 to September 30).
- E. **National Transit Database (NTD) Rural Report.** The Subrecipient will submit to the Department an annual NTD report, as required by 49 U.S.C. Section 5335, due December 15. New and updated regulations require transit agencies reporting to the NTD to include condition information on assets reported to the database.
- F. **Drug and Alcohol Management Information System (MIS) Data.** The Subrecipient will submit drug and alcohol testing data for the previous calendar year using the Management Information System (MIS) Data Collection Form to the Department before March 1 of each year.
- G. **Drug and Alcohol Compliance Review/Report** The Subrecipient will participate in an annual Drug and Alcohol Compliance Review by the Department. Once a final report has been issued, the Subrecipient will

implement corrective actions, including supportive documentation, for all deficiencies cited in the final report and respond to all recommendations within ninety (90) days of the report's issuance.

- H. **Technical Assistance and Compliance Review/Report.** The Subrecipient will participate in a biennial Technical Assistance and Compliance Review by the Department. Once a final report has been issued, the Subrecipient will implement corrective actions, including supportive documentation, for all deficiencies cited in the final report and respond to all recommendations in the final report within ninety (90) days of the report's issuance.
- I. **Transit Asset Management (TAM) Reporting.** The Subrecipient will participate in a group TAM Plan sponsored by The Department (49 U.S.C. 625). All TAM plan participants must sign a TAM Plan Approval Statement. The group plan is implemented over a four-year time horizon, beginning October 1, 2019. TAM reporting requires participants to maintain updated asset/facility inventories and condition assessments in BlackCat.

The Department may withhold payment of monthly invoices if reports are not submitted in a timely manner, are incorrect and/or incomplete. The Subrecipient'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 Subrecipient 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 Subrecipient shall grant authorized representatives of the Department, the state and the federal government access to books, documents, papers, reports, and records of the Subrecipient or its contractors or subcontractors, which are directly pertinent to this Agreement, for the purpose of making audits, examination excerpts, and transcriptions. The Subrecipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Subrecipient 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 Subrecipient 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. Section 552a. Among other things, the Subrecipient agrees to obtain the express consent of the federal government before the Subrecipient or its employees operate a system of records on behalf of the federal government. The Subrecipient 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 Agreement.

The Subrecipient agrees to include these requirements in each contract and 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 Subrecipient shall ensure that an annual audit of the Program based on the Subrecipient's fiscal year shall be conducted pursuant to 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards. The Subrecipient, prior to initiation of the audit, shall seek written approval from the Department of the auditing firm. The Subrecipient 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 (6) months following the close of the local fiscal year. Audit costs are an eligible administrative expense. Should the Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient of the Department's election to withhold an amount equal to the payment owed under this Section from any future distribution owed to Subrecipient 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 Subrecipient shall not contract or permit to have subcontracted any portion of this Agreement without prior written approval of the Department. No such contracting or subcontracting shall relieve the Subrecipient from its obligations and liabilities under this Agreement, nor shall any contracting or subcontracting obligate payment from the Department.

Except to a successor in kind, the Subrecipient 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 contract(s), subcontract(s) or an assignment be authorized by the Department, the contractor(s), subcontractor(s) and assignor(s) shall be subject to all provisions of this Agreement. It shall be the Subrecipient's responsibility to duly inform the contractor(s), subcontractor(s) and assignor(s) by means of a contract or other legally binding document stipulating responsibility to this Agreement.

Contractors, 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, contractors and subcontractors with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients*, which is attached as Certification 1.

28. No Federal Government Obligation to Third Parties.

A. The Department and Subrecipient acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the federal government, the federal government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Department, Subrecipient, or any other party (whether or not a party to the Agreement or any contract or subcontract) pertaining to any matter resulting from the Agreement.

B. The Subrecipient agrees to include the above clause in each contract or 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 contractor or subcontractor who will be subject to its provisions.

29. Training.

The Subrecipient shall ensure that all drivers described in the Operations Profile are trained in the following programs, by an approved contractor: first aid, cardiopulmonary resuscitation (CPR), blood borne pathogens, defensive driving, crisis management, and passenger safety, sensitivity and wheelchair securement. 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 (3) years. For the cardiopulmonary resuscitation (CPR) training, the drivers must be

recertified every two (2) years. All full time, part time, substitute/fill-in, or volunteer vehicle operators shall have in their possession valid certifications (driver's license) while operating a public transportation vehicle.

Should the Subrecipient fail to satisfy the terms and conditions as outlined, the Subrecipient 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.

