

**REGULAR MEETING OF THE CITY COMMISSION  
MONDAY, NOVEMBER 14, 2016 @ 5:30 P.M.  
CITY COMMISSION CHAMBERS, 214 S. LOVE STREET**

**Call to Order:** The meeting was called to order by Mayor Campos at 5:30 p.m.

**Present and answering roll call:** Commissioner Gandy, Commissioner Trujillo, Commissioner Butcher, Commissioner Sanchez, and Mayor Campos

**Also Present:** City Manager James Williams, City Attorney Patrick McMahon, Chief of Police David Rodriguez, Fire Chief Terrance Lizardo, Public Works Director Wyatt Duncan, Finance Director Gary Chapman, City Clerk Carol Ann Hogue, and Administrative Assistant Anna Juarez

**Invocation:** Mayor Campos gave the invocation.

**Pledge of Allegiance:** Mayor Campos led the pledge.

**Approval of Agenda:** Mayor Campos called for a motion. Commissioner Gandy so moved to approve the agenda; Commissioner Sanchez seconded. Motion carried unanimously.

**Approval of the Regular Meeting Minutes of October 24, 2016:** Mayor Campos called for a motion. Commissioner Trujillo so moved to approve the regular meeting minutes of October 24, 2016; Commissioner Butcher seconded. Motion carried unanimously.

**COMMISSIONER AND STAFF REPORTS:**

- Public Works Director Duncan updated Commissioners of main line break on Main Street; two inner lanes will be closed, so hole can be backfilled.
- Finance Director Chapman stated auditors will be here all this week and updated Commissioners on Tyler software planning process.
- Commissioner Sanchez stated Donald Trump won the election and is the new President.
- Commissioner Butcher asked what the chaparral park house is being utilized for; City Manager Williams stated George Aranda, a park employee is residing in the house. George Aranda is a custodian of the park.
- Commissioner Trujillo is requesting for the City of Lovington to set up Christmas lights up earlier than usual to increase shopping downtown and to create a trend or slogan for Shop Lovington. Mayor Campos asked for an update on gas fuel up give away; City Manager Williams stated we have about 600 entries and we are still accepting entries until Friday at 11:30 am. Raffle will be held on Monday morning.

- Commissioner Gandy asked for City Manager Williams to update Commissioners on lighting issue at the baseball field; City Manager Williams stated that the commercial street baseball complex has some issues with a short in the system. An electrician is working on it, but lights are out until we can repair the problem.
- City Manager Williams reminded Commissioners to shop local on November 26, 2016 a day after black Friday. City Manager Williams updated Commissioners of meeting with DOT, Engineering Firm, and WHPacific. They are working on NM18 project on reconstruction of Main Street from Commercial and Main all the way to Gilmore Street; items discussed were the condition assessment of roads. City Manager stated planning is on track for tentative construction on spring of 2018 and staff is looking into water and sewer estimates for replacing line during the construction process.
- Commissioner Gandy thanked Lovington MainStreet for hosting the Halloween on the Plaza.
- Mayor Campos asked City Attorney McMahan if he could explain the possibility of municipality or obligated projects, in the upcoming Legislative in January, sweeping recovery of funds from the schools throughout the state; City Attorney McMahan stated he could have a full report for the next Commission meeting.

**PUBLIC COMMENT:**

Ron Price asked Commissioners and Staff who is responsible for the street lights on Washington Street by the County Courthouse; City Manager Williams stated at this time Lea County Electric is responsible and they are working on switching lights to have their own meters.

**ACTION ITEMS:**

**Consider Ordinance 549: Amending Title 2 Administration and Personnel Chapter 2.92 Personnel Merit System of the Lovington Municipal Code – Section K annual leave and sick leave accruals:** Mayor Campos called for a motion. Commissioner Trujillo so moved to consider Ordinance 549: Amending Title 2 Administration and Personnel Chapter 2.92 Personnel Merit System of the Lovington Municipal Code – Section K annual leave and sick leave accruals; Commissioner Gandy seconded. City Manager Williams stated this amends the existing Personnel Code to reflect annual and sick leave accruals for Police Officers; accruals do change due to the number of base hours worked annually. Overtime is calculated after Police Officer physically works an excess of 86 hours in a two week pay period. There being no further discussion; motion carried unanimously.

