

Commission Meeting Agenda



Mayor

Samuel D. Cobb

City Commission

R. Finn Smith – District 1

Christopher R. Mills – District 2

Larron B. Fields – District 3

Joseph D. Calderón – District 4

Dwayne Penick – District 5

Don R. Gerth – District 6

City Manager

Manny Gomez

April 1, 2024



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

Monday, April 1, 2024 - 6:00 p.m.

Sam D. Cobb, Mayor

R. Finn Smith
Commissioner – District 1

Christopher R. Mills
Commissioner – District 2

Larron B. Fields
Commissioner – District 3

Joseph D. Calderón
Commissioner – District 4

Dwayne Penick
Commissioner – District 5

Don R. Gerth
Commissioner – District 6

A G E N D A

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

CALL TO ORDER AND ROLL CALL

INVOCATION AND PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

1. Minutes of the March 18, 2024, Regular Commission Meeting (*Jan Fletcher, City Clerk*)

PROCLAMATIONS AND AWARDS OF MERIT

2. Proclamation Proclaiming Monday, April 1, 2024, as “*Cameron Hernandez Day*” (*Mayor Sam Cobb*)
3. Proclamation Proclaiming the Month of April, 2024, as “*Fair Housing Month*” (*Todd Randall, City Engineer*)

4. Proclamation Proclaiming April 7 – 13, 2024, as “National Library Week” (Nicki Lawless, Library Director)

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.)

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.)

5. Resolution No. 7457 - Adopting the Required Community Development Block Grant (CDBG) Annual Certificates and Commitments (Todd Randall, City Engineer)

DISCUSSION

6. 2024 Legislative Update (Representative Randall Pettigrew)
7. LEDA Application – Space Jump
8. LEDA Application – HTeaO - Hobbs

ACTION ITEMS (Ordinances, Resolutions, Public Hearings)

9. **PUBLIC HEARING:** Resolution No. 7458 – Enforcing or Rescinding Resolution No. 7445 as it Applies to the Condemned Property Located at 700 South Jefferson (Valerie Chacon, City Attorney)
10. Resolution No. 7459 – Approving the Final Plat for College Square Subdivision Located Northwest of the Intersection of Grimes Street and College Lane as Recommended by the Planning Board (Todd Randall, City Engineer)
11. Consideration of Approval of Assignment of Ambulance Billing Contract from Image Trend, LLC, to EMS MC (Mark Doporto, Fire Chief)
12. Consideration of Approval of Contract with Tyler Technologies for Electronic Reporting Planning (ERP) Software for SaaS Cloud Switch in the Amount of \$331,757.00 (Toby Spears, Finance Director)

COMMENTS BY CITY COMMISSIONERS, CITY MANAGER

13. Next Meeting Dates:

- City Commission Regular Meeting:
 - **Monday, April 15, 2024, at 6:00 p.m.**
 - **Monday, May 6, 2024, at 6:00 p.m.**
 - **Monday, May 20, 2024, at 6:00 p.m.**

ADJOURNMENT

If you are an individual with a disability who needs 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) 397-9200 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: April 1, 2024

SUBJECT: City Commission Meeting Minutes

DEPT. OF ORIGIN: City Clerk's Office
DATE SUBMITTED: March 28, 2024
SUBMITTED BY: Jan Fletcher, City Clerk

Summary:

The following minutes are submitted for approval:

- Regular City Commission meeting held on March 18, 2024

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, March 18, 2024, in the City Commission Chamber, 200 East Broadway, 1st Floor Annex, Hobbs, New Mexico. This meeting was also broadcast via Livestream on the City's website at www.hobbsnm.org.

Call to Order and Roll Call

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

Mayor Sam D. Cobb
Commissioner R. Finn Smith
Commissioner Joseph D. Calderón
Commissioner Christopher Mills
Commissioner Larron B. Fields
Commissioner Don Gerth

Absent: Commissioner Christopher Mills
Commissioner Dwayne Penick

Also present: Manny Gomez, City Manager
Valerie Chacon, City Attorney
August Fons, Police Chief
Jessica Silva, Code Enforcement Superintendent
Mark Doporto, Fire Chief
Chris Henry, Battalion Chief
Toby Spears, Finance Director
Todd Randall, City Engineer
Tim Woomer, Utilities Director
Nicki Lawless, Library Director
Lou Maldonado, Parks and Open Spaces Superintendent
Matt Hughes, Rockwind Superintendent
Doug McDaniel, Recreation Director
Meghan Mooney, Communications Director
Nicholas Goulet, Human Resources Director
Tracy South, Assistant HR Director
Bobby Arther, Municipal Judge
Shannon Arguello, Municipal Court Administrator
Selena Estrada, Risk Manager
Julie Nymeyer, Executive Assistant
Shelia Baker, General Services Director
Christa Belyeu, I. T. Director
Jan Fletcher, City Clerk
Amelia Maldonado, Deputy City Clerk
22 citizens

Invocation and Pledge of Allegiance

Commissioner Fields delivered the invocation and Commissioner Smith led the Pledge of Allegiance.

Approval of Minutes

Commissioner Calderón moved the minutes of the regular meeting of March 4, 2024, be approved as written. Commissioner Smith seconded the motion and roll call vote was recorded as follows: Smith yes, Fields yes, Calderón yes, Gerth yes, Cobb yes. The motion carried.

Proclamations and Awards of Merit

Mayor Cobb proclaimed Monday, March 18, 2024, as "*Hobbs High School Diving Team Day*". He presented the proclamation to Coach Cynthia Calderón and team members Mr. Gabriel Palomino, Mr. Luis Miguel Cornejo and Mr. Alfredo Hernandez.

Mr. Manny Gomez, City Manager, recognized the following Milestone Service Awards for the Month of March, 2024:

- 5 years – Manuel Espinoza, Hobbs Police Department
- 5 years – Jorge Carrillo, Hobbs Police Department
- 10 years – Omar Valenzuela, General Services Department
- 15 years – Shaun Siddall, Hobbs Fire Department

Mr. Gomez thanked the Commission for recognizing the employees. Mr. Gomez reviewed highlights about the work of each employee. He expressed gratitude to each employee for their hard work and also thanked the employees' families for their contributions to the organization.

Public Comments

None.

Consent Agenda

Mayor Cobb explained the process for the consent agenda which is reserved for items which are routine when the agenda is lengthy. He stated any member of the Commission may request an item to be transferred to the regular agenda from the consent agenda without discussion or vote.

Commissioner Calderón moved for approval of the following Consent Agenda item(s):

Resolution No. 7450 – Authorizing an Application with the New Mexico Department of Health EMS Fund Act Special Projects Grant for FY 24 in the Amount of \$16,872.00 for the Purchase of Eight Knox MedVaults for the Hobbs Fire Department

Commissioner Gerth seconded the motion and roll call vote was recorded as follows: Smith yes, Mills yes, Fields yes, Calderón yes, Penick yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution are attached and made a part of these minutes.

Discussion

2024 Legislative Update

Mayor Cobb stated Representative Randall Pettigrew is unable to be at the meeting tonight due to his father's health and will make his presentation at the next Commission meeting.

Action Items

PUBLIC HEARING: Resolution No. 7451 – Enforcing or Rescinding Resolution No. 7445 as it Applies to the Condemned Property Located at 711 East Seco

Ms. Valerie Chacon, City Attorney, stated the City Commission adopted Resolution No. 7445 finding the property located at 711 East Seco to be damaged, dilapidated and a menace to the public comfort, health and safety requiring remediation. The property owner, Ms. Allison Charlotte Johnson, filed a written objection to the condemnation of said property. As required by the Hobbs Municipal Code, a condemnation hearing is to be held by the City Commission to determine if Resolution No. 7445 should be enforced or rescinded as to this property.

Ms. Johnson appeared at the hearing via telephone.

Ms. Chacon displayed photographs of the property from January of 2024 as compared to March of 2024. A substantial amount of work has visibly been done and the dilapidated carport has been removed from the structure. The property owner is continuing cleanup work in preparation to sell the property. Accordingly, Ms. Chacon requested the Commission rescind Resolution No. 7445 as it applies to this property.

Mayor Cobb stated the Commission is here to address health and safety issues. He expressed appreciation to Ms. Johnson for her efforts.

There being no discussion, Commissioner Fields moved that Resolution No. 7451 be adopted rescinding prior Resolution No. 7445 as it applies to 711 East Seco. Commissioner Calderón seconded the motion and roll call vote was recorded as

follows: Smith yes, Fields yes, Calderón yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached.

PUBLIC HEARING: Resolution No. 7452 – Enforcing or Rescinding Resolution No. 7445 as it Applies to the Condemned Property Located at 610 South Eighth St.

Ms. Chacon stated the City Commission adopted Resolution No. 7445 finding the property located at 610 South Eighth St. to be damaged, dilapidated and a menace to the public comfort, health and safety requiring remediation. The property owner, Ms. Allison Bibbs, filed a written objection to the condemnation of said property. As required by the Hobbs Municipal Code, a condemnation hearing is to be held by the City Commission to determine if Resolution No. 7445 should be enforced or rescinded as to this property.

Ms. Chacon explained the requirements of the Hobbs Municipal Code related to condemnation and stated it is not the City's intent to take the property but only to enforce compliance with City ordinance. Ms. Chacon stated she plans to call Ms. Jessica Silva of the Code Enforcement Department to testify in this matter.

Ms. Allison Bibbs attended the hearing via telephone. She stated the property has been vacant quite some time. She stated her objection letter clearly explains she was unable to attend to the property as her 16-year-old daughter was diagnosed with a brain tumor which required treatment. She stated the medical treatment resulted in a financial hardship but her intent is to hire a certified professional to demolish the property. Ms. Bibbs stated she was not home when the certified letters were sent and she needs additional time to complete the demolition.

In response to Commissioner Fields' question, Ms. Bibbs stated it is her intent to demolish the structure.

Mayor Cobb stated Ms. Bibbs has time to do it and he would recommend that the Commission not rescind the resolution but to work with Ms. Bibbs on a timeline.

Ms. Jan Fletcher, City Clerk, administered the witness oath to Ms. Jessica Silva, Community Services Superintendent.

Ms. Chacon questioned Ms. Silva regarding the property at 710 South Eighth Street and displayed photographs of the property taken in October 2023 and again in March 2024. Ms. Silva stated there has been no substantial change in the condition of the property. In response to Ms. Chacon's questions, Ms. Silva stated two certified letters addressed to Ms. Bibbs in Odessa, Texas, were returned to the City as unclaimed.

Following a short discussion, Commissioner Smith requested clarification on the timeline within which Ms. Bibbs would have to demolish the property. Ms. Chacon

stated the clock would start today. Commissioner Smith clarified Ms. Bibbs would have 60 days from today and could requested an extension of 30 days. Ms. Chacon agreed.

Ms. Bibbs stated she was away from town for six weeks with her ill daughter when the certified letter was mailed. She stated a family member saw an article in the newspaper which alerted her to the situation. She requested time to resolve the issue.

Mayor Cobb stated the testimony indicates her objection was timely and that she will, in good faith, remediate the property to be safe, secure.

There being no discussion, Commissioner Gerth moved that Resolution No. 7452 be adopted enforcing prior Resolution No. 7445 as it related to the property at 610 South Eighth St. Commissioner Calderón seconded the motion and roll call vote was recorded as follows: Smith yes, Fields yes, Calderón yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached.

Ms. Chacon stated the property owner will need to show progress to request any time extensions.

PUBLIC HEARING: Resolution No. 7453 - Regarding the Application of Black Gold Distilling, LLC, for a Craft Distiller License at 1010 West Joe Harvey Blvd., Hobbs, New Mexico

Ms. Chacon stated the purpose of tonight's public hearing is to consider the application of Black Gold Distilling, LLC, for a craft distiller license at 1010 West Joe Harvey Blvd.

Ms. Chacon asked if anyone was present at the public hearing regarding the application. Mr. Cody Scott stated he is present on behalf of the applicant, Black Gold Distilling, LLC. No other parties were present to speak for or against the application.

Ms. Chacon stated the State of New Mexico Alcoholic Beverage Control has granted conditional preliminary approval to the issuance of a craft distiller license at Black Gold Distilling, 1010 West Joe Harvey Blvd. She stated a public hearing must be held within 45 days of receipt of the application on whether or not the issuance of the proposed liquor license should be granted. Ms. Chacon stated notice of the hearing was published in the Hobbs News Sun on February 8 and 22, 2024, as shown by the Affidavit of Publication on file.

Ms. Fletcher administered the witness oath to Mr. Scott.

In response to Ms. Chacon's questions, Mr. Scott stated the premises location is within 300 feet of Stone Elementary School and a letter of no objection was received from Mr. Gene Strickland of the Hobbs Municipal Schools.

In further response to Ms. Chacon's questions, Mr. Scott stated the premises are not within 300 feet of a church or military installation.

In response to Commissioner Fields' question, Mr. Scott stated the intent is to make spirituous liquors and sell them. He stated there will be a lounge with food and they plan to sell retail liquors. Mr. Scott stated the business is anticipated to close at midnight but it could be earlier if it is not busy enough. Mr. Scott stated he was first required to obtain an appropriate permit issued by the Federal government to be a craft distiller before submitting his application to the State of New Mexico.

In further response to Commissioner Fields' inquiry, Mr. Scott stated there will be security cameras but not live security officers.

There being no further discussion, Commissioner Smith moved to approve Resolution No. 7453 for issuance of the craft distiller's license and approval of the 300' distance waiver. Commissioner Gerth seconded the motion and roll call vote was recorded as follows: Smith yes, Fields yes, Calderón yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached.

Resolution No. 7454 – Authorizing the Commission to Establish Minimum Guidelines for Funding Local Economic Development Act (LEDA) Applicants with Revenue Subject to Gross Receipt Tax (GRT)

Ms. Chacon stated the Commission adopted Ordinance No. 915 establishing a LEDA program and later amended the ordinance on July 1, 2022. She stated the Commission desires to clarify and establish requisite guidelines and categories that will be considered for the LEDA program. Ms. Chacon presented a proposed resolution setting forth the following recommended guidelines for applicants who apply for LEDA funding:

- City of Hobbs Resident Owner/Operator
- No Direct Competition
- Capital Investment
- Minimum Annual Revenue of \$1,500,000 Subject to Gross Receipts Tax
- Annual Payroll
- City Infrastructure
- Payback Breakdown

Mayor Cobb stated an ordinance is required by State Law to approve any LEDA qualifying agreements rather than a resolution as initially thought.

Ms. Chacon stated the City is looking to NMSA §5-10-9 1978 for guidance on matters related to LEDA.

Commissioner Smith commented the plan is geared toward retail businesses so it does not preclude businesses from applying if the City can get the application criteria defined to properly balance the use of public funds. Commissioner Smith stated he likes all of the criteria except the minimum annual revenue requirement of \$1,500,000. He stated he would prefer to see that amount reduced to \$1,000,000. Commissioner Smith then moved to amend Resolution No. 7454 reducing the minimum annual revenue requirement to \$1,000,000.

Mayor Cobb stated LEDA is a very complex issue requiring substantial oversight by City Staff, the New Mexico State Auditor's Office, the Department of Finance and Administration and the City's Auditor. He commented changing the minimum threshold could increase the number of applicants and create workforce issues.

The motion died for lack of a second.

Commissioner Fields stated it is a perplex process to come up with the criteria numbers. He commended staff for doing their homework in establishing the criteria. He stated the main goal of the LEDA program is to draw corporations and businesses into Hobbs, all for the growth and in the best interest of the community.

Mayor Cobb and Commissioner Fields stated it is time to stop all of the tax dollars from going to Texas.

Following the discussion, Commissioner Fields moved to approve Resolution No. 7454 as presented. Commissioner Smith seconded the motion and roll call vote was recorded as follows: Smith yes, Fields yes, Calderón yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached.

Consideration of Approval of CES Quote from A. K. Sales and Consulting, Inc., in the Amount of \$111,787.27 to Replace the Existing Basketball Court at Charlie Brown Park

Mr. Matt Hughes, Rockwind Superintendent, stated staff has been working with Commissioner Fields on upgrades at Charlie Brown Park. One of the recommended upgrades is a new basketball court to replace the existing court that needs replacement. Mr. Hughes stated a quote was submitted by A. K. Sales and Consulting, Inc., to replace the court with a post tension concrete basketball court with new goals. The cost of the replacement will be \$111,787.27 and will include discretionary funding from Commissioner Fields and Commissioner Penick.

Commissioner Gerth moved to approve the purchase of the equipment as requested in the amount of \$111,787.27. Commissioner Calderón seconded the motion and roll call vote was recorded as follows: Smith yes, Fields yes, Calderón yes, Gerth yes, Cobb yes. The motion carried. Copies of the supporting documentation are attached.

Consideration of Approval to Purchase a 2023 Type I Medix Ambulance Utilizing HGAC Contract Pricing in the Amount of \$392,245.00 for the Hobbs Fire Department

Fire Chief Mark Doporto stated the Hobbs Fire Department wishes to purchase a 2023 Type 1 Medix Ambulance utilizing the Houston Galveston Area Council (HGAC) cooperative purchasing agreement. The cost of the ambulance is \$392,245.00 which is being purchased from a \$400,000.00 Legislative Appropriation.

Following a brief discussion, Commissioner Calderón moved to approve the purchase of the ambulance as requested in the amount of \$392,245.00. Commissioner Fields seconded the motion and roll call vote was recorded as follows: Smith yes, Fields yes, Calderón yes, Gerth yes, Cobb yes. The motion carried. Copies of the supporting documentation are attached.

Resolution No. 7455 - Relating to the Disposition of Obsolete, Worn-Out and Unusable Personal Property for Public Auction on April 27, 2024

Mr. Toby Spears, Finance Director, stated the City desires to delete obsolete and unusable public inventory from its inventory list and sell those items at a public auction on April 27, 2024. Mr. Spears provided a list of the inventory to the Commission and stated minimum bid values on the vehicles would be determined prior to the auction.

In response to Commissioner Smith's question, Mr. Spears stated the General Services and Finance Departments would look at the book values and determine the minimum bid value amounts which would be provided to the auctioneer.

Following a brief discussion, Commissioner Calderón moved to approve Resolution No. 7455 as presented. Commissioner Gerth seconded the motion and roll call vote was recorded as follows: Smith yes, Fields yes, Calderón yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached.

Resolution No. 7456 - Relating to the Disposition of Obsolete, Worn-Out and Unusable Personal Property for Disposal

Mr. Spears explained the resolution and stated the items included are of no value and will be removed from the City's inventory list by discarding them.

Following a brief discussion on library books, Commissioner Gerth moved to approve Resolution No. 7456 as presented. Commissioner Smith seconded the motion and roll call vote was recorded as follows: Smith yes, Fields yes, Calderón yes, Gerth yes, Cobb yes. The motion carried. Copies of the resolution and supporting documentation are attached.

Consideration of Approval of RFP 547-24 for Professional Design Services for the Family Aquatics Design Project and Recommendation to Accept Proposal and Approve Contract with Halff Associates, Inc.

Mr. Doug McDaniel, Recreation Director, explained RFP 547-24 for professional design services for a proposed outdoor, multi-generational family aquatic center. Seven proposals were received and evaluated by an RFP Evaluation Committee. He stated the committee recommends accepting the proposal from Halff Associates, Inc.

Mr. McDaniel stated Halff Associates, Inc., has submitted costs for Phases, 1, 2 and 3 which will complete the conceptual design process. At completion of the conceptual design, staff will return to the City Commission for approval of a secondary contract with Halff Associates, Inc., that will include probable construction costs, bid terms, quantities, estimated bid costs and constructional documents, if desired.

Mr. McDaniel stated Mr. Kirk Wilson of Halff Associates, Inc., is present tonight. Mr. Wilson stated he looks forward to working with the City on this project.

Commissioner Fields moved to approve RFP 547-24 for Professional Design Services and approve the contract with Halff Associates, Inc. Commissioner Gerth seconded the motion and roll call vote was recorded as follows: Smith yes, Fields yes, Calderón yes, Gerth yes, Cobb yes. The motion carried. Copies of the supporting documentation are attached.

Comments by City Commissioners, City Manager

Mr. Manny Gomez, City Manager, specifically thanked City staff for the preparation of tonight's agenda items. He stated many hours are spent preparing for Commission meetings.

Commissioner Fields also commended City staff for the job they do.

Commissioner Fields stated Saturday, March 23, 2024, is Free Dumpster Day at Charlie Brown Park. He encouraged everyone to take advantage of this convenient opportunity to dispose of any trash. He also thanked the Code Enforcement Department for trying to clean up Hobbs.

Commissioner Gerth agreed with Commissioner Fields.

ADJOURNMENT

There being no further business or comments, Commissioner Calderón moved that the meeting adjourn. Commissioner Smith seconded the motion and the vote was recorded as follows: Smith yes, Fields yes, Calderón yes, Gerth yes, Cobb yes. The motion carried and the meeting adjourned at 7:45 p.m.

SAM COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk



PROCLAMATIONS

AND

**AWARDS OF
MERIT**

Office of the Mayor
Hobbs, New Mexico

PROCLAMATION

WHEREAS, Cameron Hernandez won the State Championship in wrestling and earned his 100th varsity win at the NMAA State Wrestling tournament and is the first Eagle Wrestler to win 100 matches since 2016-2017; and

WHEREAS, Cameron Hernandez is on the Hobbs High School wrestling team. He began wrestling in the 8th grade. Cameron is a multi-sport athlete, playing both football and wrestling. He was a 5-year letterman for the Hobbs wrestling team; and

WHEREAS, Cameron Hernandez's wrestling Coach, Tyler Schnaubert spent 8 years as an assistant coach, four of those years at Hobbs High School, with 2024 being his first year as head coach. He has coached 2 State Champions and 3 All Americans at the NAIA level; and

WHEREAS, Cameron's coach stated "Cameron is an individual that is extremely hard working, understands the process, made the hard choices, and always chose to do the right thing. It's not by accident he is a state champion, it's how he lives his life"; and

WHEREAS, Cameron stated "winning the state championship is a feeling he has never felt before, and all of his hard work had finally paid off". Cameron said he is very thankful and the feeling is unmatched; and

NOW, THEREFORE, I, Sam D. Cobb, Mayor of the City of Hobbs, New Mexico, do hereby proclaim April 1st, 2024 as,

"CAMERON HERNANDEZ DAY"

in the City of Hobbs in honor of his dedication to the Hobbs High School Wrestling Team and to our community and wish him and the wrestling team continued success.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of April, 2024, and cause the seal of the City of Hobbs to be affixed hereto.