- A. The Subrecipient 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 Subrecipient will submit for review and approval, a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Subrecipient agrees to participate in the Department's consortium.
- B. The Subrecipient will submit drug and alcohol testing data for the previous calendar year using the Management Information System (MIS) Data Collection Form to the Department before March 1 of each year.
- C. The Subrecipient will submit a Quarterly Testing Report in BlackCat for each quarter of the calendar year. Reports are due January 10, April 10, July 10, and October 10 respectively.
- D. The Subrecipient will participate in an annual Drug and Alcohol Compliance Review by the Department. Once a final report has been issued, the Subrecipient will implement corrective actions, including supportive documentation, for all deficiencies cited in the final report and respond to all recommendations within ninety (90) days of the report's issuance.

31. Labor Warranty.

The Subrecipient agrees that it will comply with the terms and conditions of the Special 49 U.S.C. Section 5333(B) Warranty for Application to the Small Urban and Rural Program. The Subrecipient will assume all legal and financial responsibility relative to compliance with the terms and conditions of the Warranty.

32. Transit Employee Protection Guidelines.

The Subrecipient 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 Subrecipient shall provide for the preservation of rights and benefits of employees under existing collective bargaining agreements, continuation of collective bargaining rights, and 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 Subrecipient 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 Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, disability, or other protected class. The Subrecipient shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue. The Nondiscrimination Assurance is attached as Assurance 3.
- B. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Agreement:

1. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Subrecipient 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. Part 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. Section 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 Subrecipient agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including gender identity and sexual orientation). 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. Section 623 and Federal transit law at 49 U.S.C. Section 5332, the Subrecipient agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subrecipient 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. Section 12112, the Subrecipient 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 Subrecipient shall 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.
- D. For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA at <https://www.transit.dot.gov/funding/procurement/third-party-procurement/contract-clauses>.
- E. The Subrecipient also agrees to ensure that these requirements are included in each subcontract 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 2020 fiscal year is 1.59%, through race-neutral means.
 - B. The Subrecipient shall not discriminate on the basis of race, color, national origin, sex, or other protected class in the performance of the Agreement. The Subrecipient shall carry out applicable requirements of 49 CFR Part 26 in the administration of the Program. Failure by the Subrecipient 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 Subrecipient signs with a contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
 - C. The Subrecipient 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, sex, or other protected class in the award and performance of U.S. DOT assisted contracts. The Subrecipient will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- D. The Subrecipient is required to pay its contractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the awarded contractor's receipt of payment for that work from the Department.
- E. The Subrecipient 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 Subrecipient 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 subrecipient 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 subrecipient with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients*, which is attached as Certification 1.

35. ADA Access.

The Subrecipient shall comply with 49 U.S.C. Section 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 Subrecipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, with 29 U.S.C. Section 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sections 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. Sections 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 Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. Sections 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 Subrecipient certifies or affirms the truthfulness and accuracy of any statement it makes pertaining to the resultant Agreement or the FTA assisted program for which this work is being performed. The Subrecipient 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 Subrecipient to the extent the federal government deems appropriate.
- B. The Subrecipient 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. Section 5307, the federal government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Subrecipient, to the extent the federal government deems appropriate.
- C. The Subrecipient certifies to abide by these clauses and include the clauses in each subcontract financed in whole or in part with Federal Transit Administration funds. The Subrecipient further agrees that these clauses shall not be modified, except to identify the contractor or 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, NMSA 1978, Sections 44-9-1 through 44-9-14.

37. Lobbying.

A subrecipient receiving \$100,000 or more of 49 U.S.C. Section 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 Subrecipient 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. Section 1352.

If the Subrecipient hires a third-party contractor, the contractor must provide the Lobbying Certification to the Subrecipient. Each tier below the contractor shall also provide a Lobbying Certification. Such disclosures are forwarded from tier to tier up to the Subrecipient.

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 Subrecipient 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 Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, 33U.S.C. Sections 1251 *et seq.*, and the Clean Air Act, 42 U.S.C. Sections 7401 *et seq.* The Subrecipient 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 Subrecipient agrees to include these requirements in each contract or 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 No. 12549, "Debarment and Suspension of Participants in Federal Programs," February 18, 1986, 31 U.S.C. Section 6101 note, as amended by Executive Order No. 12689, "Debarment and Suspension," August 16, 1989 31 U.S.C. Section 6101 note, as implemented by 2 C.F.R. Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200 prohibits FTA subrecipients from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts. Subrecipients shall include the certification and instruction language contained at 2 C.F.R. Part 1200 in all Invitations for Bids and Requests for Proposals (for inclusion by contractors and subcontractors 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 Subrecipient is required to verify that none of the Subrecipient's principals or affiliates are excluded or disqualified as defined, as defined by 2 C.F.R. Part 1200. By signing and submitting this Agreement, the Subrecipient 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/Subrecipient or proposer/Subrecipient 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/Subrecipient or proposer/Subrecipient agrees to comply with the requirements of 2 C.F.R. Part 1200 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder/Subrecipient or proposer/Subrecipient 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, the Subrecipient 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 Subrecipient 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.