**Consider Resolution 2016-102: Disposal of surplus property:** Mayor Campos called for a motion. Commissioner Sanchez so moved to consider Resolution 2016-102: Disposal of surplus property; Commissioner Butcher seconded. City Manager Williams stated Resolution 2016-102 will authorize the disposal of items listed on Exhibit A by public auction and removed from the fixed asset list if necessary; staff is following disposition schedule. There being no further discussion; motion carried unanimously.

**Consider Resolution 2016-103: Transfer of ownership of Police Department K-9:** Mayor Campos called for a motion. Commissioner Butcher so moved to consider Resolution 2016-103: Transfer of ownership of Police Department K-9; Commissioner Sanchez seconded. Chief of Police Rodriguez stated K9 Dar has worked for the City for 13 years and has developed arthritis; the decision has been made to retire Dar. Chief of Police Rodriguez stated his handler Sergeant James Hay has requested the transfer of ownership of Dar. Chief of Police Rodriguez stated a new dog was donated from Clovis; the police department will have two dogs available, one to search for narcotics and the other for explosives. There being no further discussion; motion carried unanimously.

**Consider Resolution 2016-104: Approval of Police Department Foot Pursuit Policy:** Mayor Campos called for a motion. Commissioner Trujillo so moved to consider Resolution 2016-104: approval of Police Department Foot Pursuit Policy; Commissioner Gandy seconded. Chief of Police Rodriguez stated the purpose of this procedure is to develop basic guidelines for foot pursuit; training was 8 hours at the NMJC. There being no further discussion; motion carried unanimously.

**Consider Resolution 2016-105: Approval of Police Department L.O.D.D. Policy:** Mayor Campos called for a motion. Commissioner Trujillo so moved to consider Resolution 2016-105: approval of Police Department L.O.D.D. Policy; Commissioner Butcher seconded. Chief of Police Rodriguez stated the purpose of this directive is to provide guidelines for the notification and the support of families in the event that a line of duty death or serious injury to an employee of the Lovington Police Department occurs. There being no further discussion; motion carried unanimously.

**Consider Resolution 2016-106: Approval of 2016-2017 Residential Road Improvement Projects:** Mayor Campos called for a motion. Commissioner Butcher so moved to consider Resolution 2016-106: approval of 2016-2017 Residential Road Improvement Projects; Commissioner Trujillo seconded. City Manager Williams stated as discussed in previous Commission Meeting, the two projects recommended and referenced in this resolution are:

- 7<sup>th</sup> and Polk Drainage Project: Project begins at 8<sup>th</sup> and West Polk and Terminates at 6<sup>th</sup> and West Polk
- 6<sup>th</sup> Street Reconstruction: Project begins at 6<sup>th</sup> and West Avenue K and terminates at 6<sup>th</sup> and Brian Urlacher. Sidewalk improvements will be bid as an alternate phase.

City Manager Williams explained to Commissioners how the project will be phased out to accommodate with the budget and the school zones. Sandy Robinson thanked the Commissioners and City Manager Williams for being patient with her and in helping her in solving the flooding in her neighborhood with approving this project on 7<sup>th</sup> and Polk. There being no further discussion; motion carried unanimously.

**Consider Resolution 2016-107: Approval of Engineering Services Agreement for Washington Street Project:** Mayor Campos called for a motion. Commissioner Gandy so moved to consider Resolution 2016-107: Approval of Engineering Services Agreement for Washington Street Project; Commissioner Butcher seconded. City Manager Williams stated the Resolution 2016-107 will authorize the Mayor to execute the engineering services agreement for the Washington Streetscape Project; this project is being funded through a Capital Outlay Grant and a Transportation Alternative Grant. There being no further discussion; motion carried unanimously.

**Consider Resolution 2016-107: Approval of Engineering Services Agreement for Multi-Use Trail:** Mayor Campos called for a motion. Commissioner Trujillo so moved to consider Resolution 2016-107: Approval of Engineering Services Agreement for Multi-Use Trail; Commissioner Butcher seconded. City Manager Williams stated the Resolution 2016-108 will authorize the Mayor to execute the engineering services agreement for the Multi-Use Trail Project; this project is being funded through a Federal Rails to Trails Program and the design phase will end by September 2017. Commissioner Gandy expressed misunderstanding of citizens' concerns with this project. There being no further discussion; motion carried unanimously.