ATTEST:

JAN FLETCHER, City Clerk



SAM D. COBB, Mayor

Office of the Mayor
Hobbs, New Mexico

PROCLAMATION

WHEREAS, fair and equal housing is a right guaranteed to all Americans; and

WHEREAS, the principle of fair and equal housing is a fundamental human entitlement; and

WHEREAS, all citizens have the right to live where they choose within their financial means; and

WHEREAS, people must not be denied housing because of race, color, religion, sex, national origin, handicap or family status; and

WHEREAS, we must, as individuals, assure equal access to housing for all in our communities; and

WHEREAS, the City of Hobbs acknowledges the importance of assuring fair and equal treatment to all citizens;

NOW, THEREFORE, I, Sam D. Cobb, Mayor of the City of Hobbs, New Mexico, do hereby proclaim April, 2024 as,

“FAIR HOUSING MONTH”

in the City of Hobbs.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of April, 2024, and cause the seal of the City of Hobbs to be affixed hereto.

SAM D. COBB, Mayor

ATTEST:



JAN FLETCHER, City Clerk

Office of the Mayor
Hobbs, New Mexico

PROCLAMATION

WHEREAS, libraries offer the opportunity for everyone to connect with others, learn new skills, and pursue their passions, no matter where they are on life's journey;

WHEREAS, libraries have long served as trusted institutions, striving to ensure equitable access to information and services for all members of the community regardless of race, ethnicity, creed, ability, sexual orientation, gender identity, or socio-economic status;

WHEREAS, libraries adapt to the ever-changing needs of their communities, developing and expanding collections, programs, and services that are as diverse as the populations they serve;

WHEREAS, libraries play a pivotal role in economic development by providing resources and support for job seekers, entrepreneurs, and small businesses, thus

WHEREAS, libraries are treasured institutions that preserve our collective heritage and knowledge, safeguarding both physical and digital resources for present and future generations;

WHEREAS, libraries are an essential public good and fundamental institutions in democratic societies, working to improve society, protect the right to education and literacy, and promote the free exchange of information and ideas for all;

WHEREAS, libraries, librarians, and library workers are joining library supporters and advocates across the nation to celebrate National Library Week;

NOW, THEREFORE, I Sam D. Cobb, Mayor of the City of Hobbs, New Mexico, do hereby proclaim April 7th - 13th, 2024 as

“NATIONAL LIBRARY WEEK”

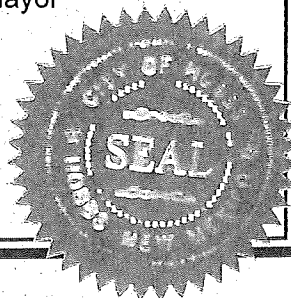
IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of April, 2024 and cause the seal of the City of Hobbs to be affixed hereto.

SAM D. COBB, Mayor

ATTEST:



JAN FLETCHER, City Clerk





CONSENT AGENDA



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: April 1, 2024

SUBJECT: ADOPTION OF REQUIRED COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL CERTIFICATIONS AND COMMITMENTS

DEPT. OF ORIGIN: Engineering Department
DATE SUBMITTED: March 27th, 2024
SUBMITTED BY: Todd Randall, City Engineer

Summary:

Citizen Participation Plan:

The City certifies its commitment to citizen participation by preparing and adopting a Citizen Participation Plan that includes ways to encourage public input using various methods to reach the public and assures that citizens are provided reasonable notice and timely access to local meetings, per the Open Meetings Act (NMSA 1978, Chapter 10, Article 15)

Fair Housing:

The City certifies its commitment to the Fair Housing Act of 1968 to affirmatively further fair housing, which prohibits discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing on the basis of race, color, religion, sex, disability, familial status, or national origin.

Residential Anti-Displacement and Relocation Assistance Plan:

The City certifies its compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, whose purpose is to provide uniform, fair, and equitable treatment for persons whose real property is acquired or for persons displaced as a result of a CDBG-funded project or activity.

Section 3:

The City certifies its commitment to Section 3, a provision of the Housing and Urban Development (HUD) Act of 1968, which requires recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low and very low income residents in connection with projects and activities in their community.

Procurement:

The City certifies its compliance with federal procurement code (24 CFR Part 85.36), New Mexico Procurement Code (§13-1-120 NMSA 1978) and the City's Procurement Code by adopting a procurement policy for CDBG projects.

Fiscal Impact:

Reviewed By: Finance Department

Community Development Block Grant projects are an important source of revenues to upgrade low and moderate income areas in the City.

Attachments:

Resolution, Adopted plan on April 3rd, 2023

Legal Review:

Approved As To Form: City Attorney

Recommendation:

To make a motion to approve the Resolution for the Mayor to adopt the CDBG Annual Certifications and Commitments

Approved For Submittal By:

TODD RANDALL

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. 7457

A RESOLUTION AUTHORIZING ADOPTION OF THE REQUIRED
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL
CERTIFICATIONS AND COMMITMENTS (2024)
CDBG 21-C-NR-I-03-G-12

WHEREAS, municipalities, counties or other entities that accept Community Development Block Grant (CDBG) funds must adopt certain required federal regulations; and

WHEREAS, the City of Hobbs (hereinafter referred to as the Grantee) wishes to ensure compliance with federal regulations by adopting the following required certifications and commitments:

- Citizen Participation** certifies its commitment to citizen participation by preparing and adopting a Citizen Participation Plan that includes ways to encourage public input using various methods to reach the public and assures that citizens are provided reasonable notice and timely access to local meetings, per the Open Meetings Act (NMSA 1978, Chapter 10, Article 15)
- Fair Housing** certifies its commitment to the Fair Housing Act of 1968 to affirmatively further fair housing, which prohibits discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing on the basis of race, color, religion, sex, disability, familial status, or national origin
- Residential Anti-Displacement & Relocation Assistance** certifies its compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, whose purpose is to provide uniform, fair, and equitable treatment for persons whose real property is acquired or for persons displaced as a result of a CDBG-funded project or activity
- Section 3** certifies its commitment to Section 3, a provision of the Housing and Urban Development (HUD) Act of 1968, which requires recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low and very low income residents in connection with projects and activities in their community.

Procurement certifies its compliance with federal procurement code (24 CFR Part 85.36), New Mexico Procurement Code (§13-1-120 NMSA 1978) and the City of Hobbs Procurement Code by adopting a procurement policy for CDBG projects.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be, and hereby is, authorized to adopt the above CDBG certifications and commitments that must be adopted annually.

PASSED, ADOPTED AND APPROVED at a duly called and convened regular meeting of the governing body of the City of Hobbs this 1st day of April, 2024.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

EXHIBIT 1-Z

CDBG FEDERAL REQUIREMENTS

CITIZEN PARTICIPATION REQUIRED ELEMENTS

In accordance with the 1987 revisions to the Housing and Community Development Act and in an effort to further encourage citizen participation, CITY OF HOBBS has prepared and adopted this Citizen Participation Plan.

Objective A

CITY OF HOBBS will provide for and encourage citizen participation within its area of jurisdiction, with particular emphasis on participation by persons of low and moderate income. *Action items:*

1. *Adopt and circulate an Open Meetings Resolution which provides citizens with reasonable notice of county/municipality upcoming meetings, actions and functions.*
2. *Develop press releases on county/municipality meetings, actions and hearings, and circulate to newspapers, radio and television media.*
3. *Develop and maintain listing of groups and representative of low and moderate income persons, and include on mailing lists of announcements, notices, press releases, etc.*

Objective B

CITY OF HOBBS will provide citizens with reasonable and timely access to local meetings, information and records relating to the proposed and actual use of CDBG funds. *Action items:*

1. *Public notices, press releases, etc., should allow for a maximum length of notice to citizens.*
2. *Appropriate information and records relating to the proposed and actual use of CDBG funds must be available upon request to all citizens. Personnel and income records may be exempted from these requirements.*
3. *Meetings, hearing, etc., should be conducted at times and locations conducive to public attendance, e.g., evenings, Saturdays.*

Objective C

CITY OF HOBBS will provide technical assistance to groups and representatives of low and moderate income persons that request assistance in developing proposals. *Note: the level and type of assistance is to be determined by the county/municipality. Action items:*

1. *Low and moderate income groups should be advised that technical assistance, particularly in the area of community development, is available from the county/municipality upon request.*
2. *Document technical assistance provided to such groups and has documentation available for review.*

Objective D

CITY OF HOBBS will provide a minimum of two public hearings to obtain citizen participation and respond to proposals and questions at all stages of the Community Development Block Grant Program. *Action items:*

1. *Advise citizens of the CDBG program objectives, range of activities that can be applied for and other pertinent information.*
2. *Conduct a minimum of two public hearings:*
 - a. *One public hearing will be held to advise citizens of the program objectives and range of activities that can be applied for, and to obtain the citizen's views on community development and housing needs, to include the needs of low and moderate income people. This hearing will take place prior to the selection of the project to be submitted to the state for CDBG funding assistance.*
 - b. *A second public hearing will be held to review program performances, past use of funds and make available to the public its community development and housing needs, including the needs of low and moderate income families, and the activities to be undertaken to meet such needs.*
3. *Publish public hearing notices in the non-legal section of newspapers or in other local media. Evidence of compliance with these regulations will be provided with each CDBG application, i.e., hearing notice minutes of public meetings, list of needs and activities to be undertaken, etc. Amendments to goals, objectives and applications are also subject to public participation.*

Objective E

CITY OF HOBBS will provide timely written answers to written complaints and grievances within 15 working days where practical. *Action items:*

1. *Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.*
2. *Allow for appeal of a decision to a neutral authority.*
3. *File a detailed record of all complaints or grievances and responses in one central location with easy public access.*

Objective F

CITY OF HOBBS will identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of residents can be reasonably expected to participate. *Action items:*

1. *Identify areas where large majorities of non-English speaking persons reside and make appropriate provisions when issues affecting these areas are to be discussed at public meetings, hearings, etc. Appropriate provisions will include having interpreters available at the meeting and having briefing material available in the appropriate language.*
2. *Maintain records/rosters of public hearing attendees and proceedings to verify compliance with this objective.*

FAIR HOUSING REQUIRED ELEMENTS

A resolution of the CITY OF COMMISSION of the CITY of HOBBS, adopting a fair housing policy, making known its commitment to the principle of fair housing, and describing actions it shall undertake to affirmatively further fair housing.

WHEREAS; the *Housing and Community Development act of 1974* as amended requires that all applicant for Community Development Block Grants funds certify that they shall affirmatively further fair housing; and

WHEREAS; the Civil Rights Act of 1968 (commonly known as the Federal Fair Housing Act) and the Fair Housing Amendments Act of 1988 declare a national policy to prohibit discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing or in the provision of brokerage services, on the basis of race, color, religion, sex, disability, familial status or national origin; and

WHEREAS; fairness is the foundation of the American system and reflects traditional American values; and

WHEREAS; discriminatory housing practices undermine the strength and vitality of America and its people;

NOW, THEREFORE, BE RESOLVED THAT the CITY OF COMMISSION of the CITY of HOBBS hereby wish all persons living, working, doing business in or traveling through this CITY to know that: discrimination in the sale, rental, leasing, and financing of housing or land to be used for construction of housing, or in the provision of brokerage services on the basis of race, color, religion, sex, handicap, familial status or national origin is prohibited by Title VIII of the Fair Housing Act Amendments of 1988; and that it is the policy of the CITY of HOBBS to implement programs, within the constraints of its resources, to ensure equal opportunity in housing for all persons regardless of race, color, religion, sex, handicap, familial status or national origin; and within available resources the CITY of HOBBS will assist all persons who feel they have been discriminated against in housing issues on the basis of race, color, religion, sex, handicap, familial status or national origin to seek equality under existing federal and state laws to file a complaint with the New Mexico Attorney General's Office or the U.S. Department of Housing and Urban Development; and that the CITY of HOBBS shall publicize this Resolution and thereby encouraging owners of rental properties, developers, builders and others involved with housing to become aware of their respective responsibilities and rights under the Fair Housing Amendments Act of 1988 and any applicable state or local laws or ordinances; and that the CITY of HOBBS shall undertake the following actions to affirmatively further fair housing:

(List all such actions to include: mailing copies of this resolution to the real estate community, banks, developers, community organizations and local media; posting copies of this resolution at identified locations; distributing flyers; sponsoring schools)

1. FAIR HOUSING PROCLAMATION - CITY COMMISSION APRIL 2023
2. Poster and Proclamation displayed at City Hall
3. Water Bill to Resident - Fair Housing Statement and web-page reference
4. City of Hobbs Web-Page - Fair Housing w/ Links
 - * Office of Fair Housing Website
 - * Fair Housing Equal Opportunity for All
 - * Equal Housing Poster (English / Spanish)
5. Fair Housing Coloring Books in City Hall Lobby Area (Engineering Dept.)

RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE REQUIRED ELEMENTS

I. Background/Introduction

Section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(d)(4)), Section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(16)), and implementing regulations at 24 CFR Part 42, specify that a grantee under the Community Development Block Grant (CDBG) must certify that it has in effect and is following a "residential Anti-displacement and relocation assistance plan" (Plan). As a CDBG grantee, CITY OF HOBBS must certify to State of New Mexico Department of Finance and Administration Local Government Division that it has and is following such a Plan.

The Plan must include three components: 1) one-for-one replacement requirements for lower-income housing units, 2) relocation assistance, and 3) a description of the steps CITY OF HOBBS will take to minimize displacement.

II. Activities Covered by the Plan

All activities involving the use of CDBG funds that cause displacement as a direct result of demolition or conversion of a lower-income dwelling are subject to the requirements specified in the Plan. Activities for which funds are first obligated on or after September 30, 1988 are subject to the requirements specified in the Plan, without regard to the source year of the funds.

III. Uniform Relocation Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) govern displacement that directly results from acquisition, rehabilitation, or demolition of real property when federal funds are used. CITY OF HOBBS's Residential Anti-displacement and Relocation Assistance Plan is in no way intended to supersede the URA. CDBG assisted activities may still be subject to the requirements of the URA.

IV. One-for-One Replacement Units

All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income units. Replacement lower-income dwelling units may be provided by any governmental agency or private developer and must meet the following requirements:

- A. The units must be located within CITY OF HOBBS to the extent feasible, the units shall be located within the same neighborhood as the units replaced

- B. The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in the units shall be in accordance with applicable local housing occupancy codes. The units may not be replaced with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless CITY OF HOBBS has provided information demonstrating that such a proposed replacement is consistent with the needs assessment contained State of New Mexico Department of Finance and Administration Local Government Division HUD-approved Consolidated Plan.
- C. The units must be in standard condition and must at a minimum meet Section 8 Program Housing Quality Standards. Replacement lower-income units may include units brought from a substandard condition to standard condition if: 1) no person was displaced from the unit; and 2) the unit was vacant for at least 3 months before execution of the agreement between CITY OF HOBBS and the property owner.
- D. The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under Section F below and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.
- E. The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance
- F. Before CITY OF HOBBS enters into a contract committing it to provide CDBG funds for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, CITY OF HOBBS must make public and submit in writing to State of New Mexico Department of Finance and Administration Local Government Division the following information:
- 1 A description of the proposed assisted activity;
 - 2 The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;
 - 3 A time schedule for the commencement and completion of the demolition or conversion;
 - 4 The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data is not available at the time of the submission to State of New Mexico Department of Finance and Administration Local Government Division, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwellings units by size shall be submitted and disclosed to the public as soon as it is available;
 - 5 The source of funding and time schedule for the provision of replacement dwelling units;
 - 6 The basis for concluding that each replacement unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and
 - 7 Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the needs assessment contained in

the State of New Mexico Department of Finance and Administration Local Government Division Consolidated Plan.

- G. The one-for-one replacement requirements may not apply if HUD determines, based on objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within CITY OF HOBBS. In making such a determination, State of New Mexico Department of Finance and Administration Local Government Division will consider such factors as vacancy rates, numbers of lower-income units in CITY OF HOBBS and the number of eligible families on the Section 8 waiting list.

V. Relocation Assistance

Each lower-income person who is displaced as a direct result of CDBG assisted demolition or conversion of a lower-income dwelling shall be provided with relocation assistance.

Relocation assistance includes advisory services and reimbursement for moving expenses, security deposits, credit checks, other moving expenses, including certain interim living costs, and certain replacement housing assistance.

Displaced persons have the right to elect, as an alternative to the benefits described in this Plan, to receive benefits under the URA, if they determine that it is in their best interest to do so. The following relocation assistance shall be available to lower-income displacement persons:

- A. Displaced lower-income persons will receive the relocation assistance required under 49 CFR 24, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses) whether the person elects to receive assistance under the URA or the assistance required by CDBG regulations. Relocation notices must be distributed to the affected persons in accordance with 49 CFR 24.203 of the URA;
- B. The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit and for credit checks required to rent or purchase the replacement dwelling unit;
- C. Actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if:
 - 1. The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or
 - 2. The person is displaced from a lower-income dwelling unit, none of the comparable replacement units to which the person has been referred qualifies as a lower-income dwelling unit, and a suitable lower-income dwelling unit is scheduled to become available through one-for-one replacement requirements
- D. Replacement Housing Assistance. Displaced persons are eligible to receive one of the following two forms of replacement housing assistance:
 - 1. Each person shall be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of

utilities for a replacement dwelling to the "Total Tenant Payment", as determined under 24 CFR 813.107. All or a portion of this assistance may be offered through a certificate or housing voucher for rental assistance under the Section 8 program.

Where Section 8 assistance is provided to the displaced person,

CITY OF HOBBS must provide the person with referrals to comparable units whose owners are willing to participate in Section 8 program to the extent that cash assistance is provided, it will be provided in installments.

2. In lieu of the housing voucher, certificate or cash assistance described above, the person may elect to receive a lump sum payment allowing them to secure participation in a housing cooperative or mutual housing association. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the

"Total Tenant Payment", as determined under 24 CFR 813.107, from the monthly cost of rent and average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings in a federally insured financial institution conducting business within CITY OF HOBBS.

Displaced lower-income tenants shall be advised of their right to elect relocation assistance pursuant to the URA and the regulations at 49 CFR 24 as an alternative to the relocation assistance available under CDBG regulations.

VI. Eligibility for Relocation Assistance

A lower-income person is eligible for relocation assistance if they are considered to be a "displaced person" as defined in 24 CFR 42.305. A displaced person means a lower-income person who, in connection with an activity assisted under the CDBG program, permanently moves from real property or permanently moves personal property from real property as a direct result of demolition or conversion of a lower-income dwelling.

For purposes of this definition, a permanent move includes a move made permanently and:

- A. After notice by the owner to move from the property, if the move occurs on or after the date of the submission of a request to CITY OF HOBBS for CDBG assistance that is later approved for the requested activity; or
- B. After notice by the owner to move from the property, if the move occurs on or after the date of the initial official submission to HUD of the consolidated plan under 24 CFR Part 91 describing the assisted activity; or
- C. Before the dates described in A & B above, if CITY OF HOBBS or State of New Mexico Department of Finance and Administration Local Government Division determines that the displacement was a direct result of conversion or demolition in connection with a CDBG assisted activity; or
- D. By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
 1. The tenant moves after execution of the CDBG agreement covering the acquisition, rehabilitation or demolition and the move occurs before the tenant is

provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions, including a monthly rent and estimated average monthly utility costs that do not exceed the greater of the tenant's monthly rent before such agreement, or the total tenant payment as determined under 24 CFR 813.107 if the tenant is lower-income, or 30 percent of gross household income if the tenant is not lower-income.

2. The tenant is required to relocate temporarily, does not return to the building/complex, and either is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.
3. The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

If the displacement occurs on or after the appropriate date described in A & B above, the lower-income person is not eligible for relocation assistance if:

- A. The person is evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the CITY OF HOBBS determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;
- B. The person moved into the property on or after the date described in A & B above after receiving written notice of the expected displacement; or
- C. CITY OF HOBBS determines that the displacement was not a direct result of the CDBG assisted activity and the State of New Mexico Department of Finance and Administration Local Government Division concurs with this determination.

VII. Minimizing Displacement

The CDBG regulations regarding the demolition or conversion of lower-income dwelling units are designed to ensure that lower-income persons are provided with adequate, affordable replacement housing. Naturally, involuntary displacement should be discouraged whenever a reasonable alternative exists. Involuntary displacement is extremely disruptive and disturbing, especially to lower-income persons who do not have the means to locate alternative housing.

There are various ways that displacement can be minimized. The following are steps that will be taken to minimize the involuntary displacement of lower-income persons when CDBG funds are involved:

- A. Screening of Applications All CDBG applications will be reviewed to determine whether involuntary displacement is likely to occur. Those applications involving displacement will receive a lower priority recommendation for funding unless it can be shown that alternatives are not available.
- B. Acquisition of Property Applicants who apply for CDBG funds to acquire property for the

development of lower-income housing will be encouraged to purchase vacant land. In the case of in-fill and other projects where this is not feasible and the project involves potential displacement, the applicant shall agree to allow the displaced lower-income person(s) to occupy the new housing at an affordable rent.

Applicants who utilize CDBG funds to rehabilitate or convert a lower-income unit to a non-residential use will be required to supply replacement housing consistent with paragraph IV, as well as relocation assistance.

- C. Cost of Relocation Assistance The cost of any required relocation assistance and the provision of replacement housing will be borne by the applicant and may be paid for out of CDBG funds awarded to the project.

VIII. Definitions

- A. "Comparable replacement dwelling unit" means a dwelling unit that:
 - 1 Meets the criteria of 49 CFR 24.2(d)(1) through (6); and
 - 2 Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" determined under 24 CFR 813.107 after taking into account any rental assistance the household would receive.
- B. "Lower-income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.
- C. "Standard condition" means units that at a minimum meet the Existing Housing Quality Standards of the Section 8 rental subsidy program.
- D. "Substandard condition suitable for rehabilitation" means units with code violations that can be brought to Section 8 Housing Quality Standards within reasonable monetary amounts.
- E. "Vacant occupiable dwelling unit" means a dwelling unit that is in a standard condition; a vacant dwelling unit that is in substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning 3 months before the date of execution of the agreement by CITY OF HOBBS covering the rehabilitation or demolition.

IX. Grievances

The CITY OF HOBBS will provide timely written answers to written complaints and grievances within 15 working days where practical. Action items:

- A. Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.
- B. Allow for appeal of a decision to a neutral authority.
- C. File a detailed record of all complaints or grievances and responses in one central location with easy public access.

SECTION 3 PLAN REQUIRED ELEMENTS

The CITY OF HOBBS is committed to comply with Section 3 of the Housing and Urban Development Act of 1968. This Act encourages the use of small local businesses and the hiring of low income residents of the community.

The CITY OF HOBBS has appointed Nicholas Goulet ^{April 3, 2023} as the Section 3 Coordinator, to advise and assist key personnel and staff on Section 3, to officially serve as focal point for Section 3 complaints, and as the on-site monitor of prime contractors and sub-contractors to insure the implementation and enforcement of their Section 3 plans. The approval or disapproval of the Section 3 plan is the ultimate responsibility of the CITY OF HOBBS. Documentation of efforts will be retained on file for monitoring by the state.