The type of information the Department is required to report includes:

- Name of Subrecipient 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 Subrecipient, which includes the Congressional District,
- Place of performance of the program or activity, which includes the Congressional District,
- Unique identifier—DUNS—of the Subrecipient and its parent organization, if one exists, and
- Total compensation and names of the top five executives of the Subrecipient. This information is required, if the Subrecipient 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 Subrecipient's grant application and standard reports. However, the Subrecipient will be required to provide additional information, which includes the total compensation and names of the Subrecipient's top five executives, if applicable. As specified earlier in Section 42, "Central Contractor Registration Requirements," of this Agreement, the Subrecipient 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 of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

46. Applicable Law and Venue; Federal Changes.

The Subrecipient 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 Subrecipient shall make as part of this Agreement between the Department and the Subrecipient 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 Subrecipient 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 <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>.

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.

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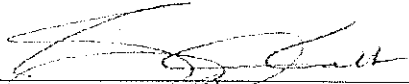
In witness whereof, each party is signing this Agreement on the date stated below that party's signature. This Agreement becomes effective on the date the last party signed the Agreement.

New Mexico Department of Transportation

CITY OF HOBBS



Michael Sandoval, Cabinet Secretary



Signature

SAM D. COBB, Mayor
Name/Title (please print)

8/30/19
Date

9-16-19
Date

Approved as to Form and Legal Sufficiency by the Department's Office of General Counsel.



NMDOT Assistant General Counsel

08/30/2019
Date

FEDERAL REQUIREMENTS FOR PASS-THROUGH ENTITIES



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: June 1, 2020

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

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: May 26, 2020
SUBMITTED BY: Kevin Robinson – Planning Department

Summary: ABS Homes has requested a Development Agreement concerning the development of single-family housing units located within the municipal boundaries. The developer proposes to produce market rate single-family units and is requesting infrastructure incentives of \$200,000.00.

Fiscal Impact:

Reviewed By: _____

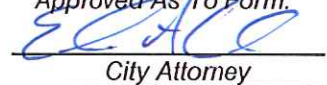

Finance Department

A budget reclassification of \$54,571.00 would need to be made from the affordable housing budget line (010100-44901-169) to the single family budget line of 010100-44901-00170. Since there is no cash budget impact (due to re-class), the reclassification would need to be ratified in the final BAR adjustment in fiscal 2020 and will need to be carried over to 2021.

Attachments: Developers Request and Development Agreement.

Legal Review:

Approved As To Form: _____


City Attorney

Recommendation:

Commission considers approval / denial of the attached Development Agreement.

Approved For Submittal By:


Department Director


City Manager

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

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

CITY OF HOBBS

RESOLUTION NO. 6943

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

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

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

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

1. The City of Hobbs hereby approves the Development Agreement, which is attached hereto and made a part of this Agreement as Exhibit #1 and the Mayor, and/or his designee, is hereby authorized to execute the Agreement.

2. That City staff and officials are authorized to do any and all deeds to carry out the intent of this Resolution.

PASSED, ADOPTED AND APPROVED this 1st day of June, 2020.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

MARKET RATE SINGLE FAMILY DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into on this 1st day of May 2020 by and between the City Of Hobbs, New Mexico, a municipal corporation (hereinafter "City"); and ABS Homes, 4915 W. Steel Driver Rd., 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 Market Rate Single Family 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 Market Rate Single Family Housing, to be produced within 365 days of ratification of this agreement, within the Municipal Boundaries.

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

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

A. Work To Be Performed.

1. The Developer shall furnish to the City its Professional Housing Developer Services for certain work regarding the Market Rate Single Family Housing. 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.

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 Rate Single Family 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.

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, providing compliance with:

- 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 supporting 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 market rate single family housing unit. The City Engineer shall resolve any issues concerning value or extent of infrastructure and amount of square footage of constructed housing units. Specifically, the City Engineer will determine the value or unit costs of the publicly owned infrastructure according to any City of Hobbs Annual Pavement/Concrete/Utility Contracts or public infrastructure projects and estimates.

B. Payment For Services.

- 1) The City shall pay for said services at the rates agreed to and as specified above in the Infrastructure details, 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 development of market rate single family housing 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.

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 365 days from date of ratification whichever comes first. A request for infrastructure reimbursement, for a qualified unit produced within the terms of this agreement, received after the Termination Date of this agreement will not be eligible for payment.

L. Notice.

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City, ATTN: City Attorney, 200 E. Broadway, Hobbs, NM 88240; to Developer ATTN and **ABS Homes, 4915 W. Steel Driver Rd., 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

Efren Cortez, City Attorney