**Consider Approval of Accounts Payable:** Mayor Campos called for a motion. Commissioner Sanchez so moved to approve the accounts payable; Commissioner Butcher second. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**CLOSED SESSION:**

At 6:09 p.m., Commissioner Trujillo moved to adjourn Regular Session and convene in Closed Session Pursuant to Section 10-15-1 NMSA 1978, Subsection H-8, regarding the purchase, acquisition, or disposition of real property or water rights – City owned commercial property, commercial leases and protest of water rights. Commissioner Sanchez seconded and a roll call vote was taken: Commissioner Gandy - Yes; Commissioner Trujillo - Yes; Commissioner Sanchez - Yes; Commissioner Butcher – Yes; and Mayor Campos - Yes.

At 6:37 p.m., Commissioner Trujillo so moved to adjourn Closed Session and reconvene in Regular Session stating that matters discussed were limited only to those specified in the motion and no action was taken. Commissioner Butcher seconded and a roll call vote was taken: Commissioner Gandy - Yes; Commissioner Trujillo - Yes; Commissioner Butcher - Yes; Commissioner Sanchez – Yes; and Mayor Campos - Yes.

**ADJOURNMENT:** There being no further business, Mayor Campos adjourned the meeting at 6:37 p.m.

**APPROVED:** \_\_\_\_\_  
**PAUL CAMPOS, MAYOR**

**ATTEST:** \_\_\_\_\_  
**CAROL ANN HOGUE, CITY CLERK**

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: November 28, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** Senior Citizen Board Appointments  
**DEPARTMENT:** Senior Citizens Board  
**SUBMITTED BY:** Norma Vejil, Director  
**DATE SUBMITTED:** November 22, 2016

**STAFF SUMMARY:**

The following individuals terms on the Senior Citizen Board will expire on at the end of December 2016:

Virginia Spears  
Wilma Kimbell  
Thomas Griffin

Staff will solicit interest from individuals desiring to be reappointed or appointed to this board for a 2 year term.

This item will be placed on the December 12, 2016 for Commission action.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

**RECOMMENDATION:**

Discussion only.

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: November 28, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: ETZ Board Appointments  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: November 22, 2016

**STAFF SUMMARY:**

The following individuals terms on the ETZ Board will expire at the end of December 2016:

Randy Pettigrew  
Betty Price  
Raymond Moreno

Staff will solicit interest from individuals desiring to be reappointed or appointed to this board for a 1 year term.

This item will be placed on the December 12, 2016 for Commission action.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

**RECOMMENDATION:**

Discussion only.

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: November 28, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Library Board Appointment  
DEPARTMENT: Lovington Library  
SUBMITTED BY: Tueredia McBride, Director  
DATE SUBMITTED: November 22, 2016

**STAFF SUMMARY:**

Donna Bengé has submitted her resignation from the Lovington Library Board. She has served over twenty years on this board and meets the qualifications to be appointed as an Honorary Life Member (LMC 2.76.030).

A new member must be appointed to serve out the remainder of her term that expires on February 9, 2020.

The honorary member appointment and the new member appointment will be placed on the December 12, 2016 for Commission action.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

**RECOMMENDATION:**

Discussion only.

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager



CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: November 28, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** Discussion of Records Fees  
**DEPARTMENT:** Executive  
**SUBMITTED BY:** James R. Williams, City Manager  
**DATE SUBMITTED:** November 22, 2016

**STAFF SUMMARY:**

Staff have had discussions regarding the charge for copies of public records. The last time action was taken to address or increase fees for copies was in 2010. At that time, the amount of electronic records was not as widely available and no charges for these copies were ever assessed. State law allows for a "reasonable fee" to be charged for public records. Staff will provide recommended fees to Commission for consideration at the next regular meeting in December.

Staff are updating the public portal on the City website with more record images that will continue to be available at no charge.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

Fee Schedule

**RECOMMENDATION:**

Information only.