Therefore, the CITY OF HOBBS shall:

1. Hiring
 - a. Advertise for all CITY OF HOBBS positions in local newspapers
 - b. List all CITY OF HOBBS job opportunities with the State Employment Service
 - c. Give preference in hiring to lower income persons residing in the CITY OF HOBBS. This means that if two equally qualified persons apply and one is a resident of the CITY OF HOBBS and one is not, the resident will be hired
 - d. Maintain records of CITY OF HOBBS hiring as specified in the CDBG Resolution to Adopt CDBG Requirements (Exhibit 1-Y). Note: Chart for Section 3 Plan MUST be filled out in its entirety and updated with a CDBG grant agreement.

2. Contracting

- a. The CITY OF HOBBS will compile a list of businesses, suppliers and contractors located in the CITY OF HOBBS.
- b. These vendors will be contacted for bid or quotes whenever the CITY OF HOBBS requires supplies, services or construction.
- c. Preference will be given to small local businesses. This means if identical bids/quotes are received from a small business located within the CITY OF HOBBS and one from outside the CITY OF HOBBS, the contract will be awarded to the business located within the community.

3. Training

The CITY OF HOBBS shall maintain a list of all training programs operated by the CITY OF HOBBS and its agencies and will direct them to give preference to CITY OF HOBBS residents. The CITY OF HOBBS will also direct all CDBG sponsored training to provide preference to CITY OF HOBBS residents.

4. CDBG Contracts

All CDBG bid proposals and contracts shall include the following Section 3 language.

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that the greatest extent feasible, opportunities for training and employment be given lower income residents of the project areas, and contracts for work in connection with the project be awarded to business concerns residing in the project area.
- b. The parties to this contract will comply with the provision of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR and all applicable rules and orders of the Department issued there-under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under the Section 3 clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135, and will not let any subcontract unless the subcontractor has first provided it with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department, issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

The CITY OF HOBBS shall require each contractor to prepare a written Section 3 plan as a part of their bids on all jobs exceeding \$100,000. All Section 3 plans shall be reviewed and approved by the City's Equal Opportunity Section 3 Compliance Officer and retained for monitoring by the state.

The CITY OF HOBBS will maintain all necessary reports and will insure that all contractors and subcontractors submit required reports.

LOWER INCOME CLARIFICATION

A family who resides in CITY OF HOBBS and whose income does not exceed the income limit for the size of family as per the attached Section 8 Income Limit for CITY OF HOBBS. Information contained in our Section 3 Plan reflects the status of the CITY OF HOBBS employees regarding lower income considerations based on their salary paid by the CITY OF HOBBS.

Certification

This Federal Requirements Plan hereby incorporates all of the State of New Mexico CDBG requirements to include Citizen Participation, Fair Housing, Residential Anti-Displacement & Relocation as well as Section 3. The CITY OF HOBBS herewith certifies to follow the CDBG Federal Requirements Plan described above and adopt the plan by resolution once throughout the term of the CDBG grant agreement.

PASSED AND ADOPTED BY THE CITY OF COMMISSION of the CITY
of HOBBS on this 3rd day of April, 2023.

ATTEST:



CITY Clerk




APPROVED AS TO FOR:



CITY Attorney

Plan Adoption Date: April 3, 2023

Adoption Instrument: RESOLUTION

Certified By: 

SAM D. COBB
MAYOR

4-3-23
Date

Copy to Local Government Division with attachments

DISCUSSION



ACTION ITEMS



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: April 1, 2024

SUBJECT: PUBLIC HEARING FOR ENFORCING/RESCINDING RESOLUTION NO. 7445 AS IT APPLIES TO THE CONDEMNED PROPERTY LOCATED AT 700 S. JEFFERSON, HOBBS, NM.

DEPT. OF ORIGIN: Legal Department
DATE SUBMITTED: March 26, 2024
SUBMITTED BY: Valerie S. Chacon, City Attorney

Summary: On February 20, 2024, the City Commission adopted Resolution No. 7445, finding the property located at 700 S. Jefferson, Hobbs, NM 88240, to be damaged, dilapidated, and a menace to the public comfort, health, and safety and requiring remediation.

Fiscal Impact:

The remediation of this property will cost approximately \$21,953.16. The estimated amount fits within the Code Enforcement Department's FY 2024 budget for professional services.

Reviewed By: [Signature]
Finance Department

Attachments: Proposed Resolution; Resolution No. 7445; and Written Objection.

Legal Review:

Approved As To Form: [Signature]
City Attorney

Recommendation:

Adopted the Resolution to enforce or rescind Resolution 7445 as it relates to the property located at 700 S. Jefferson, Hobbs, New Mexico.

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

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

CITY OF HOBBS

RESOLUTION NO. 7458

A RESOLUTION ENFORCING/RESCINDING RESOLUTION NO. 7445 AS IT APPLIES TO
THE PROPERTY AT 700 SOUTH JEFFERSON ST., HOBBS, NM 88240

WHEREAS, THIS Commission approved Resolution No. 7445 finding the structure at 700 South JEFFERSON St., Hobbs, NM 88240, was ruined, damaged, and dilapidated, and a menace to the public comfort, health and safety and requires remediation;

WHEREAS, Frances Hanley and Shirley Bailey timely filed a written objection; and

WHEREAS, THIS Commission has held a hearing on its Resolution; and

WHEREAS, THIS Commission has considered the evidence presented by Frances Hanley and Shirley Bailey against its Resolution as well as the evidence presented in favor of the Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that its Resolution No. 7445 as it applies only to the property at 700 South Jefferson St., Hobbs, NM 88240 should be, and hereby is enforced/rescinded.

PASSED, ADOPTED AND APPROVED this 1st day of April, 2024

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

CITY OF HOBBS

RESOLUTION NO. 7445

A RESOLUTION DETERMINING THAT CERTAIN PROPERTIES THAT ARE RUINED, DAMAGED AND DILAPIDATED, ARE A MENACE TO PUBLIC COMFORT, HEALTH AND SAFETY AND REQUIRE REMEDIATION OR REMOVAL FROM THE MUNICIPALITY

WHEREAS, pursuant to Section 8.24.010 of the Hobbs Municipal Code, and Section 3-18-5 NMSA as amended, the City has inspected the premises described in Attachment "A", attached hereto and incorporated herein by reference, and finds that the structure thereon are ruined, damaged, and dilapidated, are a menace to the public comfort, health and safety and requires removal from the municipality.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the structures described in Attachment "A" are found to be ruined, damaged and dilapidated, are a menace to the public comfort, health and safety, and should be removed.

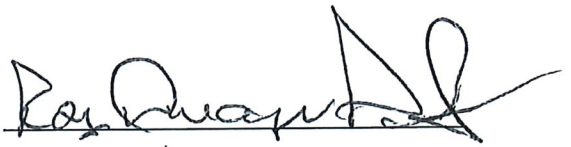
BE IT FURTHER RESOLVED that a copy of this Resolution be served on the owner, occupant or agent in charge of such premises; and that a copy of the same be published as required by law.

BE IT FURTHER RESOLVED that unless the owner, occupant or agent in charge of such premises, within ten (10) days from such service or posting and publication of this Resolution, has commenced removing such structures from the real


property or has filed written objection with the City, the City shall cause the removal of such structures at the cost and expense of the property owner.

BE IT FURTHER RESOLVED that in cases where the City removes a structure so condemned, a lien shall be levied by the City against the real property involved in an amount equal to the reasonable cost of the services rendered, which lien may be foreclosed in default of satisfaction.

PASSED, ADOPTED AND APPROVED this 20th day of February, 2024

for 
SAM D. COBB, Mayor

ATTEST:


JAN FLETCHER, City Clerk



Attachment A

	Address	Owner	Owner's Address	Estimated Cost of Demolition
1	<p>1101 E. Skelly Hobbs, Lea County, NM</p> <p>*Lots Seven (7), Eight (8), Nine (9), Ten (10) and Eleven (11), Block Forty-Six (46), Original New Hobbs to the City of Hobbs, Lea County, New Mexico as referenced on that certain Plat filed January 10, 1929.</p>	<p>- Shondra M. Quarles</p> <p>- Julian L. Mackey</p> <p>- Maycee Mackey</p> <p>- Ross Lee Mackey</p> <p>- Jocelyn Mackey</p>	<p>- 305 W. Commerce St. Apt. 422 Dallas, TX, 75208</p> <p>- 193 El Camino Loop NW Rio Rancho, NM, 87144</p> <p>- 1721 S. Turner Hobbs, NM, 88240 (x2)</p> <p>- 620 S. 6th St. Hobbs, NM, 88240</p>	\$30,258.55
2	<p>1110 S. Farquhar Hobbs, Lea County, NM</p> <p>*Lots Fourteen (14), Fifteen (15), Sixteen (16) and Seventeen (17), Block Forty-Seven (47), Original New Hobbs Addition to the City of Hobbs, Lea County, New Mexico, as referenced on that certain Plat filed July 30, 1928.</p>	Jerry Jackson	1301 S. Jefferson Hobbs, NM, 88240	\$21,355.55
3	<p>614 E. Main Hobbs, Lea County, NM</p> <p>*South One-half (S1/2) of Lots Twenty-One (21) and Twenty-two (22), Block Fifty-Five (55), New Hobbs Addition to the City Of Hobbs, Lea County, New Mexico being further described as beginning at the Southeast Corner of this Tract being the Southwest Corner of</p>	Jacob Villegas	407 E. Alston Hobbs, NM, 88240	\$18,040.61

	Lot 21, Block 55, New Hobbs Addition, Hobbs, New Mexico; thence North 93.50 feet; thence East 45.5 feet; thence S01°50'16"E 93.55 feet; thence West 48.50 feet to the point of beginning, including an easement for Utilities. (Tract C)			
4	711 E. Seco Hobbs, Lea County, NM * Lot Twelve (12), Block Fifty-Two "A" (52A), Tenth Unit of Broadmoor Addition to the City of Hobbs, Lea County, New Mexico, as referenced on that certain Plat filed October 3, 1956.	Allison Charlotte Johnson	200 Woodridge Dr. Mountain Home, AR, 72653	\$24,918.58
5	305 S. Avenue C Hobbs, Lea County, NM * Lots Fifteen (15), Sixteen (16) and Seventeen (17), Block Eleven (11). All Hobbs Addition to the City Of Hobbs, Lea County, New Mexico, as referenced on that Certain Plat filed August 2, 1957.	Michael Tercero	305 S. Ave C Hobbs, NM, 88240	\$18,987.73
6	700 S. Jefferson Hobbs, Lea County, NM * Lot Seven (7), Eight (8), Nine (9) and Ten (10), Block Eighteen (18), Original New Hobbs o the City Of Hobbs, Lea County, New Mexico as referenced on that certain Plat filed January 10, 1929.	- Frances Hanley - Pennetta Burkely	12 Whispering Bend Ct. Mansfield, TX, 76063	\$21,953.16
7	407 N Thorp Hobbs, Lea County, NM * Lot One (1), Block One Hundred Nine (109),	Melody K. Spurlock	407 N. Thorp Hobbs, NM, 88240	\$18,987.73

	Highland Park Addition to the City Of Hobbs, Lea County, New Mexico, as referenced on the certain Plat filed May 9, 1930.			
8	<p>610 S. Eighth St. Hobbs, Lea County, NM</p> <p>* A Parcel of land being located in the East Half of Section 2, Township 19 South, Range 38 East, N.M.P.M., Lea County, New Mexico and being more particularly described as follows: Beginning 124 feet North and 118 feet East of the Southwest Corner of Tract #5 of the Selman Subdivision; thence North for a distance of 62 feet; Thence East for a distance of 125.5 feet; thence South for a distance of 62 feet; thence West for a distance of 125.5 feet to the point of beginning with an easement over and upon the West 20 feet thereof for utility and road purposes and the East 7.5 for alley purposes; also known as Lot #22 of the Carter Lots</p>	Ann Bibbs	6215 Polo Grounds Ct. Odessa, TX, 79762	\$22,065.89

Jan Fletcher

From: Jan Fletcher
Sent: Friday, March 1, 2024 11:46 AM
To: 'store@alphamailbox.com'; 'psalms401234@gmail.com'
Subject: RE: EXTERNAL: Objection to condemnation of property at 700 s JEFFERSON

Hello Ms. Bailey,

Thank you for calling today about the property at 700 South Jefferson. I acknowledge receipt of your email correspondence. The City of Hobbs will establish a hearing date in the near future and you will be notified in writing about the date/time of the hearing.

Should you have any additional questions, please let us know.

Respectfully,

Jan Fletcher


City Clerk | City of Hobbs
200 East Broadway | Hobbs, NM 88240
(575) 397-9207 phone



From: store.alphamailbox.com <store@alphamailbox.com>
Sent: Friday, March 1, 2024 11:27 AM
To: Jan Fletcher <jfletcher@hobbsnm.org>
Subject: EXTERNAL: Objection to condemnation of property at 700 s JEFFERSON

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 The email came from an external source.

Thank you,

Alpha Mailbox
Las Vegas, NV
702-367-1300
www.alphamailbox.com


Shirley D. Bailey
1708 Dia Del Sol Way
Las Vegas, NV 89128
Tel, 469-443-2771
www.psalms401234@gmail.com

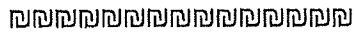
March 1, 2024

Ms Jan Fletcher
Jfletcher@hobbsnm.org

I Shirley D Bailey, object to the condemnation of the property at 700 S. Jefferson. The property is a historic house. It will be restored soon. This will be the first on the south side of town. I am sending the history of the house and one of the programs that will assist with restoration. Please be patient with my family.

Thank you


Shirley D. Bailey



28 February 2024

City of Hobbs, City Manager
200 E Broadway Street
Hobbs, NM 88240



TimeSprings, Inc.

Dear Mr. J. J. Murphy or Acting City Manager –

Three years ago, I completed an historic context for the National Park Service documenting the period of ‘Jim Crow’ African American segregation in New Mexico. That link is available on the New Mexico Historic Preservation Division (HPD) website at: <https://bit.ly/3Tv9faw>. Recently, I completed the fieldwork in nine study cities including Hobbs using National Trust for Historic Preservation funding. Those results should be posted to HPD’s website soon.

One of the goals is to identify those buildings and landscapes potentially eligible for listing in the National Register of Historic Places by virtue of their significance to the Black Experience in New Mexico. Although additional research is warranted, one such property may be located at 700 S. Jefferson Street. The Lea County Real Property Records Code is: 4000012890001, Owner #1289.

Owned by Pennetta Burkley and Frances Hanley, family members believe that the home was relocated to its current location between 1904 and 1914 from Seminole, TX to the predominantly Black neighborhood of Original New Hobbs. According to family member Ms. Shirley D. Bailey, Ms. Burkley worked for a judge when she first moved to Hobbs. She was an entrepreneur during a time when opportunities for Black residents were limited, opening a café on Main Street, a taxi stand, and she sold hot tamales. Once Lea County chose to racially segregate its schools in the mid-1920s, Ms. Burkley opened her home to board Black Booker T. Washington educators.

Her son played at the Sunshine Club with B. B. King and other jazz greats during the 1940s and 1950s. Her daughter-in-law Lizzie Lee Bailey was one of the first Black workers employed at the Good Eats Bakery, where she was a baker for more than 45 years. Her daughter, Jessie V. Bailey, was also raised at 700 E. Jefferson Street. She was the first baby to attend Pleasant Green Baptist Church. She was one of the first Black singers accepted into the acapella choir once Hobbs High School was integrated. Her granddaughter, Shirley D. Bailey, was born and raised at 700 S. Jefferson Street. She was a record-setting track athlete at Hobbs High School.

As the family seeks tax incentives and funding to restore their house beginning with the roof, I just want to make sure that the City staff is aware of the critical role that the home at 700 S. Jefferson has played in telling the story of the State’s Black Heritage.

Jean Fulton, M. A. (TimeSprings, Inc.)
Qualified Contractor, Architectural Historian, New Mexico Historic Preservation Division (Santa Fe)
Las Cruces, NM

Conserving Cultural Resources
Cell: 575.649.3265. E-mail: jeanfulton@earthlink.net



Shirley D Bailey
deebailee@yahoo.com
Cell: 469.443.2771

Some History on 700 S Jefferson Pennetta Burkley

House was moved from Seminole, Tx and was moved Hobbs NM.
700 S Jefferson.

House moved between 110 to 120 years old ago. A two rooms An she remodeled and extended it. She used tin instead of chicken v to stucco.

Self employed and worked for a judge when she moved to Hobbs She opened a cafe on E. Man. Then she opened the first and only black cab service in Hobbs. Later on she lived in operated apartm at 700 S Jefferson. She also sold Hot Tamales. Later on she hous some of the first black school teacher.

Jessie Bailey resided there her son and he played in the band wi B King band in the 40"s and the 50's

Also, her daughter in law who was Lizzie Lee Bailey resided at 70 and she was one of the first black bakery workers at Good Eats Bakery She worked there for over 45 years.

Also Jessie V Bailey also was born and raised at 700 Ms. Penne first grand child was one of the first black singers in tha accpella Hobbs High School. Also, she was the first baby at Plesant Gree Baptist Church

Shirley D Bailey was born and raised at 700 and was a athlete he schools and name is on a record that will never be broken in to stucco.

Self employed and worked for a judge when she moved to Hobbs She opened a cafe on E. Man. Then she opened the first and on y black cab service in Hobbs. Later on she lived in operated apartment at 700 S Jefferson. She also sold Hot Tamales. Later on she house some of the first black school teacher.

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Also, she was the first baby at Plesant Green Baptist Church

Shirley D Bailey was born and raised at 700 and was a athlete at in the schools and name is on a record that will never be broken in track at Hobbs School.

700 S Jefferson hold a lot of Black History.

Jessie Harley is available on evenings an weekend. Also, she know others that are her age and some that are in there 90's that make help with the history.

Jan Fletcher

From: store alphamailbox.com <store@alphamailbox.com>
Sent: Friday, March 1, 2024 11:27 AM
To: Jan Fletcher
Subject: EXTERNAL: Objection to condemnation of property at 700 s JEFFERSON
Attachments: doc01080620240301102417.pdf; doc01080520240301102356.pdf

 **Security Awareness**

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 The email came from an external source.

Thank you,

Alpha Mailbox
Las Vegas, NV
702-367-1300
www.alphamailbox.com

This email has been scanned by Inbound Shield.

Jan Fletcher

From: Jan Fletcher
Sent: Thursday, February 29, 2024 4:20 PM
To: 'Frances Hanley'
Cc: Jessica Silva
Subject: RE: EXTERNAL: Fwd: Choosing to Objection to condemnation resolution of property

Hello Ms. Hanley,

Thank you for calling today about the property at 700 South Jefferson. I acknowledge receipt of your email correspondence. The City of Hobbs will establish a hearing date in the near future and you will be notified in writing about the date/time of the hearing.

Should you have any additional questions, please let us know.

Respectfully,

Jan Fletcher



City Clerk | City of Hobbs
200 East Broadway | Hobbs, NM 88240
(575) 397-9207 phone



From: Frances Hanley <flhanley69@yahoo.com>
Sent: Thursday, February 29, 2024 3:23 PM
To: Jan Fletcher <jfletcher@hobbsnm.org>
Subject: EXTERNAL: Fwd: Choosing to Objection to condemnation resolution of property

 **Security Awareness**

[Learn more](#)

-  The email came from an external source.
-  The email was sent from a personal email address.

Ms Fletcher
Hopefully this email will get to you
Ms Hanley

Begin forwarded message:

From: Frances Hanley <flhanley69@yahoo.com>
Date: February 27, 2024 at 4:54:34 PM CST
To: jfletcher@hobbsnm.org
Subject: Choosing to Objection to condemnation resolution of property

Ms Fletcher

I am requesting a hearing regarding property at 700 South Jefferson Street in Hobbs NM, per letter I received dated Feb 23,2024 . As a senior citizen not currently living in New Mexico I would like to know if I may have a phone hearing or be given time to make any travel arrangements. At 72year old not driving for long travel. This property was passed thru from my grandmother Pennetta Buckley 700 So Jefferson Lots 7;8;9&10

in 1929. I've been taking care of the taxes for many years now. I'm also reaching out per phone calls dept of the City of Hobbs to better understand how to plan through getting this property taken care of as I'm not able to repay \$22,000.00 at once . Need to understand stand if there is a time frame for installments or what I'm up against. I did receive very helpful information from a Ms Jessica Silva office and I did try calling and left message. I'm really trying to to get a clearer understanding of this matter . If the hearing has to be in person or can I arrange phone or online?

Thanks

Ms Frances Hanley

Email address as above

Contact Phone# 972-358-5670
12 Whispering Bend Ct
Mansfield Texas 76063



This email has been scanned by Inbound Shield.

Jan Fletcher

From: Frances Hanley <flhanley69@yahoo.com>
Sent: Thursday, February 29, 2024 3:24 PM
To: Jan Fletcher
Subject: EXTERNAL: Choosing to Objection to condemnation resolution of property

Security Awareness

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-  The email came from an external source.
-  The email was sent from a personal email address.

Ms Fletcher

I am requesting a hearing regarding property at 700 South Jefferson Street in Hobbs NM, per letter I received dated Feb 23,2024 . As a senior citizen not currently living in New Mexico I would like to know if I may have a phone hearing or be given time to make any travel arrangements. At 72year old not driving for long travel. This property was passed thru from my grandmother Pennetta Buckley 700 So Jefferson Lots 7;8;9&10 in 1929. I've been taking care of the taxes for many years now. I'm also reaching out per phone calls dept of the City of Hobbs to better understand how to plan through getting this property taken care of as I'm not able to repay \$22,000.00 at once . Need to understand stand if there is a time frame for installments or what I'm up against. I did receive very helpful information from a Ms Jessica Silva office and I did try calling and left message. I'm really trying to to get a clearer understanding of this matter .

Thanks

Ms Frances Hanley
Contact Phone# 972-358-5670
12 Whispering Bend Ct
Mansfield Texas 76063

This email has been scanned by Inbound Shield.



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: April 1, 2024

SUBJECT: RESOLUTION TO APPROVE THE FINAL PLAN FOR THE COLLEGE SQUARE SUBDIVISION, AS RECOMMENDED BY THE PLANNING BOARD.

DEPT. OF ORIGIN: Engineering Dept.
DATE SUBMITTED: March 24, 2024
SUBMITTED BY: Todd Randall, City Engineer

Summary: The Final Plan for the College Square Subdivision, is submitted by Lemke Development, Inc. The subdivision is located northwest of the intersection of Grimes St and College Ln. within the municipal boundaries. The subdivision encompasses +/- 12.54 acres and will contain 50 single family residential lots. The Planning Board consider this item at the March 19th, and voted 5-0 to recommend approval. The Municipality is in receipt of an Engineer of Record Certification concerning the installation of infrastructure as to the approved construction plan se and a cash bond for \$12,500 to cover the replacement of water meter curb stops.

Fiscal Impact: Reviewed By: Finance Department

The positive impact of the new development and new housing from GRT collections and monthly utility bills of the residents should offset any expenses that the City will incur from the maintenance responsibility of streets, water and sewer lines.

Attachments: Resolution, Final Plat, DRAFT Planning Board Minutes, Estimate for uncompleted infrastructure.

Legal Review: Approved As To Form: Valerie S. Chacon City Attorney

Recommendation: Approval of the Resolution to approve College Square Subdivision as recommended by the Planning Board.

Approved For Submittal By:

TODD RANDALL
Department Director
City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

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

CITY OF HOBBS

RESOLUTION NO. 7459.

A RESOLUTION TO APPROVE THE FINAL PLAT FOR COLLEGE SQUARE SUBDIVISION, AS RECOMMENDED BY THE PLANNING BOARD.

WHEREAS, Lemke Development, Inc. has submitted a Final Plat for College Square Subdivision for review by the City Planning Board; and

WHEREAS, the subdivision Final Plat was reviewed and approved by the Hobbs Planning Board at the March 19th, 2024; and

WHEREAS, the Final Plat for the College Square Subdivision was reviewed and found compliant with MC Title 16 by the City of Hobbs Planning Board and the Municipality is in receipt of the Engineer of Record Certification as to the installation of all public infrastructures, which noted the water meter curb stops need to related; and

WHEREAS, the City has received a cash bond of \$12,500 to ensure the replacement of the water meter curb stops are completed.

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

1. The City of Hobbs hereby grants Final Plat Approval to the College Square Subdivision as recommended by the Planning Board; and

2. The City officials and staff are directed to do any and all acts necessary to carry out the intent of this Resolution.

PASSED, ADOPTED AND APPROVED this 1st day of April, 2024.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, CITY CLERK

squarerootservices.net
7921 N World Dr
Hobbs, NM 88242



March 12, 2024

Via e-mail: trandall@hobbsnm.org

Todd Randall, PE, City Engineer
City Of Hobbs
200 E. Broadway
Hobbs, NM 88240

Re: College Square Subdivision

Dear Mr. Randall,

Square Root Services, LLC (SRS) conducted inspections and materials testing for the installation of the water and sewer lines as well as concrete curb and gutter, subgrade, base, and asphalt testing for the roadway. Leo Wilson conducted sewer air test and manhole exfiltration testing for this project. Results of said testing and inspections can be provided upon request. The city conducted waterline testing and chlorination inspections. The construction was completed in substantial compliance with the submitted and approved plans with one exception anticipated to be corrected by March 14th. This exception is the incorrect corp stops being installed at water meters. A check has been delivered to the city in the amount of \$12,500 in order to cover these cost should they not be completed.

Additionally, sidewalks will be completed by developer prior to houses being sold to better accommodate driveway layouts to match the house being constructed for each lot.

Street lights will be installed by developer when electrical is installed as well.

It is recommended that said College Square Subdivision roadways, water, and sewer lines be accepted by the City of Hobbs and allow for subdivision plat to be filed to create this much needed housing project.

Respectfully Submitted,

A handwritten signature in black ink that reads 'Jeremy Baker'. The signature is written in a cursive, flowing style.

Jeremy Baker, PE/PS
Square Root Services, LLC

J & H Services, Inc.
 Albuquerque, NM 87109

Estimate	
Date	Estimate #
3/11/2024	2511

Name / Address
Lemke Development, Inc. John F. Lemke 4008 N. Grimes #157 Hobbs, NM 88240

Expires	Project
4/10/2024	College Square Curb Stops

Item	Description	Qty	Price	Total
900 Water	Curb Stop Replacement; 50 ea	50	250.00	12,500.00

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner.

			Subtotal	\$12,500.00
			Sales Tax (6.5625%)	\$0.00
Total				\$12,500.00

Phone #	Fax #	E-mail
5058969428	505-896-9429	holly@jhservicesinc.com

Jan Fletcher

From: Deborah Corral
Sent: Tuesday, March 12, 2024 12:14 PM
To: Jan Fletcher
Cc: Toby Spears; Todd Randall
Subject: BOND

Jan
I needed to verify with Todd that this would be returned to the developer at some point so I could determine the correct account.

Please use code 010 and put it in account 001-20026 – Bid Bond Payable for the \$12,500 Lemke Check.
thanks
Deb



City of Hobbs
City Clerk
200 E Broadway St
Hobbs, NM 88240
(575) 397-9200
Welcome

03/12/2024 02:57PM Front D.
014035-0013 000192735

MISCELLANEOUS
MISCELLANEOUS REVENUE
(010)
2024 Item: 010
1.00 @ 12,500.00

MISCELLANEOUS REVENUE
(010) 12,500.00

12,500.00

Subtotal 12,500.00
Total 12,500.00

CHECK 12,500.00
Check Number 141629

Change due 0.00

Paid by: BID BOND - LEMKE DEVELOPMENT -
DC/JF

Thank you for your payment!

City of Hobbs COPY
DUPLICATE RECEIPT

[Home](#) / [All Products](#) / [Pipe Fittings](#) / [AWWA Service Brass & Saddles](#) / [AWWA Service Brass](#) / [Water Service Brass Stops](#)

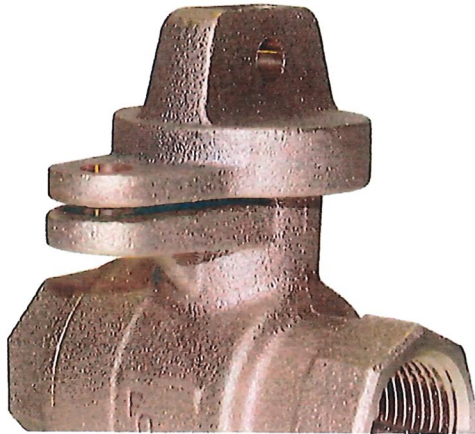


FORD METER BOX

1 in. FIP Water Service Brass Ball Valve Curb Stop

Part #FB11344WNL | Item #4409668 |
Manufacturer Part #B11-344W-NL

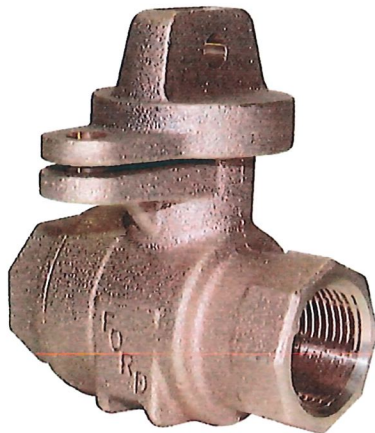
[\(0\) Write a Review](#)



\$128.16 EACH

Inlet Service Size: 1 in

Ford Meter Box 1 in. FIP Water Service Brass Ball Valve Curb Stop



Communications from Citizens

There were no communications from citizens.

Action Items

- 3) **Review and Consider Proposed Annexation of land located east of Zia RVillas and south of W De Baca Street.**

Mr. Randall stated this is a proposed annexation of land located east of Zia RVillas and south of W. De Baca Stree.

There being no further discussion, Mr. Clay made a motion to approve the Annexation of land located east of Zia RVillas and South of W. DeBaca Street, seconded by Mr. Ramirez. The vote on the motion was 5-0 and the motion carried.

- 4) **Review and Consider Final Preliminary Plan for College Square Subdivision with a Cash Bond Security (\$12,500) for those improvements not finalized, located northwest of the intersection of College Lane and Grimes St., as submitted by property owner, Lemke Development, Inc.**

Mr. Randall stated this is the final preliminary plan for College Square Subdivision, located northwest of the intersection of College Lane and Grimes St. He stated the subdivision will contain 50 single-family residential lots. Mr. Randall stated the municipality is in receipt of an Engineer of Record stating the development is nearly complete except for one issue regarding the type of curb stops where the water meters are installed. He further stated Mr. Lemke, the property owner, already deposited \$12,500.00 cash bond security for the 50 curb stops. Mr. Randall stated it is preferred that these be corrected today to avoid having the Utilities Department replace them later on. He stated the issue is minor, as it pertains to the type of curb stops specified versus those installed, which are not the locking type.

Mr. Randall stated with the approval of the subdivision, the Planning Board is approving any security associated with work that hasn't been completed. This approval allows the developer to proceed with the plan, backed by the bond for improvements. In response to Mr. Ramirez's question, Mr. Randall stated all utilities have been buried underground, and the infrastructure is in place, including water infrastructure and streets. The only pending task is the installation of streetlights, which is awaiting Xcel Energy to complete the electrical work.

Mr. Clay made a motion to approve the Final Preliminary Plan for College Square Subdivision with a Cash Bond Security (12,500.00) for those improvements not finalized, seconded by Ms. Turner. The vote on the motion was 5-0 and the motion carried.

Adjournment



CITY OF HOBBS

COMMISSION STAFF SUMMARY FORM

MEETING DATE: April 1, 2024

SUBJECT: Assignment of ambulance billing contract from Image Trend, LLC to EMS MC
DEPT. OF ORIGIN: Hobbs Fire Department
DATE SUBMITTED: 3-20-2024
SUBMITTED BY: Mark Doporto - Fire Chief

Summary:

On October 4th, 2021, RFP # 523-21 was awarded to Image Trend, LLC to provide ambulance billing services. Subsequently, Image Trend, LLC was awarded a professional service contract. On February 7th, 2024, Image Trend, LLC sold its ambulance billing service unit to EMS MC of North Carolina. Management at EMS MC issued a consent letter, stating that all terms and conditions would remain the same as the original contract with Image Trend, LLC, including the commission collection %. The City of Hobbs will conduct a formal RFP process prior to October 4th, 2024.

Fiscal Impact:

Reviewed By: _____
Finance Department

Digitally signed by Valerie S. Chacon
DN: cn=Valerie S. Chacon, o=City of Hobbs, ou=City Attorney
Date: 2024.03.21 09:23:45 -0500

Total estimated annual assigned contract is projected at \$146,250. (\$2,500,000 projected ambulance fees x 5.85% contract collection percentage)

Attachments:

- Image Trend, LLC consent letter
- EMS MC management consent letter
- Image Trend, LLC original contract

Legal Review:

Approved As To Form: Valerie S. Chacon
City Attorney

Digitally signed by Valerie S. Chacon
DN: cn=Valerie S. Chacon, o=City of Hobbs, ou=City Attorney
Date: 2024.03.21 09:23:45 -0500

Recommendation:

Motion to approve the assignment of contract to EMC MC of North Carolina

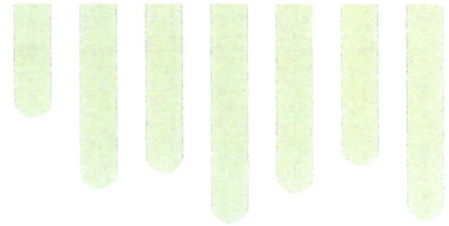
Approved For Submittal By:

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. _____



March 18, 2024

Hobbs Fire Department
Attn: Chief Chris Henry
301 E. White St.
Hobbs, NM 88240

VIA EMAIL: chenry@hobbsnm.org

Re: Professional Services Agreement (Contract No. 00003298.0), and all related amendments and attachments, by and between the Hobbs Fire Department and ImageTrend, LLC (collectively, the "Agreements").

Dear Chief Henry:

Per our email exchange, I am providing this letter as written documentation of EMS Management and Consultants, Inc (EMS|MC) intent as it relates to the assignment of the Agreements following the sale ImageTrend's EMS billing and collections business to EMS|MC. It is our intent to step into the contract exactly as written between ImageTrend and the City of Hobbs. We will not be changing any pricing or service deliverables under the contract.

My understanding is that you will be meeting with the Commission the first week of approval to seek approval of the assignment. If there is anything further you need from me or EMS|MC in advance of that meeting please let me know. We are very excited about the opportunity to service the Hobbs Fire Department and look forward to working together for many years to come. Please feel free to contact me via email or phone (781.710.3602) if you need additional information or have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "George Abatjoglou".

George Abatjoglou
President
george.abatjoglou@emsmc.com



2540 Empire Drive, Suite 100
Winston-Salem, NC 27103



Info@emsmc.com



emsmc.com

CONFIDENTIAL

ImageTrend, LLC

February 7, 2024

Hobbs Fire Department (the "**Company**" or "**you**")
Attn: Chief Chris Henry
301 E. White St.
Hobbs, NM 88240

VIA EMAIL: chenry@hobbsnm.org

Re: Professional Services Agreement (Contract No. 00003298.0), and all related amendments and attachments, by and between the Company and ImageTrend, LLC (collectively, the "**Agreements**").

All,

We are pleased to inform you that ImageTrend, LLC, a Minnesota corporation ("**ImageTrend**") is considering a prospective transaction with EMS Management & Consultants, Inc., a North Carolina corporation, or one of its affiliates ("**Prospective Buyer**"), pursuant to which Prospective Buyer would purchase certain assets of ImageTrend (the "**Prospective Transaction**"), which would include the assignment of the Agreements from ImageTrend to Prospective Buyer (the "**Assignment**").

Our review of the Agreements indicates that ImageTrend must confirm your consent to, or that you have the right to terminate the Agreements upon the occurrence of, the Assignment. By signing below, you hereby: (a) acknowledge and consent to the Proposed Transaction for all purposes under the Agreements, including, without limitation, for purposes of any provisions contained therein requiring consent, notice or other action in respect of disclosing the existence or terms of the Agreements or any Assignment that may result therefrom; (b) waive any and all rights that you may have to terminate the Agreements to the extent such rights arise or result from, or are caused by, the Prospective Transaction or the Assignment; (c) agree that any notice requirements under the Agreements with respect to the Prospective Transaction (in regards to form of delivery and notice, time requirements or otherwise) are hereby waived; (d) agree that this Letter will not otherwise amend or modify any of the terms and conditions of the Agreements, which will continue in full force and effect after the closing of the Prospective Transaction in accordance with their terms; and (e) agree to keep confidential the existence and contents of this Letter (including any information regarding or the existence of the Prospective Transaction). This Letter shall be null and void and shall have no force or effect in the event the Prospective Transaction is not consummated.

Thank you in advance for your prompt attention to this request. Please return a signed copy of this Letter via e-mail to me at dquam@imagetrend.com, as soon as possible. Please feel free to contact me via email or phone (952.469.6426) to discuss any questions or concerns you may have about this matter.

[Signature Page Follows]

Sincerely,

IMAGETREND, LLC

By: _____
Name:
Title:

Acknowledged and Agreed:

Hobbs Fire Department

By: _____
Name: _____
Title: _____



Professional Services Agreement

CONTRACT NUMBER: 00003298.0

BETWEEN

Hobbs Fire Department

209 E. Willow Street
Hobbs, NM 88240

AND

IMAGETREND®

ImageTrend, Inc.
20855 Kensington Blvd.
Lakeville, Minnesota 55044

THIS AGREEMENT is made and entered into on the date last written below, by and between the ImageTrend, Inc., a Minnesota corporation (hereinafter "ImageTrend"), and Hobbs Fire Department (hereinafter "Client"), together "the Parties."

RECITALS

WHEREAS, Client desires to have services performed by ImageTrend; or

WHEREAS, Client desires to purchase Commercial-Off-The-Shelf Software from ImageTrend; or

WHEREAS, Client desires to purchase Custom Software Development from ImageTrend; and

WHEREAS, ImageTrend possesses technical skill, knowledge, and capability in consulting and designing custom and off-the-shelf software solutions and performing technical software services and Client desires such services.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

"Agreement" and **"This Agreement"** means this Professional Claims Services Agreement, the Work Orders issued hereunder, all Attachments and Exhibits attached hereto, or any Amendments made in mutually executed hereto.

"Business Day" means a single 8 hour period occurring on a Monday, Tuesday, Wednesday, Thursday or Friday, 9:00am CST to 5:00pm CST, excluding holidays per §14(b) below. Unless specified in a Service Order, ImageTrend personnel will only perform services during Business Days.

"Business Week" means a 5 day period, beginning Monday at 9:00am CST and ending Friday at 5:00pm CST, excluding holidays per below.

"Confidential Information" means the proprietary products and trade secrets, including, but not limited to, computer software, code, technical parameters, price lists, methods of pricing, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed. Information shall be considered Confidential Information if it is identified in writing as confidential or proprietary, or if disclosed verbally or visually in discussion, upon written notice specifying and describing the nature of the orally disclosed Confidential Information at that time, or within fifteen (15) days of such disclosure. Confidential Information is subject to the New Mexico Inspection of Public Records law.

"Commercial Off The Shelf" or "COTS" means pre-designed software products which are made available for sale by ImageTrend to many customers. COTS is mutually exclusive to Custom Software or Custom IP. MOTS means Modified Off The Shelf, and is a derivative work of ImageTrend COTS Software.

"Custom IP" or "Custom Software" means software products, or other Intellectual Property, which is designed for a specific purpose, for a specific customer or CLIENT.

"Deliverable" means an intangible or tangible product, material, or service produced as a result of a Work Order, and each Deliverable is specified in the corresponding Work Order from which it is produced.

"Disclosing Party" means the party disclosing Confidential Information to the other party, see also Receiving Party.

"Effective Date" means the date upon which the last party has signed and executed this Agreement.

"Fixed Fee" means a fixed amount of compensation due in return for a fixed Deliverable.

"Governmental Entity" shall have the same meaning as "State and local government entities" as defined in the General Services Administration Acquisition Manual (GSAM) at 538.7001, as updated.

"Intellectual Property" means any intellectual property or proprietary rights in any jurisdiction, whether owned or held for use under license, whether registered or unregistered, including such rights in and to: (i) trademarks, trade dress, service marks, certification marks, logos, trade names, brand names, corporate names, assumed names and business names ("Trademarks", which term shall include the items described in clause (viii) below); (ii) patents and any and all divisions, continuations, continuations-in-part, reissues, continuing patent applications, reexaminations or extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention, certificates of registration and like statutory rights; inventions, invention disclosures, discoveries and improvements, whether patentable or not; (iii) copyrights and works of authorship; (iv) trade secrets (including those trade secrets defined in the Uniform Trade Secrets Act and under corresponding federal, state or foreign statutory or common law), business, technical and know-how information, non-public information, and confidential information and rights to limit the use or disclosure thereof by any Person; (v) mask works; (vi) moral rights, author's rights or rights of publicity; (vii) suits, causes of action and defenses relating to the enforcement of any of the foregoing; (viii) any applications for registration of any of the foregoing, and all renewals or extensions of any of the foregoing, whether now existing or hereafter arising; and (ix) the goodwill associated with each of the foregoing. For the avoidance of doubt, "Intellectual Property Rights" includes any and all of the foregoing related to computer software, data files, Source Code, Object Code, APIs, manuals, documentation, specifications, databases or other materials or information.

"Licensed Information" means any information pertaining to the Software which is owned by IMAGETREND and is licensed to CLIENT. Licensed Information includes such information as input form, user manuals and user documentation, interface format and input/output format, and any other materials pertaining to the Software.

"Local Travel" means travel to a destination in the Twin Cities Metro area, within 30 miles of Lakeville, MN.

"Materials" and "Expenses" means but is not limited to third party software licenses, physical hardware, test devices, or other items, reasonable travel expenses (including but not limited to food, lodging, and transportation), printing, delivery of materials, or any other cost reasonably incurred arising out of this Agreement.

"Professional Claims Services Agreement" means this document excluding Work Orders issued from this document.

"Pre-Existing Materials" means code, documentation, frameworks, development accelerators, tool sets or any other materials owned by ImageTrend and not developed as part of the services performed for Client. It may include, without limitation, Security Framework, Dashboard, ImageTrend Frameworks, Report Writer and any other tools or Intellectual Property made or used by ImageTrend unrelated to this Agreement.

"On-Site Hour" means time an hour worked by ImageTrend personnel on Client premises, or other premises of Client's choosing that are not ImageTrend's corporate offices.

"Statement of Work" means the technical document which outlines a mutually agreed upon specification for particular Custom Development projects and associated costs, payment terms and acceptance procedures. This document requires client acceptance and signature prior to beginning work.

"Support" means technical support for the configuration and functioning of the products, including taking and monitoring defect reports, as defined further below in the Service Level Agreement between ImageTrend and Client.

"Software" means ImageTrend software provided to Client by ImageTrend, specifically software developed and/or written by ImageTrend. Software developed by a third-party which is purchased on behalf of Client is considered Third Party Material.

"Receiving Party" means the party receiving Confidential Information from the Disclosing Party.

"The Agreement" means collectively this Professional Claims Services Agreement, its Exhibits, all Work Orders issued from this Professional Claims Services Agreement, and all Exhibits to Work Orders.

"Third Party Material(s)" means software or other materials owned by a party other than Client or ImageTrend.

"Time and Materials Basis" means charges billable to the Client based upon each hour worked, multiplied by the hourly rate for the work, plus the cost of any Materials necessary (including but not limited to, the cost of third party software licenses, travel and accommodation expenses, or otherwise), or Materials beneficial (conditioned upon mutual assent of the parties), billed on a monthly basis in arrears.

"Work Order" means the document which outlines a mutually agreed upon set of services, products, or Deliverables and associated costs, payment terms, and acceptance procedures.

SECTION 2. TERM OF AGREEMENT

The Term of this Agreement shall be 12 months from the Effective Date of this Agreement ("Initial Term"). Upon expiration of a Term, the Term shall automatically renew under the same terms and conditions for additional subsequent 12 month term ("Renewal Term"), unless terminated under the terms of this Agreement or by otherwise giving the other party no less than 180 days of written notice prior to the last day of the then-current Term.

SECTION 3. WORK ORDERS

CREATION OF WORK ORDERS. The parties may, from time to time, work together to detail the specific engagement scope, pricing, acceptance criteria, and terms of services to be performed and Deliverables to be delivered by ImageTrend. ImageTrend will set forth these details as a Work Order. If the Work Order is for the purchase of COTS Software or Services, the Work Order shall also outline the quantity

and SKU of each product or service as applicable. Should a Work Order contain no term regarding a topic, the terms of this Professional Claims Services Agreement shall hold instead.

LIMITATIONS OF WORK ORDERS. Work Orders may include requirements on the Client. Such requirements, when executed as part of a mutual agreed writing, form a material part of this Agreement and of the Work Order where the requirement is presented. Additionally, either party may set forth factual assumptions ("Assumption") in each Work Order. Notwithstanding anything in this Agreement or the Work Order, a Work Order will be rendered void to the extent that ImageTrend is obligated to perform services which are impossible or impracticable. Further, a Work Order will be rendered voidable to the extent that ImageTrend is obligated to perform services materially different than originally set out in that Work Order due to an inaccurate Assumption. The parties will make commercially reasonable efforts to negotiate an alternative or modified Work Order in light of the inaccurate Assumption.