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

## Fee Schedule

<b>Record</b>	<b>Current Cost</b>	<b>Proposed Cost</b>
Paper Copy of Records	\$0.40 per page	\$1.00 per page
Audio or Video Recording	-	\$15.00 per CD
Scan and Email existing digital record	-	\$0.50 per page
Scan and email new document	-	\$1.00 per page
Letter of Record	\$5.00	\$5.00
Fax Fees (Send in U.S.)	\$1.25 per page	\$1.25 per page
Fax Fees (Send International)	\$1.50 per page	\$1.50 per page
Fax Receive	\$1.50 per page	\$1.50 per page
Notary Fee	\$5.00	\$5.00

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: November 28, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Municipal Reserve Funds  
DEPARTMENT: Finance  
SUBMITTED BY: Gary Lee Chapman, Finance Director  
DATE SUBMITTED: November 22, 2016

**STAFF SUMMARY:**

As requested, the City Attorney will provide information regarding the status of our municipal reserve funds and if there is any State legislative action that may be taken to cause a reversion of the funds. The Finance Department will also share information and recommendations provided by our auditor.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

Revenue Report (GRT and Gas Tax)

**RECOMMENDATION:**

Information only.

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

**Lovington Gross Receipts Tax**

	<b>2008 - 2009</b>	<b>2009 - 2010</b>	<b>2010 - 2011</b>	<b>2011 - 2012</b>	<b>2012 - 2013</b>	<b>2013 - 2014</b>	<b>2014 - 2015</b>	<b>2015 - 2016</b>	<b>2016 - 2017</b>
<b>July</b>	499,659.90	370,513.35	364,408.18	510,397.22	651,928.76	585,343.00	682,164.06	608,671.41	429,560.82
<b>August</b>	587,778.40	396,363.51	455,525.85	590,765.59	718,517.72	750,109.26	718,423.29	839,029.73	446,235.14
<b>September</b>	506,846.61	333,224.83	398,338.18	549,320.84	667,019.62	686,640.56	751,009.89	632,399.69	381,973.33
<b>October</b>	585,486.39	358,266.53	413,682.53	618,886.66	704,778.79	708,150.92	838,011.70	609,558.62	459,175.25
<b>November</b>	539,293.34	331,940.87	455,240.06	630,599.07	683,350.53	736,256.79	677,850.86	638,676.92	505,752.06
<b>December</b>	696,236.02	371,848.96	481,095.86	590,718.06	631,933.46	709,959.57	843,698.11	572,756.25	
<b>January</b>	511,777.57	345,851.02	371,440.60	559,829.14	623,263.05	725,825.80	665,455.26	476,934.49	
<b>February</b>	547,729.35	372,920.38	470,157.08	557,906.27	739,635.84	793,443.82	1,139,324.84	603,202.55	
<b>March</b>	611,961.35	344,065.98	515,578.55	564,996.52	718,432.51	666,957.95	553,370.88	604,227.48	
<b>April</b>	519,128.08	358,040.47	433,073.69	612,609.88	724,406.71	749,051.65	787,081.29	694,650.67	
<b>May</b>	471,905.49	441,809.83	493,288.84	678,736.49	727,556.81	744,016.81	849,737.63	488,416.64	
<b>June</b>	372,616.98	410,518.84	473,141.91	674,787.97	501,998.74	591,972.02	804,685.10	398,084.22	
<b>YTD Total</b>	<b>6,450,419.48</b>	<b>4,435,364.57</b>	<b>5,324,971.33</b>	<b>7,139,553.71</b>	<b>8,092,822.54</b>	<b>8,447,728.15</b>	<b>9,310,812.91</b>	<b>7,166,608.67</b>	<b>2,222,696.60</b>

**Designated Economic Development 1/8% (LEDA)**

	<b>2008 - 2009</b>	<b>2009 - 2010</b>	<b>2010 - 2011</b>	<b>2011 - 2012</b>	<b>2012 - 2013</b>	<b>2013 - 2014</b>	<b>2014 - 2015</b>	<b>2015 - 2015</b>	<b>2016 - 2017</b>
<b>July</b>				23,440.87	28,066.23	26,771.92	31,280.50	27,842.60	18,531.07
<b>August</b>				25,228.69	32,263.56	34,125.08	32,870.48	37,817.28	19,113.32
<b>September</b>			17,931.96	25,136.06	30,689.91	32,048.78	34,271.00	28,749.36	16,444.64
<b>October</b>			18,379.13	28,234.29	31,516.07	32,569.09	38,490.05	27,714.63	20,162.92
<b>November</b>			20,296.64	27,274.34	31,574.20	31,587.10	30,571.90	28,829.13	21,293.24
<b>December</b>			21,740.34	25,506.57	28,990.34	32,465.51	38,165.44	25,716.71	
<b>January</b>			18,093.65	25,105.61	28,398.84	33,144.51	30,338.09	21,640.41	
<b>February</b>			21,393.74	25,855.92	33,590.56	35,572.29	51,440.35	26,074.83	
<b>March</b>			23,414.46	25,995.99	32,173.43	30,127.75	25,376.56	26,741.75	
<b>April</b>			19,793.33	28,067.04	31,410.07	34,306.61	36,012.75	26,598.99	
<b>May</b>			22,717.99	30,717.08	33,121.71	33,573.65	37,808.24	21,403.64	
<b>June</b>			21,639.69	30,692.43	25,989.11	26,967.29	36,806.25	17,222.74	
<b>YTD Total</b>	<b>-</b>	<b>-</b>	<b>205,400.93</b>	<b>321,254.89</b>	<b>367,784.03</b>	<b>383,259.58</b>	<b>423,431.61</b>	<b>316,352.07</b>	<b>95,545.19</b>

**TOTAL LEDA COLLECTED TO DATE: 2,113,028.30**

	<u>Capitol Improvement Fund 3/8%</u>								
	2008 - 2009	2009 - 2010	2010 - 2011	2011 - 2012	2012 - 2013	2013 - 2014	2014 - 2015	2015 - 2015	2016 - 2017
July								78,901.90	49,869.55
August								97,231.88	52,184.56
September								82,891.76	44,770.87
October								79,855.46	53,632.07
November								83,389.74	54,181.75
December								73,008.43	
January								62,783.26	
February								75,329.28	
March							92,623.21	73,269.79	
April							97,687.63	60,137.03	
May							94,295.01	58,368.24	
June							87,066.66	49,117.57	
<b>YTD Total</b>							<b>371,672.51</b>	<b>874,284.34</b>	<b>254,638.80</b>

**TOTAL CAPITAL IMPROVEMENT FUND COLLECTED TO DATE: 1,500,595.65**

	<u>Gas Tax Fund</u>								
	2008 - 2009	2009 - 2010	2010 - 2011	2011 - 2012	2012 - 2013	2013 - 2014	2014 - 2015	2015 - 2015	2016 - 2017
July			15,975.93	14,387.82	14,420.93	9,705.11	16,079.60	21,388.34	33,378.16
August			12,884.06	12,214.16	14,386.02	19,222.49	17,341.97	15,319.03	14,933.32
September			13,612.60	17,620.08	24,433.58	16,636.86	21,321.31	16,074.41	14,935.64
October			14,189.26	15,298.76	13,000.08	17,174.41	17,458.04	17,122.06	14,560.96
November			11,122.21	13,961.83	14,031.94	12,597.43	13,124.68	21,357.01	14,321.69
December			11,122.21	14,665.81	16,654.97	15,898.82	13,560.12	19,733.01	
January			15,147.59	12,304.43	14,768.33	14,307.53	15,862.63	14,692.04	
February			7,023.47	13,689.60	14,963.83	16,915.48	15,923.66	14,365.58	
March			11,087.48	14,453.89	16,392.41	19,361.42	17,098.32	10,625.87	
April			17,858.11	16,370.89	13,677.91	11,813.48	14,831.42	33,964.57	
May			14,310.99	14,812.87	15,462.19	16,773.63	18,041.95	15,155.66	
June			13,483.19	15,161.54	17,272.72	17,957.60	14,639.05	14,881.18	
<b>YTD Total</b>			<b>157,817.10</b>	<b>174,941.68</b>	<b>189,464.91</b>	<b>188,364.26</b>	<b>195,282.75</b>	<b>214,678.76</b>	<b>92,129.77</b>