MODIFICATION OF WORK ORDERS. Any modification to the scope or tasks identified within the Work Order that change the work budget by an estimated 10 hours of work or more shall require a new modified written Work Order or written Change Order. ImageTrend shall not work on the new tasks in the modified Work Order until the Client has provided signed written acceptance of the new Work Order. The parties may waive this requirement on a case-by-case basis in writing. Modifications requiring less than an estimated 10 hours of work may be proposed and accepted verbally, with such modifications requiring less than 10 hours of work billed on a Time and Materials basis.

LEGAL EFFECT. Work Orders issued under this Professional Claims Services Agreement are incorporated by reference into this Professional Claims Services Agreement which collectively is called "the Agreement." Work Orders do not override the terms of this Professional Claims Services Agreement unless specifically stated that they do so. Work Orders may contain their own Fee/Payment Schedules and Payment Terms; those terms are binding insofar as they concern the services or Deliverables contemplated by the Work Order. For Work Orders without their own fee and payment terms, the payment terms the Professional Claims Processing Fees attachment below control.

SECTION 4. PERFORMANCE OF SERVICES

COMMENCEMENT. ImageTrend shall begin services described in the Work Order subsequent mutual signed execution of the Work Order. No services shall begin before mutual signed and written final acceptance of each Work Order.

USE OF KNOW HOW. ImageTrend shall use its know-how, Intellectual Property, talent, skills, and employees to perform the services. Client shall receive no license to any Intellectual Property, and shall instead receive only the benefit of the services rendered hereunder unless otherwise specified in a Work Order.

ACCEPTANCE OF SERVICES AND DELIVERABLES. ImageTrend shall deliver completed Deliverables and services to Client for acceptance. Each Work Order must detail the acceptance criteria for each Deliverable or service contained within that Work Order. If a Deliverable or services acceptance criteria is measurable objectively, it shall be complete upon satisfaction of that objective measurement without regard to either party's satisfaction with the Deliverable. If 1) a Deliverable's acceptance criteria is based

on Client's satisfaction with the Deliverable, or 2) no acceptance criteria is detailed, then the following default clause shall apply:

After delivery of the Deliverable or performance of the service, Client shall have no more than 15 days to: 1) accept the deliverable or service, or 2) reject the deliverable or service by providing a written rejection that reasonably sets forth the reason for the rejection and the changes required to gain Client's acceptance, or 3) provide a written request for a 15 additional day extension to review the Deliverable or service; ImageTrend shall not unreasonably withhold approval of such 15 day extension. If Client does not provide an acceptance within the above time frame inclusive of extensions, the Deliverable or service will be deemed accepted. After delivery of the fourth revision of the service or Deliverable, the service or Deliverable shall be deemed accepted by Client.

SECTION 5. FEES, INVOICING, AND PAYMENT TERMS

PROMPT PAYMENT ACTS. IF CLIENT IS A GOVERNMENTAL ENTITY, THE FOLLOWING PARAGRAPH APPLIES: To the degree any term in this Section, or any payment related term in any Work Order, conflicts with the governing prompt payment act or similar procurement act which unambiguously limits client's ability to agree or comply with any term in this section 5 or in any payment related term in any work order ("The PPA"), the term in the PPA will instead control. For clarity, unless there is an unambiguous conflict between the terms of this Section or in any Work Order, the PPA shall not control and this Agreement shall still control.

FEES. Client shall owe to ImageTrend such fees as set forth in each mutually executed Work Order.

SCHEDULING NON-LOCAL TRAVEL. For air travel Client may, and is strongly advised to, schedule travel no less than 3 weeks in advance of the first on-site date by written request; ImageTrend reserves the right to approve or deny travel requests on a per-request basis. Client may also request travel by writing with 3 weeks or less advance notice; ImageTrend reserves the right to approve or deny such travel requests, and to invoice costs to Client due to scheduling changes ImageTrend must make to accommodate such a request if approved.

CANCELLATION, RESCHEDULE, OR DELAY. Client will provide to ImageTrend (10) ten business days prior written notice of Client's intent to delay, reschedule, or cancel ("Staffing Change") any service in a Work Order which requires an ImageTrend employee to perform work at a specific location or at a specific time (e.g. face-to-face meetings, on-site visits, after hours on-call status). If Client fails to provide such notice, Client shall reimburse ImageTrend for loss caused by the Staffing Change. ImageTrend shall use commercially reasonable efforts to mitigate any losses that would be incurred by a Staffing Change and due to ImageTrend by Client.

INVOICING. Unless otherwise specified in a Work Order, invoices must be paid on Net 30 terms. Any objection to an invoice must be made in writing. Client may request up to an additional 15 days to review Deliverables associated with an invoice, approval to which ImageTrend shall not unreasonably withhold. If Client does not object to an invoice, or request an extension to review Deliverables, within

15 days after receipt of the invoice then the invoice is deemed accepted and any right to object to the invoice is waived. Payment shall be made by check or by ACH transfer to ImageTrend.

REMEDIES FOR NON-PAYMENT. Should Client fail to pay per the terms of this Agreement and this Section 5, ImageTrend may 1) suspend services under all Work Orders until such payment is made in full, and/or 2) charge a late fee at the lesser of 1.5% or the maximum allowed by law, and/or 3) invoice Client for the costs of collection including reasonable attorney's fees.

TRAVEL COSTS. Should Client desire ImageTrend to send personnel to a location of Client's choosing in the continental United States, Client may pay \$1,750 per ImageTrend trainer per trip and a further \$1,400 per trainer per day spent at Client's chosen location. Travel outside of the continental US will be quoted by ImageTrend upon request. Travel may only be scheduled for a maximum of one business week of Monday through Friday per trip; however Client may book consecutive trips. Non-local travel scheduling which runs from one business week into a subsequent business week(s) (e.g. start date on Friday at 8:00am, end date Wednesday at 5:00pm, "Overlapped Weekend") will result in ImageTrend invoicing Client an additional trip for each Overlapped Weekend. ImageTrend staff will work 8 hours each day, except on the first and last day of each trip ImageTrend may reserve up to 2 hours of the Business Day for travel time. ImageTrend further reserves the right to escalate travel prices once per year upon written notice to Client. Such travel price increases will only affect future travel prices and will not change the price or amount due to ImageTrend for previously rendered travel.

TIME AND MATERIALS RATE. Unless otherwise specified in a Work Order, ImageTrend's Time and Materials rate is \$175.00 per hour.

SECTION 6. DATA AND INTELLECTUAL PROPERTY

CLIENT DATA. All Client data provided to ImageTrend remains at all times the property of the Client unless otherwise specified by a Work Order. ImageTrend will not use or make available any personally identifiable information or patient health information other than for performing the services outlined in a Work Order, and for use in an aggregated manner to monitor, operate, train artificial intelligence, and conduct statistical analyses relevant to the application's proper functioning, maintenance, optimization, or improvement. ImageTrend will not in any way transfer to any third party any Confidential Information of Client.

DE-IDENTIFICATION. ImageTrend may create a de-identified data set of Client's data ("the De-identified Data Set") and ImageTrend may, in ImageTrend's discretion, transform, analyze, distribute and redistribute, create derivative works of, license, make available to 3rd party researchers, or otherwise use the De-identified Data Set except as limited by: 1) this Agreement, 2) applicable law and regulation, e.g. State and Local data privacy law and HIPAA/HITECH, 3) notwithstanding any of the prior, ImageTrend shall create the De-identified Data Set in accordance with the then current HIPAA Safe Harbor Rule at 45 CFR § 164.514(2)(i) by removing the 18 listed data elements, and any additional data element designated as 'Personal Information' by State and Local data breach law (or equivalent laws). ImageTrend shall ensure its methods for creating the De-identified Data Set comport with industry best practices and guidance such as NISTIR 8053 'De-identification of Personal Information' (available at

<http://dx.doi.org/10.6028/NIST.IR.8053>). ImageTrend shall use reasonable administrative, technical, and physical safeguards to protect and prevent unauthorized disclosure of the De-identified Data Set. ImageTrend shall not attempt to re-identify any de-identified records.

GRANT OF LICENSE TO IMAGETREND'S PRE-EXISTING IP AND OWNERSHIP OF NEW IP. All Intellectual Property Rights connected to the ImageTrend pre-existing materials such as architectural structure, modules, processes, and Know-How that may be used in Deliverables ("Pre-existing IP"), shall remain owned by ImageTrend. ImageTrend agrees to grant to Client a royalty-free, worldwide, transferable, non-exclusive, use license for these architectural structures, modules, and processes that may be used solely in conjunction with the Deliverables and services performed under Work Orders and in accordance with the license selected below at Exhibit A, conditioned upon full payment of the Work Order from which the Deliverable containing Pre-Existing IP originates. This license may not be transferred, and Client may not sublicense, use, reproduce, distribute or prepare derivative works of ImageTrend's Pre-Existing IP except to the extent strictly necessary to fulfill the purpose of a Work Order. New Deliverables utilizing the same Pre-Existing IP may require another license for that new Deliverable, in ImageTrend's discretion. New Custom Intellectual Property authored by the parties in the course of performing a Work Order shall be owned by the party that authored the Intellectual Property and in the case of derivative works, it shall be owned by the party who owns the work from which the derivative is made, or as otherwise set forth in the Work Order. In the case of ImageTrend Software products licensed per Exhibit A below, or "Modified Off The Shelf Software" as defined above, ImageTrend shall own all Intellectual Property related to or arising out of any Work Order. A Work Order may specify who owns the intellectual property embodied in a Deliverable; however, absent such terms in the Work Order, the terms of this Agreement shall control. Any right not hereby granted is reserved.

SECTION 7. CONFIDENTIALITY

CONFIDENTIALITY ACKNOWLEDGEMENT. Each party hereby acknowledges and agrees that the other Party's Data, potential clients or customers, client or customer lists, business plans, pricing structures, software and database designs, and any other information a Party has marked as Confidential, constitute Confidential Information. Each party agrees to treat (and take precautions to ensure that its authorized personnel treat) Confidential Information as confidential in accordance with the confidentiality requirements and conditions set forth below. Orally transmitted information shall not be Confidential Information unless specified as such in a writing transmitted from the Disclosing party to the Receiving party within 15 days of the oral transmission, with such writing providing a reasonable description and scope of the Confidential Information transmitted.

CONFIDENTIALITY OBLIGATIONS. Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the provisions of this §7 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by a Party by means other than the disclosure of the information by the Disclosing Party; (iii) is duly obtained by a Party directly or indirectly from a third party who has independently developed the information and is entitled to disclose the information to the Party, and such disclosure does not directly or indirectly violate the confidentiality obligation of such third party; (iv) becomes

known publicly, without fault on the part of a Party, subsequent to the receipt of the information by Party or (v) is required to be disclosed pursuant to the Inspection of Public Records Act.

SURVIVAL. This §7 shall survive the termination of this Agreement or of any license granted under this Agreement.

SECTION 8. WARRANTIES

NO CONFLICTS OF INTEREST. ImageTrend does not have any express or implied obligation to a third party which in any way conflicts with any of ImageTrend's obligations under this Agreement.

SERVICES. All services and will be provided in a professional and workmanlike manner in accordance with applicable industry standards and will comply with all applicable laws. All Deliverables will substantially conform to the agreed-upon specifications set forth in the applicable Work Order or as otherwise set forth in this Agreement.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT ABOVE, THE SERVICES IMAGETREND PROVIDES TO CLIENT ARE PROVIDED WITHOUT ADDITIONAL WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS, OR STATEMENTS MADE PRIOR TO THIS AGREEMENT. IMAGETREND HEREBY EXPRESSLY DISCLAIM, AND CLIENT HEREBY WAIVES, ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED IN THIS AGREEMENT ARE CLIENT'S SOLE AND EXCLUSIVE REMEDIES.

SECTION 9. LIMITATION OF LIABILITY

EACH PARTY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THAT PARTY IS ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURING. EACH PARTY'S CUMULATIVE LIABILITY ARISING OUT OF OR IN ANY MANNER RELATED TO THIS SHALL BE LIMITED TO THE AMOUNT OF THE FEES DUE UNDER THIS AGREEMENT.

SECTION 10. DISPUTE RESOLUTION

DUTY TO NEGOTIATE IN GOOD FAITH PRIOR TO FORMAL DISPUTES. IF CLIENT IS A GOVERNMENTAL ENTITY, THE FOLLOWING 2 PARAGRAPHS APPLY:

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place, or by teleconference.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

ARBITRATION. If Client is NOT a Governmental Entity the following paragraph applies:

Any dispute between ImageTrend and Client under this Agreement shall be resolved by arbitration by an arbitrator selected under the rules of the American Arbitration Association in the State of the defending party and the arbitration shall be conducted in that same location under the rules of said Association. If an arbitrator cannot be agreed upon by the parties, ImageTrend and Client shall each choose an arbitrator, and those two chosen arbitrators shall choose a third arbitrator, that third arbitrator shall preside over any dispute. ImageTrend and Client shall each be entitled to present evidence and argument to the arbitrator. The arbitrator shall have the right only to interpret and apply the provisions of this Agreement and may not change any of its provisions. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by the arbitrator. The arbitrator shall endeavor to keep costs as low as possible while still allowing for the just and fair disposition of the dispute. The determination of the arbitrator shall be conclusive, final and binding upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The arbitrator shall give written notice to the parties stating his determination, and shall furnish to each party a signed copy of such determination. ImageTrend and Client shall equally share the cost of the arbitrator(s) fees. The arbitrator may award reasonable costs and expenses, including reasonable attorney fees, to the prevailing party.

SECTION 11. NON-EXCLUSIVITY

This Agreement does not establish any exclusivity of service, contract, customer relationship, or otherwise between the parties.

SECTION 12. AMENDMENTS

This Agreement may only be modified by a mutually executed writing including but not limited to Work Orders, signed by a person having authority to sign.

SECTION 13. TERMINATION

Either Party may terminate this Agreement upon giving the other Party thirty days (30) days' prior written notice to the other Party in addition to any other remedy or right contained in this Agreement. This right of termination is additive to other rights of termination identified above in this Agreement and does not preclude the exercise of those other rights.

ImageTrend requires the ability to work down all accounts for a period of 120 days following the contract termination date. After the work down period, ImageTrend will return all Client's data within 60 days of conclusion of work down period.

SECTION 14. INDEMNIFICATION

IMAGETREND INDEMNITY. ImageTrend shall defend and indemnify Client from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses ("Indemnity Claims"), which arise out of any negligent act or omission, or willful misconduct of ImageTrend. Client shall promptly notify ImageTrend for any actual or prospective Indemnity Claim for which indemnification is sought. In the event that any third-party Indemnity Claim is made and Client invokes this clause, ImageTrend shall have the right and option to undertake and control such defense

of such action with counsel of Client's recommendation and ImageTrend's choice with control to settle any such Indemnity Claim with notice of such settlement to client. ImageTrend shall have no obligation to defend or indemnify Client from Indemnity Claims arising out of Client's negligent or intentional wrongful acts or omissions. Because ImageTrend must provide its own insurers with notice of an Indemnity Claim within 60 days of actual knowledge of an Indemnity Claim, Client accordingly must provide ImageTrend written notice no more than 60 days after Client has actual knowledge of an Indemnity Claim else ImageTrend shall have no obligation to indemnify Client.

CLIENT INDEMNITY. IF CLIENT IS A GOVERNMENTAL ENTITY THE FOLLOWING PARAGRAPH DOES NOT APPLY. Client shall defend and indemnify ImageTrend from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses ("Indemnity Claims"), which arise out of any negligent act or omission, or willful misconduct of Client. ImageTrend shall promptly notify Client for any actual or prospective Indemnity Claim for which indemnification is sought. In the event that any third-party Indemnity Claim is made and Client invokes this clause, Client shall have the right and option to undertake and control such defense of such action with counsel of Client's choice with control to settle any such Indemnity Claim. Client shall have no obligation to defend or indemnify ImageTrend from Indemnity Claims arising out of Client's negligent or intentional wrongful acts or omissions. ImageTrend accordingly must provide Client written notice no more than 60 days after ImageTrend has actual knowledge of an Indemnity Claim else Client shall have no obligation to indemnify Client.

SECTION 15. GENERAL TERMS

- a. **INSURANCE REQUIREMENTS.** ImageTrend will provide to Client a Certificate of Insurance upon request.
- b. **ELECTRONIC SIGNATURES.** The parties agree to conduct transactions primarily via electronic means. Accordingly, each party accepts electronic signatures and Deliverables as equivalent to physical versions of the same.
- c. **BUSINESS DAYS AND HOLIDAYS.** The parties agree a business day is 8 hours long, and excludes Saturdays, Sundays, and days reasonably considered a holiday by either party per each party's written policies. Unless otherwise specified in a Work Order, ImageTrend shall perform services only during business days, from 9:00am CST to 5:00pm CST.
- d. **COUNTERPARTS.** This Agreement may be executed in counterpart originals, duly signed by both parties, each of which will be deemed an original but all of which, together, will constitute one and the same Agreement. Any terms not present in all counterpart copies are severed and void. Electronic counterparts are equally as valid as original counterparts.
- e. **FORCE MAJEURE.** Neither party will be liable for delays nor for non-performance due to an unforeseeable event, external to this Agreement and the parties, where the occurrence of the event beyond the non-performing or delayed party's reasonable control ("Force Majeure Events.") Force Majeure Events may include, but are not limited to: war, terrorism or threats of terrorism, civil disorder, labor strikes, fire, disease, medical epidemics or outbreaks, events which curtail necessary transportation

facilities (e.g. airports), or other unforeseeable events where the occurrence of the event is beyond the non-performing or delayed party's control.

- f. **REASONABLE COOPERATION.** Client will reasonably cooperate with ImageTrend to the extent reasonably necessary to enable ImageTrend to perform the Services contemplated in each Work Order. Accordingly, Client will provide access, information or other materials in a fashion timely to the schedule of each Work Order. ImageTrend shall have no liability to Client for delays arising out of the actions or non-actions of Client.
- g. **NON ASSIGNABILITY.** A party shall not assign this Agreement or its rights hereunder without the prior written consent of the other party.
- h. **JURISDICTION AND VENUE.** The parties agree that the law governing this Agreement shall be that of the State of Minnesota without regard to its conflict of laws principles. **IF CLIENT IS A GOVERNMENTAL ENTITY** the law governing this Agreement shall be that of the Client's jurisdiction without regard to its conflict of laws principles.
- i. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties, with respect to this subject matter, including, but not limited to the services, goods, products, and Software provided by ImageTrend for Client and the compensation provided by Client for said provision of such services therefore, and supersedes all previous proposals, both oral and written, negotiations, representations, writings and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by the parties.
- j. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- k. **WAIVER.** No waiver by either party of any of any provision hereof shall constitute a waiver of any other term of this Agreement nor shall it preclude either party from enforcing its rights.
- l. **NONAPPROPRIATION. IF CLIENT IS A GOVERNMENTAL ENTITY THE FOLLOWING PARAGRAPH APPLIES.** The continuation of this Agreement is contingent upon the appropriation of funds by the legislature or other sources as applicable to fulfill the requirements of the Agreement. If the insufficient monies are appropriated to provide for the continuation of the Contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the applicable appropriation laws or regulations for any lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of this Agreement or any Work Order hereto, the Agreement or applicable Work Order(s) shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated. ImageTrend shall be entitled to payment for deliverables in progress, to the extent work has been performed pursuant to this Agreement or any Work Order hereto; obligations that have been incurred that extend beyond the date of termination; and reasonable contract close-out costs.

- m. **ATTORNEYS' FEES.** In any action between the parties to enforce any of the terms of this Agreement, the each party shall be responsible for their own attorney's fees.
- n. **INDEPENDENT CONTRACTORS.** It is the express intention of Client and ImageTrend that ImageTrend and its employees and agents will perform the services hereunder as independent contractors to Client. Nothing in this Agreement shall in any way be construed to constitute ImageTrend or its employees or agents as an agent, employee or representative of Client. Without limiting the generality of the foregoing, ImageTrend is not authorized to bind Client to any liability or obligation or to represent ImageTrend has any such authority. Client and ImageTrend agree that neither ImageTrend employees nor its agents will receive Client - sponsored benefits from Client.
- o. **NOTICES.** Any notice required to be given by either party to the other shall be deemed given if in writing on the date actually delivered (including electronic methods such as e-mail), or if deposited in the United States mail in registered or certified form with return receipt requested, postage prepaid, on the postmarked date and addressed to the notified party at the address set forth below, or to such other address as a party may designate from time to time by means of notice given hereunder to the other party.

If to Client:

Hobbs Fire Department
Attn: Michael Prudencio
301 E. White Street
Hobbs, NM 88240

If to ImageTrend:

ImageTrend, Inc.
Attn: Mike McBrady
20855 Kensington Boulevard
Lakeville, MN 55044

IN WITNESS WHEREOF: the undersigned parties, each having authority to bind their respective organizations, hereby agree

Client _____

ImageTrend _____

Signature: _____

Signature:  _____

Print Name: _____

Print Name: Joseph T. Graw _____

Title: _____

Title: President _____

Date: _____

Date: 10/13/2021 _____

RCM AND PROFESSIONAL CLAIMS SERVICES ATTACHMENT

This attachment shall be the first Work Order for professional claims services and revenue cycle management services, as detailed below:

Processing a Claim means taking commercially reasonable efforts to prepare a Claim (or Fire Claim if applicable) for submission to a Payor with the goal of ensuring the maximum chance of successful reimbursement (subject to all applicable State, Federal and local laws and regulations as well as applicable Payor policies and procedures); however this shall be limited to: correcting data on remitted claims (including modifying claim coding and modifiers), calling Insurance providers to check on the status of claims, suggesting which claims should or must be written off, coding claims appropriately, moving claims to self-pay for collection from patients, preparing and mailing self-pay Invoices, undertaking any task described in the Service Description sections below, submitting the non-paying self-pay claims to the Client's debt collection agency, and any other task that is reasonably helpful or required in ImageTrend's sole judgment (e.g., appealing certain claims, etc.).

Payor means any party paying to Client any sum of money in return for services rendered by Client to patient(s), including but not limited to: monies associated with payment for services billed to all primary insurance, Federal Medigap policies, all patient-owed balances, HMOs, PPOs, managed health organizations, non-Medigap secondary insurance billings, home, vehicle or fire insurers, or any other primary or secondary, public or private entity or person that typically makes payment(s) for Claims or Fire Claims

Follow up means phone call(s) made by insurance specialist, and/or paper mailings requesting additional information, and/or payment of services rendered: Speaking with patient/representative/responsible party, and/or leaving a message, (where applicable) are considered a contact attempt to the patient.