### GRT by Industry

Classification	7/16	8/16	9/16	10/16	11/16	12/16	1/17	2/17	3/17	4/17	5/17	6/17	AVERAGE
Mining and Oil and Gas Extraction	4.38%	4.43%	6.05%	6.52%	7.70%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	5.82%
Utilities	3.94%	3.98%	5.80%	6.06%	4.22%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	4.80%
Construction	14.39%	19.08%	15.71%	15.43%	11.27%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	15.17%
Manufacturing	1.12%	2.15%	1.81%	1.78%	1.67%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	1.71%
Wholesale Trade	7.92%	8.57%	6.90%	8.02%	6.49%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	7.58%
Retail Trade	30.04%	25.32%	29.87%	26.75%	23.53%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	27.10%
Transportation and Warehousing	4.48%	4.53%	5.03%	3.23%	6.04%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	4.66%
Information and Cultural Industries	5.77%	5.40%	6.46%	5.67%	4.91%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	5.64%
Finance and Insurance	0.85%	0.68%	0.87%	0.82%	0.67%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.78%
Real Estate and Rental and Leasing	3.50%	4.86%	2.04%	2.31%	2.64%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	3.07%
Professional, Scientific and Technical Services	3.63%	1.55%	2.00%	2.04%	3.34%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	2.51%
Admin and Support, Waste Mgt and Remed	0.00%	0.98%	0.65%	0.44%	0.82%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.58%
Health Care and Social Assistance	0.55%	0.07%	2.57%	3.06%	3.07%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	1.87%
Accommodation and Food Services	8.75%	6.22%	8.26%	7.76%	10.13%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	8.22%
Other Services (except Public Admin)	7.04%	7.29%	5.53%	8.45%	11.34%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	7.93%
Unclassified Establishments	0.13%	0.61%	0.38%	0.15%	0.69%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.39%

Classification	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016	FY 2016-2017
Mining and Oil and Gas Extraction	11.01%	13.04%	14.06%	7.64%	5.82%
Utilities	3.47%	2.21%	1.79%	4.00%	4.80%
Construction	7.69%	10.47%	18.48%	19.64%	15.17%
Manufacturing	1.98%	2.25%	1.64%	1.66%	1.71%
Wholesale Trade	12.28%	9.64%	13.04%	13.72%	7.58%
Retail Trade	25.97%	23.73%	23.16%	23.65%	27.10%
Transportation and Warehousing	6.48%	7.34%	6.81%	4.79%	4.66%
Information and Cultural Industries	4.09%	4.55%	3.33%	4.25%	5.64%
Finance and Insurance	0.47%	1.07%	0.55%	0.59%	0.78%
Real Estate and Rental and Leasing	1.30%	2.11%	2.06%	2.37%	3.07%
Professional, Scientific and Technical Services	-0.64%	2.47%	1.79%	1.85%	2.51%
Admin and Support, Waste Mgt and Remed	0.55%	0.69%	0.43%	0.79%	0.58%
Health Care and Social Assistance	1.35%	1.47%	1.70%	2.58%	1.87%
Accommodation and Food Services	5.14%	4.77%	3.31%	5.56%	8.22%
Other Services (except Public Admin)	17.92%	7.84%	3.49%	5.81%	7.93%
Unclassified Establishments	0.89%	5.84%	0.00%	0.31%	0.39%

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: November 28, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** Auxiliary Agency Agreements  
**DEPARTMENT:** Executive  
**SUBMITTED BY:** James R. Williams, City Manager  
**DATE SUBMITTED:** November 22, 2016

**STAFF SUMMARY:**

As requested by Commissioner Trujillo, staff have created draft professional services agreements with the Chamber, EDC, and MainStreet. These agreements are modeled after other communities. Section 3 of the agreement defines the individual agency scope of work. The agreements have been provided to the agencies for their review. Changes requested by the agency are identified in red font, blue font are changes made by staff.

Staff are requesting Commission review, input, and direction to place this item on the December 12 agenda for approval. The agreements are set to go into effect January 1, 2017, with the first initial term being only 6 months. The remaining terms will be 12 months each, to coincide with the fiscal year.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

Chamber Agreement  
EDC Agreement  
MainStreet Agreement

**RECOMMENDATION:**

Information only.  
  
Provide direction to staff.

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

## PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the City of Lovington (hereafter "City"), a New Mexico municipal corporation, and the Lovington Chamber of Commerce, (hereafter "Chamber") a New Mexico non-profit corporation.

### **1.0 FUNDING**

The terms of this agreement are contingent upon sufficient General Fund and Lodgers' Tax Fund monies being made available by the City of Lovington for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City of Lovington, this Agreement shall terminate upon written notice being given by the City to the Chamber. The City, in its sole discretion, will determine if sufficient appropriations are available for funding and its decision shall be accepted by the Chamber and shall be final.