Claim means any claim, potential claim, remitted claim, denied claim, appealed or appealable claim, or any other claim for reimbursement of costs incurred providing Client's services to patients or other medical bill.

FEES AND PAYMENT TERMS

1. **Fees.** The fees owed by Client to ImageTrend for the services herein are detailed in the Price Table Attachment below.
2. **Invoicing.** ImageTrend shall invoice the Client monthly in arrears based on Processed Claims in the month prior, net 30 days.
3. **Late Fees.** Client agrees ImageTrend may charge to Client a late fee of 1.5% per month, or the highest rate allowed under the law, whichever is lower, on any overdue amounts. Client also agrees ImageTrend may charge to Client all reasonable costs and expenses of collection, including attorneys' fees where, in ImageTrend's discretion, payments are consistently deficient or late.
4. **Sales Tax.** ImageTrend will invoice sales tax to Client if Client is non-exempt or where otherwise applicable.

FRAUD, OVERPAYMENT OR INSUFFICIENT DOCUMENTATION

ImageTrend shall under no circumstances perpetuate fraud, nor the fraud of Client, nor fraud on the behalf of Client. In ImageTrend's discretion, ImageTrend may refuse to pursue or process a claim that appears fraudulent, contains insufficient documentation or the documentation lacks adequate justification on which to make claims, appears to be unbundled services, appears to be upcoded, or otherwise appears out of order with the legal and ethical standards to which ImageTrend is held. ImageTrend shall notify Client of any such incident. Should ImageTrend receive overpayment on any submitted Claim, ImageTrend shall notify the Client of the overpayment and associated Information, and it shall be Client's responsibility to resolve the overpayment. ImageTrend further reserves the right to refuse to carry out any task, that in ImageTrend's sole discretion, would be prohibited under applicable law, regulation, or payor policy (such as HIPAA/HITECH and CMS rules and guidelines, or otherwise).

LICENSE TO USE IMAGETREND BILLING BRIDGE FOR TERM

Included as part of the Services rendered to Client by ImageTrend, Client is hereby granted a non-exclusive, non-sublicensable, license to use and have access to ImageTrend Billing Bridge software for the term of this Agreement only to the extent allowed and specifically instructed by ImageTrend during the term of this Agreement. ImageTrend reserves the right to unilaterally, upgrade, modify or otherwise change the nature of this software license with a 60 (sixty) day notice. This license is intended, and Client is hereby instructed, to allow Client to view and report on the status of ImageTrend's work for Client, and not to function as a full license to use Billing Bridge nor execute Client's own billing workflow. A full, unrestricted license is available from ImageTrend for additional consideration. This license shall expire upon termination of this Agreement.

RIGHT TO AUDIT

- **Retain Books and Records.** During the Term and for a period of two years after the termination or expiration of this agreement, Client shall keep its books and records that relate to this agreement, and maintain them in a manner reasonably consistent with prior practices.
- **Inspection and Audit.** During the Term and for a period of two years after the termination or expiration of this agreement, upon reasonable notice from ImageTrend, Client shall provide ImageTrend and ImageTrend's Representatives, reasonable access to Client's Books and Records that relate to this Agreement (and allow ImageTrend to make photocopies, at ImageTrend's expense), during normal business hours.
- **Corrections.** If ImageTrend's audit reveals errors or discrepancies in Client's Books and Records, Client shall promptly correct the error or discrepancy, including refunding any over-payments or making up any under-payments.

EMS CLAIMS PROCESSING RESPONSIBILITIES AND SERVICES

ImageTrend shall:

1. Enter paper Explanation of Benefit (EOB) documents and other paperwork received back from any Payor which is transmitted or otherwise made available to ImageTrend by Client for data entry;

2. Import electronic documentation in order to Process Claims from Client's ePCR Software in NEMESIS v2 or v3 (v3.4 or lesser) format. Different import formats can be developed as a custom software development project for additional consideration in a separately contracted and mutually agreeable written Statement of Work.
3. Prepare All Claims for submission to Payors in a timely manner;
4. Provide to Client access to all Standard Reports built into the Client's Billing Bridge software;
5. Adhere to all other terms and conditions in this Agreement.

Client shall:

6. Provide to ImageTrend only accurate, truthful, and non-fraudulent information;
7. Act at all times in accordance with all applicable law;
8. Continue to administer and enter data into ePCR and all other systems, as well as enter appropriate data into Client's Billing Bridge system as instructed by ImageTrend;
9. Make available to ImageTrend all materials and information ImageTrend finds necessary or helpful for ImageTrend to Prepare Claims;
10. Maintain a relationship with, and may collaborate with, a third party debt collection agency for any debt Client wishes pursued after ImageTrend has exhausted;
11. Ensure that a copy of every check or payment made to the Client is transmitted to ImageTrend, or if payment is made to a lockbox or similar service provider on behalf of Client, to ensure that the lockbox or similar service provider provides a copy of every check or payment made to Client's lockbox or similar service; or otherwise ensure that ImageTrend is made up to date on payment status resulting from Processed Claims in a timely fashion;
12. Adhere to all other terms and conditions in this Agreement.

BANK ACCOUNT AND REMITTANCE PROCESS – CLIENT DEPOSIT PAYMENTS

Client takes responsibility of depositing all non-ACH payments into a bank account held by the client. Client will ensure ImageTrend gets weekly deposit uploads for paper checks received by client and give proper user level access to client's clearinghouse (if available) for ImageTrend to remit daily for batching and posting.

ImageTrend Billing Services will setup and maintain MyEMSCare.com for online payment processing. ImageTrend uses Authorize.net as their preferred payment processor. The merchant holder will be responsible for all transaction fee(s).

PROFESSIONAL CLAIMS PROCESSING FEES

The prices below are based on the quantity of Claims annually, as specified in the table below.

Contracted Services:

Description	Rate Type	Rate	S/U
EMS Revenue Services	Percentage of Net Collections	5.85%	RCM.001.002.001
Bank Account and Remittance Process - Client Deposit Payments	Not RCM	Included	RCMBAR1

Send Invoices To:

City of Hobbs
Attn: Deborah Corral
200 E. Broadway
Hobbs, NM 88240
dcorral@hobbsnm.org

Payment Terms:

1. ImageTrend will invoice Client monthly in arrears based on the actual amount of Processed Claims.
2. ImageTrend may temporarily suspend performance (e.g. cease to provide services, access, support) due to Client's breach of contract provided Client shall have 30 days to cure such breach before ImageTrend may suspend performance.
3. ImageTrend will not be responsible for third-party fees related to this Agreement unless specifically outlined by this Agreement.
4. Net Collections is defined as all monies collected by ImageTrend for EMS Billing provided by client less adjustments, write-offs, and refunds calculated in accordance with GAAP practices.

STANDARD REPORTS

The standard reports available to the Client are:

Period Activity Summary ; Displays the beginning A/R, charges and transactions with the ending A/R within the time period.	Transaction Non-Adjustments – Detailed ; Details of the transaction changes that have a postdate within the specified date range.
All Charges – Detailed ; Details of all charge changes. Effectively giving the net changes within the date range	Transaction Non-Adjustments – Detailed (with Patient) ; Details of the transaction changes that have a postdate within the specified date range.
All Charges – Detailed (with Patient) ; Details of all charge changes. Effectively giving the net changes within the date range and patient name.	Transactions Posted – Summary ; Summary of transaction changes that are not voids and that have a postdate within the specified date range.
All Charges – Summary ; Summary of all charge changes. Effectively giving the net changes within the date range	Transactions Voided – Summary ; Summary of transaction changes that are voids and that have a postdate within the specified date range.
Charge Adjustments ; Detailed; Details of the charge changes that happened as an override after the invoice was posted.	Aging by Agency and Current Payer ; Includes date ranges from 0-30 days and 180+ days
Charge Adjustments ; Detailed (with Patient); Details of the charge changes that happened as an override after the invoice was posted and patient name.	Number of Invoices Posted by User by Month ; Number of invoices that have been posted by user within a month
Charge Adjustments – Summary ; Summary of the charge changes that happened as an override after the invoice was posted.	Number of Invoices Posted by User in Last 30 days ; number of Invoices posted by User in Last 30 days
Charge Non-Adjustments – Detailed ; Details of the charges that were created while the invoice was in data entry and thus, are not overrides.	Days Since Last Transaction for Posted Invoices ; Shows the number of days that have past since the last transaction for the invoices that have been posted.
Charge Non-Adjustments – Detailed (with Patient) ; Details of the charges that were created while the invoice was in data entry and thus, are not overrides and patient name.	Days Since DOS for Data Entry Invoices ; Shows the number of days that have passed since the date of service for invoices that are still in data entry status
Charge Non-Adjustments – Summary ; Summary of the charges that were created while the invoice was in data entry and thus, are not overrides.	Number of Invoices by Agency and Status ; Number of invoices that exist by agency and for each of the Data Entry, Posted, Closed and Voided Status.
All Transactions – Detailed ; Details of all the transaction changes. Essentially giving the net transactions for the date range	Number of Invoices by Month of Service ; The number of invoices by agency for each month of service
All Transactions – Summary ; Summary of all the transaction changes. Essentially giving the net transactions for the date range	Invoice Details by DOS ; Details about the posted and closed invoices with a date of service within the specified date range.
Transaction Adjustments – Detailed ; Details of the transaction changes that have a postdate before the specified date range.	Invoice Summary by DOS ; Summary about the posted and closed invoices with a date of service within the specified date range.

Transaction Adjustments – Detailed (with Patient); Details of the transaction changes that have a postdate before the specified date range.	Invoice Details by DOS (with Balance); Details about the posted and closed Invoices with a balance and date of service within the specified date range.
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Standard Report Table - ImageTrend, in its discretion, may add Standard Reports from time to time. Custom Report creation services and other reporting services may be purchased under a separate Statement of Work at ImageTrend's standard rate of \$175/hour.

PROFESSIONAL EMS CLAIM PROCESSING SERVICE DESCRIPTION

PATIENT CARE REPORT DOCUMENTATION VERIFICATION

Patient Care Report Documentation Verification is a process used by ImageTrend Billing Services to ensure that all data submitted for reimbursement is accurate. ImageTrend Billing Services will take the information provided by the EMS Agency and verify any information that ImageTrend Billing Services feels may not be accurate. This process allows ImageTrend Billing Services to submit accurate data to insurance companies and private individuals for reimbursement of their ambulance bill. By utilizing tools such as Insurance Verification, Insurance Discovery, Receiving Facility follow up and Skip Tracing, ImageTrend Billing Services attempts to confirm accuracy of documented information, or gather additional information available for proper claim submission. By completing these steps, we can ensure a faster turn-around in your billable revenues and also ensure the patient of less hassle in the payment of their bill. This process decreases the resubmission of claims due to errors in the data provided to insurance companies for reimbursement.

PRIMARY BILLING

Patient receives initial billing for services that were provided. In addition, patients' primary insurance company is billed. With patients who are participating in a Medicare/Medicaid Program, Medicare/Medicaid will be billed directly. If a Medicare/Medicaid patient has primary commercial insurance coverage, that company will be billed first and Medicare/Medicaid will act as a secondary carrier. States with Medicaid and Medicaid HMO applicable law requiring waivers for billing, will not receive a bill until appropriate waivers are obtained and signed by the patient.

The patient will typically be billed within two business days upon receipt of all necessary billing documentation and information. For the convenience of the patient transported by your service, the patient will receive, with their bill, a return envelope for sending payment directly to your billing service or specified collection process.

Included in ImageTrend's clearinghouse services, has the ability for ImageTrend to receive daily claim status checks. This will ensure that the ImageTrend Billing Services is kept abreast of the latest changes to all electronically submitted claims. This information is also available to our clients through the use of our Billing Bridge™ solution.

SECONDARY BILLING

The patient will receive a second invoice normally within thirty (30) days after the first bill was sent. ImageTrend Billing Services utilizes a scheduling procedure that places bills, depending on their payor type, into specific cycles, which will ensure the submission of regularly scheduled billings.

In a scenario where no insurance information is available, one follow up call attempt will be placed to the patient within thirty (30) days of Self Pay aging. If patient does not answer and no option to leave a voice message is available, the invoice will be held for seven (7) days before another follow up call is made.

In the event that the patients' phone number and insurance information is not documented or the patients' phone number is disconnected, ImageTrend will reach out to the documented receiving facility in an attempt to obtain updated contact and/or insurance information for patient.

Once the patients' primary insurance has paid, any secondary insurances will be automatically posted for consideration of any unpaid balances. If the patients primary insurance payer does not respond to a submitted claim forty five (45) days after claim submission, our insurance specialist will contact primary insurance payer to request a status update.

TERTIARY BILLING

Normally at this point Medicare, Medicaid, and private insurance companies will have paid the maximum amounts that the patient would eligible for.

This invoice is sent normally within sixty (60) days after the initial billing has been forwarded. In addition to the invoice and return envelope received by the patient, a note is also applied to the patients bill that reminds the patient of their responsibilities for payment of this ambulance service.

FINAL BILLING

This bill is sent normally within ninety (90) days after the initial billing. The largest percentage of claims have been paid at this point; however, in addition to the invoice and return envelope, the patient receives a stronger note than the previous month's billing that re-emphasizes the importance of paying his/her bill in a timely manner. This is considered the patients final notice before patient is referred to collections.

****Note:** At any point in time, any necessary resubmissions, due to lack of information or incorrect information, will be resubmitted upon receiving notification of changes. All delinquent billings will be reflected in the Billing Bridge™ reporting system. This will ensure an accurate reporting of delinquent verses non-delinquent accounts in the month end reporting you receive from ImageTrend Billing Services.

RETURN MAIL PROCESS

When return mail is received due to an invalid address for the patient, an attempt to call the patient will be made as well as a call to the hospital for updated address information. If the hospital does not have updated information and call attempts are unsuccessful, the invoice will be sent to your service through the collection process regardless of the aging of the invoice.

PAYMENT PROCESS

ImageTrend Billing Services assists in the enrollment of EFT with as many participating payors as possible. ImageTrend also utilizes Wells Fargo Lockbox services (additional charges may apply) to provide efficient and streamlined payment acceptance when needed. ImageTrend will ensure that the

lockbox provides an image of every check or payment made to Client's lockbox. ImageTrend Billing Services will work with our clients to ensure that a copy of every check or payment made to the Client (i.e. walk-in payment) is transmitted to ImageTrend. We want to make sure that all payments made are accounted for (using GAAP) within Billing Bridge™. ImageTrend Billing Services works with the Client to ensure that their credit card processing (if applicable) is discussed and documented. In some scenarios there may be an additional charge for credit card processing, if applicable. ImageTrend's Sales Team will review any applicable charges throughout the sales process.

WRITE-OFF POLICY

In the scenario where a patient's transport by our clients reach a time, where dictated by our clients, need to have a balance written off. There are various different reasons why this policy exists, primarily due to patient hardship requests. ImageTrend Billing Services understands our clients need to treat their patients with the utmost respect and consideration when dealing with financial hardships. ImageTrend has the ability to identify patients that meet our client's requirements for financial hardship and our Account Manager will provide our recommendations as to whether or not a particular patient meets the criteria of their financial hardship program. Ultimately our clients make the final decision, as to whether or not a patient should be granted their financial hardship request.

As with all ImageTrend Billing Services policies and procedures, our objective is to collect funds for services rendered in as efficient and cost effective manner as possible and yet, not place undue hardship on the patients that are served by your company.

Once account write-offs have been determined, the Client will form a resolution to be considered by the City of Hobbs Commission which will determine how to proceed with the write-offs and collections.

COLLECTION PROCESS

In the scenario where ImageTrend Billing Services identifies an invoice that meets our clients collection requirements, ImageTrend will work with our clients to provide reasonable account information in order to assist with their collection vendor's needs.

RESPONSIBILITIES OF CLIENT

1. EVERY PATIENT that has Insurance/Medicare must have an Authorization form, signed at the hospital by the patient or patient's representative.
2. EVERY Medicare or Medicaid patient that is transported from hospital to hospital and hospital to nursing home/residence must have a Physician Certification Statement for transport completed by a doctor BEFORE the transport unless there is an acute emergency.
3. ImageTrend Billing Services does not bill for WAITING TIME for Medicare patients. Rather, the patient is billed for two separate runs.
4. On Run Forms (when applicable/available):
 - The patient's name, address, phone number and Social Security number need to be documented on the proper form
 - Record location of patient pick-up and transport destination.
 - Record all appropriate dispatch information. (i.e. Nature of call)
 - Record all patient past history related to this emergency/non-emergency
 - Record all patient complaints related to this emergency/non-emergency
 - Complete a detailed narrative indicating the medical necessity for transport
 - Record the patient's date of birth

- Record admitting/receiving doctors name (first & last)
- Obtain a copy of the hospital top/face sheet from the Emergency Department admit.
- Obtain all available insurance information, including complete hospital admit form (copies of insurance cards are very helpful)
- Record the responsible party for all patients
- Record all times accurately
- Record odometer readings for loaded mileage
- Record crew names, crew license levels and any specialty areas of expertise that are relevant to the patient care being provided
- Have all crewmembers review the form for accuracy and completeness before leaving receiving facility. Crewmember signatures are required for all billable claims.
- Record reasons why transport by other means was contraindicated
- Record reasons why the level of service was required (i.e. ALS assessment)
- Record patient condition at the time of transport including Chief Complaint and Provider Primary Impression
- Record zip code at point of pickup
- Obtain necessary Medicare and Medicaid waivers where appropriate, signed by patient or other appropriate person. *PCS and/or ABN

BUSINESS ASSOCIATE AGREEMENT ATTACHMENT

This Business Associate Agreement ("Agreement") dated 07/05/2021 (the "Effective Date"), is entered into by and between Hobbs Fire Department located at 301 E. White Street, Hobbs, NM 88240 (the "Covered Entity") and ImageTrend, Inc. a Minnesota corporation (the "Business Associate").

WHEREAS, Covered Entity (also referred to as "Client") and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the "Business Arrangements") pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create and use health information that is protected by state and/or federal law; and

WHEREAS, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the U.S. Department of Health & Human Services ("HHS") promulgated the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards"), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (each a "Covered Entity", or collectively, "Covered Entities") to protect the privacy of certain individually identifiable health information ("Protected Health Information", or "PHI"); and

WHEREAS, pursuant to HIPAA, HHS has issued the Security Standards (the "Security Standards"), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information ("EPHI"); and

WHEREAS, in order to protect the privacy and security of PHI, including EPHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a "business associate agreement" with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or EPHI; and

WHEREAS, on February 17, 2009, the federal Health Information Technology for Economic and Clinical Health Act was signed into law (the "HITECH Act"), and the HITECH Act imposes certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

WHEREAS, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of PHI and EPHI, including extending certain HIPAA and HITECH Act requirements directly to business associates; and

WHEREAS, Business Associate and Covered Entity desire to enter into this Business Associate Agreement;

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

- **Business Associate Obligations.** Business Associate may receive from Covered Entity, or create or receive on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All capitalized terms not

otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable (collectively referred to hereinafter as the "Confidentiality Requirements"). All references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Confidentiality Requirements if the PHI were used or disclosed by Covered Entity in the same manner.

- **Use of PHI.** Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein.
- **Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Additionally, Business Associate shall ensure that all disclosures of PHI by Business Associate and the third party comply with the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed; provided further, Business Associate shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure (if applicable) of Limited Data Sets. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within three (3) business days of the Business Associate becoming aware of such use or disclosure. In addition to Business Associate's obligations under Section 9, Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing or as directed by or as a result of a request by Covered Entity to disclose to Recipients, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.
- **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity,

an individual who is the subject of the PHI under conditions and limitations required under 45 CFR §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) days of such request and shall make any amendment requested by Covered Entity within ten (10) days of such request. Any information requested under this Section 4 shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

- **Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Covered Entity such information necessary to provide an accounting within thirty (30) days of Covered Entity's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.
- **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.
- **Records and Audit.** Business Associate shall make available to the U.S. Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or any other health oversight agency, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests

by or on behalf of any and all federal, state and local government authorities served upon Business Associate for PHI.

- **Implementation of Security Standards; Notice of Security Incidents.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314, and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act. Furthermore, **to the extent feasible, Business Associate will use commercially reasonable efforts to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI.** Business Associate acknowledges and agrees that the HIPAA Omnibus Rule finalized January 25, 2013 at 78 Fed. Reg. 5566 requires Business Associate to comply with new and modified obligations imposed by that rule under 45 C.F.R. §164.306, 45 C.F.R. § 164.308, 45 C.F.R. § 163.310, 45 C.F.R. § 164.312, 45 C.F.R. § 164.316, 45 C.F.R. § 164.502, 45 C.F.R. § 164.504. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate's response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known. Business Associate and Covered Entity shall take reasonable measures to ensure the availability of all affirmative defenses under the HITECH Act, HIPAA, and other state and federal laws and regulations governing PHI and EPHI.

- **Data Breach Notification and Mitigation.**
 - **HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 (hereinafter a "HIPAA Breach"). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section 9.1, governs the determination of the date of a HIPAA Breach. In the event of any conflict between this Section 9.1 and the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity immediately and in no event later than three (3) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known,

to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than seven (7) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et seq.* Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions or learn additional information concerning the HIPAA Breach. Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described in items (i) through (v), above.

- Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Section 9.1, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under one or more State data breach notification laws (each a "State Breach") to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Business Associate shall promptly: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach.
- Breach Indemnification. Business Associate shall indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Business Associate in violation of the terms of this Agreement or applicable law, and (ii)

whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Business Associate. If Business Associate assumes the defense of an Information Disclosure Claim, Covered Entity shall have the right, at its expense and without indemnification notwithstanding the previous sentence, to participate in the defense of such Information Disclosure Claim. Business Associate shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Covered Entity. Covered Entity likewise shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Business Associate. To the extent permitted by law and except when caused by an act of Covered Entity or resulting from a disclosure to a Recipient required or directed by Covered Entity to receive the Information, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate's own acts, failures or omissions.

- **If Client is a Governmental Entity the following clause does not apply:** Covered Entity shall indemnify, defend and hold Business Associate and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Covered Entity, its subcontractors, agents, or employees in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Covered Entity, its subcontractors, agents, or employees.
- Covered Entity and Business Associate shall seek to keep costs or expenses that the other may be liable for under this Section 9, including Information Disclosure Claims, to the minimum reasonably required to comply with the HITECH Act and HIPAA. Covered Entity and Business Associate shall timely raise all applicable affirmative defenses in the event a violation of this Agreement, or a use or disclosure of PHI or EPHI in violation of the terms of this Agreement or applicable law occurs.
- **Term and Termination.**
 - This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 10, provided, however, that termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.
 - Covered Entity shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.
 - Covered Entity, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate if any of the following events shall have occurred and be continuing:
 - Business Associate fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been

If to Covered Entity:

ATTN: Barry Young
301 E. White Street
Hobbs, NM 88240

If to Business Associate:

ImageTrend, Inc.
Attn: Michael J. McBrady
20855 Kensington Blvd.
Lakeville, MN 55044

- **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- **Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.
- **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
- **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party

beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

- **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Mexico in which Business Associate is located, excluding its conflicts of laws provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in the county in which Business Associate is located.
- **Equitable Relief.** The parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause the other irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the injured party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the injured party shall deem appropriate. Such right is to be in addition to the remedies otherwise available to the parties at law or in equity. Each party expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond.
- **Nature of Agreement; Independent Contractor.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.
- **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF: the undersigned parties, each having authority to bind their respective organizations, hereby agree

Client

ImageTrend

Signature: 

Signature: 

Print Name: SAM D. COBB

Print Name: Joseph T. Graw

Title: Mayor

Title: President

Date: 10-4-21

Date: 10/13/2021



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: April 1, 2024

SUBJECT: Approval to sign a contract with Tyler Technologies for a SaaS Cloud Flip.(ERP Software)
DEPT. OF ORIGIN: Finance Department
DATE SUBMITTED: 03/27/2024
SUBMITTED BY: Deborah Corral, Assistant Finance Director

Summary:

The City of Hobbs currently uses Tyler Technologies for several functions related to our Central Accounting system. Tyler Products used by City of Hobbs include Enterprise ERP (formally Munis), Tyler Cashiering, Tyler Open Finance (Transparency Portal), Employee Self Service, Citizen Self Service and Tyler Parks & Recreation. With the exception of Tyler Open Finance, all programs are currently hosted on our local servers.

The Finance department would like to enter into a contract with Tyler Technologies to host our Tyler Software on the Cloud. This function is called a SaaS Flip and we are seeking approval to enter into a contract with Tyler Technologies for our SaaS (Software as a Service) Agreement.

Rather than the programs and data "living" on our local servers, the programs will be moved to AWS and live in the "cloud". Data and Programs would be hosted and secured by Tyler Technologies. There are many benefits to this SaaS flip including the ability of our employees to access the program outside the network and the advantage of a much larger globally scaled security package for our data.

This move has been cleared by both our Legal department with regard to the contract itself as well as by our local IT Dept for the move off of our local servers and onto the cloud.

Fiscal Impact:

Reviewed By: [Signature]
Finance Department

FY24 Budget accounts for any increased costs related to the move to the cloud with regard to recurring annual service maintenance agreements. The initial year one cost is approximately \$331,757.

Attachments:

SaaS Agreement

Legal Review:

Approved As To Form: _____
City Attorney

Recommendation:

Approval of contract with Tyler Technologies

Approved For Submittal By:

[Signature]
Department Director

[Signature]
City Manager

CITY CLERK-S USE ONLY
COMMISSION ACTION TAKEN

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

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



SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement is made between Tyler Technologies, Inc. and Client.

WHEREAS, Client selected Tyler to provide certain products and services set forth in the Investment Summary, including providing Client with access to Tyler's proprietary software products, and Tyler desires to provide such products and services under the terms of this Agreement;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

SECTION A – DEFINITIONS

- **"Agreement"** means this Software as a Service Agreement.
- **"Business Travel Policy"** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 1 to Exhibit B.
- **"Client"** means City of Hobbs, New Mexico.
- **"Data"** means your data necessary to utilize the Tyler Software.
- **"Data Storage Capacity"** means the contracted amount of storage capacity for your Data identified in the Investment Summary.
- **"Defect"** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **"Defined Users"** means the number of users that are authorized to use the SaaS Services. The Defined Users for the Agreement are as identified in the Investment Summary. If Exhibit A contains Enterprise Permitting & Licensing labeled software, defined users mean the maximum number of named users that are authorized to use the Enterprise Permitting & Licensing labeled modules as indicated in the Investment Summary.
- **"Developer"** means a third party who owns the intellectual property rights to Third Party Software.
- **"Documentation"** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **"Effective Date"** means the date by which both your and our authorized representatives have signed the Agreement.
- **"Force Majeure"** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **"Investment Summary"** means the agreed upon cost proposal for the products and services attached as Exhibit A.

- **“Invoicing and Payment Policy”** means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as [Exhibit B](#).
- **“Order Form”** means an ordering document that includes a quote or investment summary and specifying the items to be provided by Tyler to Client, including any addenda and supplements thereto.
- **“SaaS Fees”** means the fees for the SaaS Services identified in the Investment Summary.
- **“SaaS Services”** means software as a service consisting of system administration, system management, and system monitoring activities that Tyler performs for the Tyler Software, and includes the right to access and use the Tyler Software, receive maintenance and support on the Tyler Software, including Downtime resolution under the terms of the SLA, and Data storage and archiving. SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting or other professional services.
- **“SLA”** means the service level agreement. A copy of our current SLA is attached hereto as [Exhibit C](#).
- **“Support Call Process”** means the support call process applicable to all of our customers who have licensed the Tyler Software. A copy of our current Support Call Process is attached as [Schedule 1 to Exhibit C](#).
- **“Third Party Hardware”** means the third party hardware, if any, identified in the Investment Summary.
- **“Third Party Products”** means the Third Party Software and Third Party Hardware.
- **“Third Party SaaS Services”** means software as a service provided by a third party, if any, identified in the Investment Summary.
- **“Third Party Services”** means the third party services, if any, identified in the Investment Summary.
- **“Third Party Software”** means the third party software, if any, identified in the Investment Summary.
- **“Third Party Terms”** means, if any, the end user license agreement(s) or similar terms for the Third Party Products or other parties’ products or services, as applicable, and attached or indicated at [Exhibit D](#).
- **“Tyler”** means Tyler Technologies, Inc., a Delaware corporation.
- **“Tyler Software”** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Investment Summary and licensed by us to you through this Agreement.
- **“we”, “us”, “our”** and similar terms mean Tyler.
- **“you”** and similar terms mean Client.

SECTION B – SAAS SERVICES

1. **Rights Granted.** We grant to you the non-exclusive, non-assignable limited right to use the SaaS Services solely for your internal business purposes for the number of Defined Users only. The Tyler Software will be made available to you according to the terms of the SLA. You acknowledge that we have no delivery obligations and we will not ship copies of the Tyler Software as part of the SaaS Services. You may use the SaaS Services to access updates and enhancements to the Tyler Software, as further described in Section C(9). The foregoing notwithstanding, to the extent we have sold you perpetual licenses for Tyler Software, if and listed in the Investment Summary, for which you are receiving SaaS Services, your rights to use such Tyler Software are perpetual, subject to the terms and conditions of this Agreement including, without limitation, Section B(4). We will make any such

software available to you for download.

2. SaaS Fees. You agree to pay us the SaaS Fees. Those amounts are payable in accordance with our Invoicing and Payment Policy. The SaaS Fees are based on the number of Defined Users and amount of Data Storage Capacity. You may add additional users or additional data storage capacity on the terms set forth in Section H(1). In the event you regularly and/or meaningfully exceed the Defined Users or Data Storage Capacity, we reserve the right to charge you additional fees commensurate with the overage(s).
3. Ownership.
 - 3.1 We retain all ownership and intellectual property rights to the SaaS Services, the Tyler Software, and anything developed by us under this Agreement. You do not acquire under this Agreement any license to use the Tyler Software in excess of the scope and/or duration of the SaaS Services.
 - 3.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.
 - 3.3 You retain all ownership and intellectual property rights to the Data. You expressly recognize that except to the extent necessary to carry out our obligations contained in this Agreement, we do not create or endorse any Data used in connection with the SaaS Services.
4. Restrictions. You may not: (a) make the Tyler Software or Documentation resulting from the SaaS Services available in any manner to any third party for use in the third party's business operations; (b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the SaaS Services; (c) access or use the SaaS Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to us; or (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the SaaS Services, Tyler Software, or Documentation available to any third party other than as expressly permitted by this Agreement.
5. Software Warranty. We warrant that the Tyler Software will perform without Defects during the term of this Agreement. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the maintenance and support process set forth in Section C(9), below, the SLA and our then current Support Call Process.
6. SaaS Services.
 - 6.1 Our SaaS Services are audited at least yearly in accordance with the AICPA's Statement on Standards for Attestation Engagements ("SSAE") No. 21. We have attained, and will maintain, SOC 1 and SOC 2 compliance, or its equivalent, for so long as you are timely paying for SaaS Services. The scope of audit coverage varies for some Tyler Software solutions. Upon execution of a mutually agreeable Non-Disclosure Agreement ("NDA"), we will provide you with a summary of our compliance report(s) or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which you make a written request, we will provide that same information. If our SaaS Services are provided using a 3rd party data center, we will provide available compliance reports for that data center.

- 6.2 You will be hosted on shared hardware in a Tyler data center or in a third-party data center. In either event, databases containing your Data will be dedicated to you and inaccessible to our other customers.
- 6.3 Our Tyler data centers have fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Tyler Software in the event of a disaster or component failure. In the event of a data center failure, we reserve the right to employ our disaster recovery plan for resumption of the SaaS Services. In that event, we commit to a Recovery Point Objective (“RPO”) of 24 hours and a Recovery Time Objective (“RTO”) of 24 hours. RPO represents the maximum duration of time between the most recent recoverable copy of your hosted Data and subsequent data center failure. RTO represents the maximum duration of time following data center failure within which your access to the Tyler Software must be restored.
- 6.4 We conduct annual penetration testing of either the production network and/or web application to be performed. We will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. We will provide you with a written or electronic record of the actions taken by us in the event that any unauthorized access to your database(s) is detected as a result of our security protocols. We will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at your written request. You may not attempt to bypass or subvert security restrictions in the SaaS Services or environments related to the Tyler Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of our network and systems (hosted or otherwise) is prohibited without the prior written approval of our IT Security Officer.
- 6.5 We test our disaster recovery plan on an annual basis. Our standard test is not client-specific. Should you request a client-specific disaster recovery test, we will work with you to schedule and execute such a test on a mutually agreeable schedule. At your written request, we will provide test results to you within a commercially reasonable timeframe after receipt of the request.
- 6.6 We will be responsible for importing back-up and verifying that you can log-in. You will be responsible for running reports and testing critical processes to verify the returned Data.
- 6.7 We provide secure Data transmission paths between each of your workstations and our servers.
- 6.8 Tyler data centers are accessible only by authorized personnel with a unique key entry. All other visitors to Tyler data centers must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.
- 6.9 Where applicable with respect to our applications that take or process card payment data, we are responsible for the security of cardholder data that we possess, including functions relating to storing, processing, and transmitting of the cardholder data and affirm that, as of the Effective Date, we comply with applicable requirements to be considered PCI DSS compliant and have performed the necessary steps to validate compliance with the PCI DSS. We agree to

supply the current status of our PCI DSS compliance program in the form of an official Attestation of Compliance, which can be found at <https://www.tylertech.com/about-us/compliance>, and in the event of any change in our status, will comply with applicable notice requirements.

SECTION C – PROFESSIONAL SERVICES

1. Professional Services. We will provide you the various implementation-related services itemized in the Investment Summary.
2. Professional Services Fees. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy. You acknowledge that the fees stated in the Investment Summary are good-faith estimates of the amount of time and materials required for your implementation. We will bill you the actual fees incurred based on the in-scope services provided to you. Any discrepancies in the total values set forth in the Investment Summary will be resolved by multiplying the applicable hourly rate by the quoted hours.
3. Additional Services. The Investment Summary contains the scope of services and related costs (including programming and/or interface estimates) required for the project based on our understanding of the specifications you supplied. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work. The price quotes in the addendum or change order will be valid for thirty (30) days from the date of the quote.
4. Cancellation. If you cancel services less than four (4) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) daily fees associated with cancelled professional services if we are unable to reassign our personnel and (b) any non-refundable travel expenses already incurred by us on your behalf. We will make all reasonable efforts to reassign personnel in the event you cancel within four (4) weeks of scheduled commitments.
5. Services Warranty. We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.
6. Site Access and Requirements. At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide implementation services, subject to any reasonable security protocols or other written policies provided to us as of the Effective Date, and thereafter as mutually agreed to by you and us.
7. Background Checks. For at least the past twelve (12) years, all of our employees have undergone criminal background checks prior to hire. All employees sign our confidentiality agreement and security policies.
8. Client Assistance. You acknowledge that the implementation of the Tyler Software is a cooperative process requiring the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with

us to schedule the implementation-related services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).

9. Maintenance and Support. For so long as you timely pay your SaaS Fees according to the Invoicing and Payment Policy, then in addition to the terms set forth in the SLA and the Support Call Process, we will:

9.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (subject to any applicable release life cycle policy);

9.2 provide support during our established support hours;

9.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;

9.4 make available to you all releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and

9.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with any applicable release life cycle policy.

We will use all reasonable efforts to perform support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain your VPN for backup connectivity purposes.

For the avoidance of doubt, SaaS Fees do not include the following services: (a) onsite support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (b) application design; (c) other consulting services; or (d) support outside our normal business hours as listed in our then-current Support Call Process. Requested services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) weeks' advance notice.

SECTION D – THIRD PARTY PRODUCTS

1. Third Party Hardware. We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.
2. Third Party Software. As part of the SaaS Services, you will receive access to the Third Party Software and related documentation for internal business purposes only. Your rights to the Third Party Software will be governed by the Third Party Terms.
3. Third Party Products Warranties.
 - 3.1 We are authorized by each Developer to grant access to the Third Party Software.
 - 3.2 The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.
 - 3.3 You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, we grant and pass through to you any warranty that we may receive from the Developer or supplier of the Third Party Products.
4. Third Party Services. If you have purchased Third Party Services, those services will be provided independent of Tyler by such third-party at the rates set forth in the Investment Summary and in accordance with our Invoicing and Payment Policy.

SECTION E - INVOICING AND PAYMENT; INVOICE DISPUTES

1. Invoicing and Payment. We will invoice you the SaaS Fees and fees for other professional services in the Investment Summary per our Invoicing and Payment Policy, subject to Section E(2).
2. Invoice Disputes. If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of the invoice. We reserve the right to suspend delivery of all SaaS Services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

SECTION F – TERM AND TERMINATION

1. Term. The initial term of this Agreement is equal to the number of years indicated for SaaS Services in Exhibit A, commencing on the first day of the first month following the Effective Date, unless earlier terminated as set forth below. If no duration is indicated in Exhibit A, the initial term is one

(1) year. Upon expiration of the initial term, this Agreement will renew automatically for additional one (1) year renewal terms at our then-current SaaS Fees unless terminated in writing by either party at least sixty (60) days prior to the end of the then-current renewal term. Your right to access or use the Tyler Software and the SaaS Services will terminate at the end of this Agreement.

2. Termination. This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section E(2).

2.1 Failure to Pay SaaS Fees. You acknowledge that continued access to the SaaS Services is contingent upon your timely payment of SaaS Fees. If you fail to timely pay the SaaS Fees, we may discontinue the SaaS Services and deny your access to the Tyler Software. We may also terminate this Agreement if you don't cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.

2.2 For Cause. If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section H(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section H(3).

2.3 Force Majeure. Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or more.

2.4 Lack of Appropriations. If you should not appropriate or otherwise make available funds sufficient to utilize the SaaS Services, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. You will not be entitled to a refund or offset of previously paid, but unused SaaS Fees. You agree not to use termination for lack of appropriations as a substitute for termination for convenience.

SECTION G – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

1. Intellectual Property Infringement Indemnification.

1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

1.2 Our obligations under this Section G(1) will not apply to the extent the claim or adverse final judgment is based on your use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties, or your willful infringement.

1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for

you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.

1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. General Indemnification.

2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by our negligence or willful misconduct; or (b) our violation of PCI-DSS requirements or a law applicable to our performance under this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

2.2 To the extent permitted by applicable law, you will indemnify and hold harmless us and our agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by your negligence or willful misconduct; or (b) your violation of a law applicable to your performance under this Agreement. We will notify you promptly in writing of the claim and will give you sole control over its defense or settlement. We agree to provide you with reasonable assistance, cooperation, and information in defending the claim at your expense.

3. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT UNDERSTANDS AND AGREES THAT TYLER DISCLAIMS ANY LIABILITY FOR ERRORS THAT RELATE TO USER ERROR.

4. **LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (A) DURING THE INITIAL TERM, AS SET FORTH IN SECTION F(1), TOTAL FEES PAID AS OF THE TIME OF THE CLAIM; OR (B) DURING ANY RENEWAL TERM, THE THEN-CURRENT ANNUAL SAAS FEES PAYABLE IN THAT RENEWAL TERM. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE EXCLUSION OF CERTAIN DAMAGES, AND EACH SHALL APPLY REGARDLESS

OF THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS G(1) AND G(2).

5. **EXCLUSION OF CERTAIN DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. **Insurance.** During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least \$1,000,000; (b) Automobile Liability of at least \$1,000,000; (c) Professional Liability of at least \$1,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least \$5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

SECTION H – GENERAL TERMS AND CONDITIONS

1. **Additional Products and Services.** You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date by executing a mutually agreed addendum. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional products and services at our then-current list price, also by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.
2. **Optional Items.** Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.
3. **Dispute Resolution.** You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, then the parties shall participate in non-binding mediation in an effort to resolve the dispute. If the dispute remains unresolved after mediation, then either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.
4. **Taxes.** The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.

5. Nondiscrimination. We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.
6. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.
7. Subcontractors. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.
8. Binding Effect; No Assignment. This Agreement shall be binding on, and shall be for the benefit of, either you or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.
9. Force Majeure. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.
10. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party Terms.
11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Purchase orders submitted by you, if any, are for your internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force or effect. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.
12. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.
13. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or

modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.

14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.
15. Notices. All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.
16. Client Lists. You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.
17. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (*e.g.*, social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:
 - (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
 - (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
 - (c) a party receives from a third party who has a right to disclose it to the receiving party; or
 - (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.
18. Quarantining of Client Data. Some services provided by Tyler require us to be in possession of your Data. In the event we detect malware or other conditions associated with your Data that are reasonably suspected of putting Tyler resources or other Tyler clients' data at risk, we reserve the absolute right to move your Data from its location within a multi-tenancy Tyler hosted environment to an isolated "quarantined" environment without advance notice. Your Data will remain in such quarantine for a period of at least six (6) months during which time we will review the Data, and all traffic associated with the Data, for signs of malware or other similar issues. If no issues are detected through such reviews during the six (6) month period of quarantine, we will coordinate

with you the restoration of your Data to a non-quarantined environment. In the event your Data must remain in quarantine beyond this six (6) month period through no fault of Tyler's, we reserve the right to require payment of additional fees for the extended duration of quarantine. We will provide an estimate of what those costs will be upon your request.

19. Business License. In the event a local business license is required for us to perform services hereunder, you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.
20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of your state of domicile, without regard to its rules on conflicts of law.
21. Multiple Originals and Authorized Signatures. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.
22. Cooperative Procurement. To the maximum extent permitted by applicable law, we agree that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. We reserve the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances of that cooperative procurement.
23. Data & Insights Solution Terms. Your use of certain Tyler solutions includes Tyler's Data & Insights data platform. Your rights, and the rights of any of your end users, to use Tyler's Data & Insights data platform is subject to the Data & Insights SaaS Services Terms of Service, available at <https://www.tylertech.com/terms/data-insights-saas-services-terms-of-service>. By signing a Tyler Agreement or Order Form, or accessing, installing, or using any of the Tyler solutions listed at the linked terms, you certify that you have reviewed, understand, and agree to said terms.
24. Contract Documents. This Agreement includes the following exhibits:

Exhibit A	Investment Summary
Exhibit B	Invoicing and Payment Policy Schedule 1: Business Travel Policy
Exhibit C	Service Level Agreement Schedule 1: Support Call Process
Exhibit D	Third Party Terms

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.

City of Hobbs, New Mexico

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address for Notices:

Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Attention: Chief Legal Officer

Address for Notices:

City of Hobbs
200 East Broadway Street
Hobbs, New Mexico 88240-8425
Attention: _____



Exhibit A
Investment Summary

The following Investment Summary details the software and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date, despite any expiration date in the Investment Summary that may have lapsed as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement. In the event of conflict between the Agreement and terms in the Comments section of this Investment Summary, the language in the Agreement will prevail.

Tyler sales quotation inserted on the following pages.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK



Quoted By: Jeff Keller
 Quote Expiration: 08/06/24
 Quote Name: City of Hobbs-EERP-SaaS Flip
 Quote Description: Final Update
 SaaS Term: 1.00

Sales Quotation For:

Shipping Address:

City of Hobbs
 200 E Broadway St
 Hobbs NM 88240-8425

Tyler SaaS and Related Services

Description	Qty	Imp. Hours	Annual Fee
Financial Management			
Accounting/GL/BG/AP	1	0	\$ 52,367.00
Capital Assets	1	0	\$ 12,030.00
Cash Management	1	0	\$ 10,025.00
eProcurement	1	0	\$ 0.00
eProcurement (Vendor Access and Punch-Out) Migration	1	0	\$ 6,234.00
Inventory	1	0	\$ 11,022.00
Purchase Orders	1	0	\$ 12,030.00
Requisitions	1	0	\$ 10,025.00
Work Orders, Fleet & Facilities Management	1	0	\$ 13,399.00
Human Resources Management			
Advanced Scheduling - Up to 25 Employees	1	0	\$ 6,726.00
Advanced Scheduling Mobile Access	1	0	\$ 1,920.00
Employee Self Service	1	0	\$ 0.00
HR Management	1	0	\$ 7,501.00
Payroll w Employee Access Migration	1	0	\$ 16,135.00

Time & Attendance - Up to 500 Employees	1	0	\$ 18,692.00
Revenue Management			
Accounts Receivable	1	0	\$ 11,022.00
Business Licenses	1	0	\$ 10,025.00
Cashiering	1	0	\$ 21,047.00
Citizen Self Service	1	0	\$ 0.00
General Billing	1	0	\$ 5,012.00
Permits & Code Enforcement	1	0	\$ 24,498.00
Civic Services			
Parks and Recreation	1	0	\$ 8,596.00
Resident Access Migration	1	0	\$ 7,560.00
Content Management			
Content Manager Core	1	0	\$ 10,025.00
Data Insights			
Open Finance	1	0	\$ 10,747.00
Tyler Reporting Services (Microsoft SQL Server)	1	0	\$ 7,001.00
Additional			
Enterprise ERP Office	1	0	\$ 8,516.00
Forms Processing Doc Origin Software	1	0	\$ 11,137.00
Recurring Services			
Data Access Services	1	0	\$ 3,000.00
TOTAL		0	\$ 316,292.00

Professional Services

Description	Quantity	Unit Price	Ext Discount	Extended Price	Maintenance
Project Planning Services	1	\$ 15,465.00	\$ 0.00	\$ 15,465.00	\$ 0.00
TOTAL				\$ 15,465.00	\$ 0.00

Summary	One Time Fees	Recurring Fees
Total Tyler License Fees	\$ 0.00	\$ 0.00
Total SaaS	\$ 0.00	\$ 316,292.00
Total Tyler Services	\$ 15,465.00	\$ 0.00
Total Third-Party Hardware, Software, Services	\$ 0.00	\$ 0.00
Summary Total	\$ 15,465.00	\$ 316,292.00
Contract Total	\$ 331,757.00	

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held For six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: _____ Date: _____
Print Name: _____ P.O.#: _____

All Primary values quoted in US Dollars

Comments

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms:

- License fees for Tyler and third party software are invoiced upon the earlier of (i) deliver of the license key or (ii) when Tyler makes such software available for download by the Client;

- Fees for hardware are invoiced upon delivery;
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware;
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software available for download by the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the Agreement, with renewals invoiced annually thereafter in accord with the Agreement.
- Fees for services included in this sales quotation shall be invoiced as indicated below.
 - Implementation and other professional services fees shall be invoiced as delivered.
 - Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
 - Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion module, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion module.
 - Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
 - If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
 - Notwithstanding anything to the contrary stated above, the following payment terms shall apply to services fees specifically for migrations: Tyler will invoice Client 50% of any Migration Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Unless otherwise indicated on this Sales quotation, annual services will be invoiced in advance, for annual terms commencing on the date this sales quotation is signed by the Client. If listed annual service(s) is an addition to the same service presently existing under the Agreement, the first term of the added annual service will be prorated to expire coterminous with the existing annual term for the service, with renewals to occur as indicated in the Agreement.
- Expenses associated with onsite services are invoiced as incurred.