For services, as described in Section 3, funding will be computed as follows:

- 1.1 Commencing on the 1<sup>st</sup> day of ~~January, 2016~~ 2017, the City agrees throughout the term of this Agreement to pay the Chamber on a quarterly basis from the City of Lovington's Lodgers' Tax Fund and General Fund. ~~It is understood that the total expenditure by the City from the Lodgers Tax Fund will be six thousand dollars (\$6,000), paid in quarterly amounts of three thousand dollars (\$3,000) during the initial term of this agreement. Furthermore, it is understood that the total expenditure by the City from the General Fund will be seventeen thousand five hundred dollars (\$17,500) paid in quarterly amounts of eight thousand seven hundred fifty dollars (\$8,750) during the initial term of this agreement.~~

~~Upon renewal as set out more fully in Section 2.0, the total annual expenditure by the City from the Lodgers' Tax Fund will be twelve thousand dollars (\$12,000), paid in ~~quarterly~~ monthly installments of one thousand dollars (\$1,000). It is also understood that the total annual expenditure by the City from the General Fund will be thirty-five thousand dollars (\$35,000) paid in quarterly amounts of eight thousand seven hundred fifty dollars (\$8,750).~~

- 1.2 The Chamber agrees to receive, expend, and account for the entire Lodger's Tax proceeds, provided by this agreement, for advertising, publicizing, and promotion of tourist-related attractions, facilities, and events (including expenditures for administration, salaries, and other indicated expenses), in strict compliance with the terms of this



Agreement and requirements of the Lodger's Tax Code. The Chamber shall provide sufficient documentation (contracts, receipts, 1099's, etc.) to the City's Finance Department as to the expenditures of the Lodger's tax monies on the facilities or those categories identified in Sections 3-38-15 and 3-28-21, et. seq. NMSA 1978 Comp. (as revised). Any funds not spent at the end of the term shall and must be returned to the City. Original records, receipts and documentation shall be retained for the period years as specified in Section 16.0.

- 1.3 The Chamber agrees to receive, expend, and account for the entire ~~\$35,000~~ in General Fund proceeds to facilitate and support the services identified in Section 3.0.
- 1.4 [As set out more fully in Section 12.0](#) all performance by the City under this Agreement is subject to available funding and revenues from the City's Lodgers' Tax Fund and General Fund and is subject to budget approval of the City Commission of the City of Lovington and the New Mexico Department of Finance and Administration (DFA).
- 1.5 The Chamber shall present to the City documentation of services provided and within fifteen (15) days ~~prior to~~ [after](#) the end of the quarter, except for the last quarter when documents shall be presented fifteen (15) days prior to the end of the quarter. After certification by the City Manager that the services invoices have been received and accepted, payment shall be tendered to the Chamber within 30 days. Documentation required upon submittal for quarterly payment is identified in Section 16.0.

## **2.0 TERM OF AGREEMENT**

This Agreement shall be effective on the \_\_\_\_ day of \_\_\_\_\_ 2016, and shall continue until June 30, 2017, with an option to renew, at the discretion of the City, for three (3) additional one (1) year terms.

## **3.0 SCOPE OF SERVICES**

- 3.1 The Chamber shall provide services to the City on matters relating to the Chambers specialized areas of expertise as defined in this Agreement and its referenced or incorporated Attachments. The Chamber shall secure and remain current on all insurances, licenses, permits, certificates, fees, etc., required for the performance of this Agreement.
- 3.2 The Chamber shall provide the required services for the City when and where appropriate or as indicated in the attached documents.

- 3.3 The following services will be provided by Chamber during the term of this agreement:
- 3.3.1 Advertising and Promotion: The Chamber shall provide advertising, printing, publication, and other promotional practices as customarily used for securing tourism, promoting existing businesses, and recruitment of new business to the City. The Chamber will produce at least ~~four (4) five (5) three (3)~~ “Shop Local” advertisements that will be disseminated electronically.
  - 3.3.2 Visitors’ Center: The Chamber shall provide a visitor information center, year-round, within the facility provided at 201 S. Main Street and will provide the initial meet and greet liaison interface for walk-up visitors, phone inquiries, internet requests and other visitor related information for the City of Lovington.
  - 3.3.3 Mobile App: The Chamber shall maintain and keep up to date the Mobile App with current businesses, community events, job listings, lodging information, dining, retail opportunities, news, and other information the Chamber determines as being in the best interest of the City of Lovington.
  - 3.3.4 Community Calendar: The Chamber shall develop and maintain a community calendar that will be distributed through print and electronic means.
  - 3.3.5 Business network: The Chamber will develop and maintain a business network that will keep local businesses informed of local events and news.
  - 3.3.6 Website: The Chamber will develop and maintain a website that will provide promote the City and provide information to visitors, businesses, and Chamber members.
  - 3.3.7 Email list serve: The Chamber will develop and maintain an email list serve to assist with delivery of information released by the City and its departments, local civic groups, and Chamber members.
  - 3.3.8 Troy Harris Center: The Chamber will coordinate reservations and usage of the Troy Harris Center.
  - 3.3.9 Produce Quality of Life and Fundraising Events: The Chamber shall coordinate and facilitate quality of life and fundraising