Tyler's quote contains estimates of the amount of services needed, based on our preliminary understanding of the scope, level of engagement, and timeline as defined in the Statement of Work (SOW) for your project. The actual amount of services required may vary, based on these factors.

Tyler's pricing is based on the scope of proposed products and services contracted from Tyler. Should portions of the scope of products or services be altered by the Client, Tyler reserves the right to adjust prices for the remaining scope accordingly.

Unless otherwise noted, prices submitted in the quote do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for determining and remitting. Installations are completed remotely but can be done onsite upon request at an additional cost.

In the event Client cancels services less than four (4) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.

The Implementation Hours included in this quote assume a work split effort of 70% Client and 30% Tyler.

Implementation Hours are scheduled and delivered in four (4) or eight (8) hour increments.

Tyler provides onsite training for a maximum of 12 people per class. In the event that more than 12 users wish to participate in a training class or more than one occurrence of a class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby the client designated attendees of the initial training can thereafter train the remaining users.

Content Manager Core includes up to 1TB of storage. Should additional storage be needed it may be purchased as needed at an annual fee of \$5,000 per TB.

The SaaS fees for product that are not named users are based on 50 concurrent users. Should the number of concurrent users be exceeded, Tyler reserves the right to re-negotiate the SaaS fees based upon any resulting changes in the pricing categories.

Financial library includes: 1 A/P check, 1 EFT/ACH, 1 Purchase order, 1099M, 1099INT, 1099S, and 1099G.

Business license library includes: standard business license and standard renewal application.

General Billing library includes: standard invoice, standard statement, standard general billing receipt and standard miscellaneous receipt.

Permits library includes: standard Building permit, standard Trades permit, standard Zoning permit and standard certificate of occupancy/completion.

Project Management includes project planning, kickoff meeting, status calls, task monitoring, verification and transition to support.

Your rights, and the rights of any of your end users, to use Tyler's Data & Insights SaaS Services, or certain Tyler solutions which include Tyler's Data & Insights data platform, are subject to the Terms of Services, available at <https://www.tylertech.com/terms/data-insights-saas-services-terms-of-service>. By signing this sales quotation, or accessing, installing, or using any of the Tyler solutions listed at the linked terms, you certify that you have reviewed, understand, and agree to said terms.

In the event Client acquires from Tyler any edition of Content Manager software other than Enterprise Edition, the license for Content Manager is restricted to use with Tyler applications only. If Client wishes to use Content Manager software with non-Tyler applications, Client must purchase or upgrade to Content Manager Enterprise Edition.

Tyler's form library prices are based on the actual form quantities listed, and assume the forms will be provided according to the standard Enterprise ERP form template. Any forms in addition to the quoted amounts and types, including custom forms or forms that otherwise require custom programming, are subject to an additional fee. Please also note that use of the Tyler Forms functionality requires the use of approved printers as well. You may contact Tyler's support team for the most current list of approved printers. Any forms included in this quote are based on the standard form templates provided. Custom forms, additional forms and any custom programming are subject to additional fees not included in this quote. The additional fees would be quoted at the time of request, generally during the implementation of the forms. Please note that the form solution provided requires the use of approved printers. You may contact Tyler's support team for the most current list of approved printers.

Your rights, and the rights of any of your end users, to use Tyler's Access applications are subject to the Terms of Services, available at <https://www.tylertech.com/terms/tyler-access-applications-migration-terms>. By signing this sales quotation, or accessing, installing, or using any of the Tyler solutions listed at the linked terms, you certify that you have reviewed, understand, and agree to said terms.

Data Access Services



Exhibit B Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary of the Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

Invoicing: We will invoice you for the applicable software and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

1. **SaaS Fees.** SaaS Fees are invoiced on an annual basis, beginning on the commencement of the initial term as set forth in Section F (1) of this Agreement. Your annual SaaS fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual SaaS fees will be at our then-current rates.
2. **Other Tyler Software and Services.**
 - 2.1 *Implementation and Other Professional Services (including training):* Implementation and other professional services (including training) are billed and invoiced as delivered, at the rates set forth in the Investment Summary.
 - 2.2 *Consulting Services:* If you have purchased any Business Process Consulting services, if they have been quoted as fixed-fee services, they will be invoiced 50% upon your acceptance of the Best Practice Recommendations, by module, and 50% upon your acceptance of custom desktop procedures, by module. If you have purchased any Business Process Consulting services and they are quoted as an estimate, then we will bill you the actual services delivered on a time and materials basis.
 - 2.3 *Conversions:* Fixed-fee conversions are invoiced 50% upon initial delivery of the converted Data, by conversion option, and 50% upon Client acceptance to load the converted Data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, we will bill you the actual services delivered on a time and materials basis.
 - 2.4 *Requested Modifications to the Tyler Software:* Requested modifications to the Tyler Software are invoiced 50% upon delivery of specifications and 50% upon delivery of the applicable modification. You must report any failure of the modification to conform to the specifications within thirty (30) days of delivery; otherwise, the modification will be deemed to be in compliance with the specifications after the 30-day window has passed. You may still report Defects to us as set forth in this Agreement.
 - 2.5 *Other Fixed Price Services:* Other fixed price services are invoiced as delivered, at the rates set forth in the Investment Summary. For the avoidance of doubt, where "Project Planning Services" are provided, payment will be due upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be billed monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
 - 2.6 *Other Fixed Price Services:* Other fixed price services are invoiced as delivered, at the rates set forth in the Investment Summary. For the avoidance of doubt, where "Project Planning

- Services” are provided, payment will be due upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be billed monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
- 2.7 *Web Services*: Annual fees for web services are payable in advance, commencing upon the availability of the service. Your annual fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual fees will be at our then-current rates.
- 2.8 *Annual Services*: Unless otherwise indicated in this Exhibit B, fees for annual services are due annually, in advance, commencing on the availability of the service. Your annual fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual fees will be at our then-current rates.
3. Third Party Products and Hardware.
- 3.1 *Third Party Software License Fees*: License fees for Third Party Software, if any, are invoiced when we make it available to you for downloading.
- 3.2 *Third Party Software Maintenance*: The first year maintenance fee for the Third Party Software is invoiced when we make it available to you for downloading. Subsequent annual maintenance fees for Third Party Software are invoiced annually, in advance, at then-current rates, upon each anniversary thereof.
- 3.3 *Hardware*: Third Party Hardware costs, if any, are invoiced upon delivery.
- 3.4 *Hardware Maintenance*: The first year maintenance fee for Hardware is invoiced upon delivery of the hardware. Subsequent annual maintenance fees for hardware are invoiced annually, in advance, at then-current rates, upon each anniversary thereof.
- 3.5 *Third Party Services*: Fees for Third Party Services, if any, are invoiced as delivered, along with applicable expenses, at the rates set forth in the Investment Summary. For the avoidance of doubt, Finite Matters will invoice Client directly for any services fees for Pattern Stream.
- 3.6 *Third Party SaaS*: Third Party SaaS Services fees, if any, are invoiced annually, in advance, commencing with availability of the respective Third Party SaaS Services. Pricing for the first year of Third Party SaaS Services is indicated in the Investment Summary. Pricing for subsequent years will be at the respective third party’s then-current rates.
4. Transaction Fees. Unless paid directly by an end user at the time of transaction, per transaction (call, message, etc.) fees are invoiced on a quarterly basis. Fees are indicated in the Investment Summary and may be increased by Tyler upon notice of no less than thirty (30) days.
5. Expenses. The service rates in the Investment Summary do not include travel expenses. Expenses for Tyler delivered services will be billed as incurred and only in accordance with our then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached to this Exhibit B as Schedule 1. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.
6. Credit for Prepaid Maintenance and Support Fees for Tyler Software. Client will receive a credit for the maintenance and support fees prepaid for the Tyler Software for the time period commencing on the first day of the SaaS Term.

Payment. Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is available by contacting AR@tylertech.com.



**Exhibit B
Schedule 1
Business Travel Policy**

1. Air Travel

A. Reservations & Tickets

The Travel Management Company (TMC) used by Tyler will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five (5) days = one (1) checked bag
- Six (6) or more days = two (2) checked bags

Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

A. Private Automobile

Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a "mid-size" or "intermediate" car. "Full" size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler's TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

"No shows" or cancellation fees are not reimbursable if the employee does not comply with the hotel's cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at www.gsa.gov/perdiem.

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of State and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

Breakfast	15%
Lunch	25%
Dinner	60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.*

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

6. International Travel

All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.



Exhibit C

SERVICE LEVEL AGREEMENT

I. Agreement Overview

This SLA operates in conjunction with, and does not supersede or replace any part of, the Agreement. It outlines the information technology service levels that we will provide to you to ensure the availability of the application services that you have requested us to provide. All other support services are documented in the Support Call Process. This SLA does not apply to any Third Party SaaS Services. All other support services are documented in the Support Call Process.

II. Definitions. Except as defined below, all defined terms have the meaning set forth in the Agreement.

Actual Attainment: The percentage of time the Tyler Software is available during a calendar month, calculated as follows: $(\text{Service Availability} - \text{Downtime}) \div \text{Service Availability}$.

Client Error Incident: Any service unavailability resulting from your applications, content or equipment, or the acts or omissions of any of your service users or third-party providers over whom we exercise no control.

Downtime: Those minutes during Service Availability, as defined below, when all users cannot launch, login, search or save primary data in the Tyler Software. Downtime does not include those instances in which only a Defect is present.

Emergency Maintenance Window: (1) maintenance that is required to patch a critical security vulnerability; (2) maintenance that is required to prevent an imminent outage of Service Availability; or (3) maintenance that is mutually agreed upon in writing by Tyler and the Client.

Planned Downtime: Downtime that occurs during a Standard or Emergency Maintenance window.

Service Availability: The total number of minutes in a calendar month that the Tyler Software is capable of receiving, processing, and responding to requests, excluding Planned Downtime, Client Error Incidents, denial of service attacks and Force Majeure. Service Availability only applies to Tyler Software being used in the live production environment.

Standard Maintenance: Routine maintenance to the Tyler Software and infrastructure. Standard Maintenance is limited to five (5) hours per week.

III. **Service Availability**

a. Your Responsibilities

Whenever you experience Downtime, you must make a support call according to the procedures outlined in the Support Call Process. You will receive a support case number.

b. Our Responsibilities



When our support team receives a call from you that Downtime has occurred or is occurring, we will work with you to identify the cause of the Downtime (including whether it may be the result of Planned Downtime, a Client Error Incident, denial of service attack or Force Majeure). We will also work with you to resume normal operations.

c. Client Relief

Our targeted Attainment Goal is 100%. You may be entitled to credits as indicated in the Client Relief Schedule found below. Your relief credit is calculated as a percentage of the SaaS Fees paid for the calendar month.

In order to receive relief credits, you must submit a request through one of the channels listed in our Support Call Process within fifteen days (15) of the end of the applicable month. We will respond to your relief request within thirty (30) day(s) of receipt.

The total credits confirmed by us will be applied to the SaaS Fee for the next billing cycle. Issuing of such credit does not relieve us of our obligations under the Agreement to correct the problem which created the service interruption.

Credits are only payable when Actual Attainment results in eligibility for credits in consecutive months and only for such consecutive months.

Client Relief Schedule	
Actual Attainment	Client Relief
99.99% - 98.00%	Remedial action will be taken
97.99% - 95.00%	4%
Below 95.00%	5%

IV. Maintenance Notifications

We perform Standard Maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, we will provide advance notice of those windows and will coordinate to the greatest extent possible with you.

Not all maintenance activities will cause application unavailability. However, if Tyler anticipates that activities during a Standard or Emergency Maintenance window may make the Tyler Software unavailable, we will provide advance notice, as reasonably practicable, that the Tyler Software will be unavailable during the maintenance window.



Exhibit C Schedule 1 Support Call Process

Support Channels

Tyler Technologies, Inc. provides the following channels of software support for authorized users*:

- (1) On-line submission (portal) – for less urgent and functionality-based questions, users may create support incidents through the Tyler Customer Portal available at the Tyler Technologies website. A built-in Answer Panel provides users with resolutions to most “how-to” and configuration-based questions through a simplified search interface with machine learning, potentially eliminating the need to submit the support case.
- (2) Email – for less urgent situations, users may submit emails directly to the software support group.
- (3) Telephone – for urgent or complex questions, users receive toll-free, telephone software support.

** Channel availability may be limited for certain applications.*

Support Resources

A number of additional resources are available to provide a comprehensive and complete support experience:

- (1) Tyler Website – www.tylertech.com – for accessing client tools, documentation, and other information including support contact information.
- (2) Tyler Search -a knowledge based search engine that lets you search multiple sources simultaneously to find the answers you need, 24x7.
- (3) Tyler Community –provides a venue for all Tyler clients with current maintenance agreements to collaborate with one another, share best practices and resources, and access documentation.
- (4) Tyler University – online training courses on Tyler products.

Support Availability

Tyler Technologies support is available during the local business hours of 8 AM to 5 PM (Monday – Friday) across four US time zones (Pacific, Mountain, Central and Eastern). Tyler’s holiday schedule is outlined below. There will be no support coverage on these days.

New Year’s Day	Labor Day
Martin Luther King, Jr. Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day

For support teams that provide after-hours service, we will provide you with procedures for contacting support staff after normal business hours for reporting Priority Level 1 Defects only. Upon receipt of such a Defect notification, we will use commercially reasonable efforts to meet the resolution targets set forth below.

We will also make commercially reasonable efforts to be available for one pre-scheduled Saturday of each month to assist your IT staff with applying patches and release upgrades, as well as consulting with them on server maintenance and configuration of the Tyler Software environment.

Incident Handling

Incident Tracking

Every support incident is logged into Tyler’s Customer Relationship Management System and given a unique case number. This system tracks the history of each incident. The case number is used to track and reference open issues when clients contact support. Clients may track incidents, using the case number, through Tyler’s Customer Portal or by calling software support directly.

Incident Priority

Each incident is assigned a priority level, which corresponds to the Client’s needs. Tyler and the Client will reasonably set the priority of the incident per the chart below. This chart is not intended to address every type of support incident, and certain “characteristics” may or may not apply depending on whether the Tyler software has been deployed on customer infrastructure or the Tyler cloud. The goal is to help guide the Client towards clearly understanding and communicating the importance of the issue and to describe generally expected response and resolution targets in the production environment only.

References to a “confirmed support incident” mean that Tyler and the Client have successfully validated the reported Defect/support incident.

Priority Level	Characteristics of Support Incident	Resolution Targets*
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client’s remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. For non-hosted customers, Tyler’s responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.

Priority Level	Characteristics of Support Incident	Resolution Targets*
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. For non-hosted customers, Tyler's responsibility for loss or corrupted data is limited to assisting the Client in restoring its last available database.
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack, which shall occur at least quarterly. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

**Response and Resolution Targets may differ by product or business need*

Incident Escalation

If Tyler is unable to resolve any priority level 1 or 2 defect as listed above or the priority of an issue has elevated since initiation, you may escalate the incident to the appropriate resource, as outlined by each product support team. The corresponding resource will meet with you and any Tyler staff to establish a mutually agreeable plan for addressing the defect.

Remote Support Tool

Some support calls may require further analysis of the Client's database, processes or setup to diagnose a problem or to assist with a question. Tyler will, at its discretion, use an industry-standard remote support tool. Tyler's support team must have the ability to quickly connect to the Client's system and view the site's setup, diagnose problems, or assist with screen navigation. More information about the remote support tool Tyler uses is available upon request.



Exhibit D Third Party Terms

DocOrigin Terms. Your use of Tyler Forms software and forms is subject to the DocOrigin End User License Agreement available for download here: <https://eclipsecorp.us/eula/>. By signing a Tyler Agreement or Order Form including Tyler forms software or forms, or accessing, installing, or using Tyler Forms software or forms, you agree that you have read, understood, and agree to such terms.

ThinPrint Terms. Your use of Tyler Forms software and forms is subject to the End User License Agreement terms for ThinPrint Engine, ThinPrint License Server, and Connected Gateway found here: <https://www.thinprint.com/en/legal-notes/eula/>. By signing a Tyler Agreement or Order Form, or accessing, installing, or using Tyler Forms software or forms, you agree that you have read, understood, and agree to such terms.



Quoted By: Jeremy Shaw
 Quote Expiration: 09/02/24
 Quote Name: City of Hobbs-ERP-Tyler Payments
 Quote Description: EERP/TPAR - Payments

Sales Quotation For:

Shipping Address:

City of Hobbs
 200 E Broadway St
 Hobbs NM 88240-8425

Payments

	Use Case	List Price	Service %	Min	Basis Points	Rate	Cap	POS	Online	IVR
Payments - Client Card Cost - Interchange Plus										
Enterprise ERP										
Enterprise ERP Payments	Permits				0.75%	\$ 0.75		X	X	
Enterprise ERP Payments	Licenses				0.75%	\$ 0.75		X	X	
Enterprise ERP Payments	General Billing				0.75%	\$ 0.75		X	X	
Parks and Rec Payments					0.75%	\$ 0.75		X	X	
Payments - Other Fees										
Enterprise ERP										
Client eCheck Cost		\$ 1.95								
eCheck Rejects		\$ 5.00								
Credit Card Chargebacks		\$ 15.00								

Client Card Cost - Interchange Plus Per card transaction with Visa, MasterCard, Discover, and American Express for all transactions on top of industry-driven rates for bank fees, card brand fees, interchange fees, dues, assessments, and other processing fees.

Client eCheck Cost Per electronic check transaction.

eCheck Rejects When an eCheck transaction comes back as declined (e.g bounced check)

Credit Card Chargebacks If a card payer disputes a transaction at the card issuing bank (e.g. stolen card)

3rd Party Hardware, Software and Services

Description	Qty	Unit Price	Unit Discount	Total Price	Unit Maint/SaaS	Unit Maint/SaaS Discount	Total Maint/SaaS
Payments Lane 7000 Terminal Purchase	9	\$ 630.00	\$ 0.00	\$ 5,670.00	\$ 0.00	\$ 0.00	\$ 0.00
Payments PCI Service Fee (Per Device)	9	\$ 0.00	\$ 0.00	\$ 0.00	\$ 180.00	\$ 0.00	\$ 1,620.00
TOTAL				\$ 5,670.00			\$ 1,620.00

Summary	One Time Fees	Recurring Fees
Total Tyler License Fees	\$ 0.00	\$ 0.00
Total SaaS	\$ 0.00	\$ 0.00
Total Tyler Services	\$ 0.00	\$ 0.00
Total Third-Party Hardware, Software, Services	\$ 5,670.00	\$ 1,620.00
Summary Total	\$ 5,670.00	\$ 1,620.00
Contract Total	\$ 7,290.00	

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held For six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: _____ Date: _____

Print Name: _____ P.O.#: _____

All Primary values quoted in US Dollars

Comments

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms:

- License fees for Tyler and third party software are invoiced upon the earlier of (i) deliver of the license key or (ii) when Tyler makes such software available for download by the Client;
- Fees for hardware are invoiced upon delivery;
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware;
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software available for download by the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the Agreement, with renewals invoiced annually thereafter in accord with the Agreement.
- Fees for services included in this sales quotation shall be invoiced as indicated below.
 - Implementation and other professional services fees shall be invoiced as delivered.
 - Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
 - Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion module, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion module.
 - Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
 - If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
 - Notwithstanding anything to the contrary stated above, the following payment terms shall apply to services fees specifically for migrations: Tyler will invoice Client 50% of any Migration Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Unless otherwise indicated on this Sales quotation, annual services will be invoiced in advance, for annual terms commencing on the date this sales quotation is signed by the Client. If

listed annual service(s) is an addition to the same service presently existing under the Agreement, the first term of the added annual service will be prorated to expire coterminous with the existing annual term for the service, with renewals to occur as indicated in the Agreement.

- Expenses associated with onsite services are invoiced as incurred.

Tyler's quote contains estimates of the amount of services needed, based on our preliminary understanding of the scope, level of engagement, and timeline as defined in the Statement of Work (SOW) for your project. The actual amount of services required may vary, based on these factors.

Tyler's pricing is based on the scope of proposed products and services contracted from Tyler. Should portions of the scope of products or services be altered by the Client, Tyler reserves the right to adjust prices for the remaining scope accordingly.

Unless otherwise noted, prices submitted in the quote do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for determining and remitting. Installations are completed remotely but can be done onsite upon request at an additional cost.

In the event Client cancels services less than four (4) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.

The Implementation Hours included in this quote assume a work split effort of 70% Client and 30% Tyler.

Implementation Hours are scheduled and delivered in four (4) or eight (8) hour increments.

Tyler provides onsite training for a maximum of 12 people per class. In the event that more than 12 users wish to participate in a training class or more than one occurrence of a class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby the client designated attendees of the initial training can thereafter train the remaining users.

Fees for year one of hardware maintenance are invoiced upon delivery of the hardware, with subsequent years' fees billed annually, in advance.

Your use of Payments and any related items included on this order is subject to the terms found at: <https://www.tylertech.com/terms/payment-card-processing-agreement>. By signing this order or the agreement in which it is included, you agree you have read, understand, and agree to such terms. Please see attached Payments fee schedule.