events to promote the Chamber and City to increase tourism and promote local businesses.

3.3.9.1 ~~Electric Light Parade~~ Electric Light Parade or other similar holiday community event

3.3.9.2 ~~City light pole decorations~~ Community Christmas light pole decorations

3.3.9.3 ~~4<sup>th</sup> of July "Party in the Park" & World's Greatest Lizard Race~~ 4<sup>th</sup> of July "Party in the Park" or other similar community Independence day event

3.3.9.4 ~~Fall Arts, Craft and Marketplace Festival~~ Fall Arts, Craft and Marketplace Festival or similar community Fall Festival event

3.3.9.5 ~~Coordinate Fair parade (Subject to County Contract)~~  
Coordinate Fair parade (Subject to County Contract)

3.3.9.6 ~~Two (2) additional quality of life events that promote the City in an effort to increase tourism and promote local businesses.~~ Two (2) additional quality of life events that promote the City in an effort to increase tourism and promote local businesses.

3.3.10 Business Development: The Chamber shall coordinate and host a ~~minimum of three (3)~~ business seminars and ~~two (2)~~ job fairs ~~per year~~.

3.3.11 Business Promotion: The Chamber will coordinate and assist City businesses with ribbon cuttings, grand openings, and ground breaking ceremonies.

3.3.12 Fiscal Responsibility: The Chamber will maintain fiscal and legal integrity of the non-profit organization, completing its annual reporting to the IRS, NM Secretary of State, and the Office of the New Mexico Attorney General.

3.3.13 Staffing: the Chamber will provide a paid Executive Director to oversee the day-to-day operations of the organization.

3.3.14 The Chamber will work closely with the City's elected officials and professional staff, the ~~Chamber of Commerce~~ Lovington

MainStreet, the Lovington Economic Development Corporation and all organizations, individuals, and entities in order to draw on resources to augment the work of its staff and board to bring projects to completion and meet common goals.

3.3.15 Other services, as determined by the Chamber to be in the best interest of the City.

3.4 The City will provide the following to the Chamber during the term of this Agreement:

3.4.1 Office space located at 201 S. Main St., Lovington, New Mexico.

3.4.2 Provide utilities, to include landline telephone and Internet access.

3.4.3 Provide building maintenance as required.

3.4.4 Provide janitorial services for the facility.

3.4.5 Allow usage of the City multi-function printer at City Hall. Usage will be limited to no more than 250 copies or scans per month. In the event copies or scans exceed the monthly amount, the Chamber will be required to compensate the City \$0.12 per copy or scan.

3.5 Both parties will agree to additional services requested by the City to be provided by the Chamber in writing. Any additional funding for agreed upon services will require amendment to this agreement as provided for in Section 4.0.

#### **4.0 AMENDMENTS**

This Agreement shall not be altered, changed, or amended except by written instrument signed by both parties.

#### **5.0 ASSIGNMENT**

The Chamber shall not assign nor delegate specific duties as part of this Agreement nor transfer any interest nor assign any claims for money due or become due under this Agreement without the written consent of the City.

#### **6.0 BINDING EFFECT OF AGREEMENT**

Both Parties agree that the terms of this Agreement and any extension or renewal thereof shall extend to and be binding upon the administrators, assigns, successors, and transferees of the contracting parties.

#### **7.0 COMPLIANCE WITH GOVERNING LAW**

This Agreement shall be construed in agreement with New Mexico law. The Chamber shall comply with all applicable federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies having any jurisdiction or authority, which in any manner affect the performance of the scope of work completed by the Chamber

#### **FORMER 8.0 CONFIDENTIAL INFORMATION**

~~Any confidential information provided to the City, not subject to disclosure by the City under the Inspection of Public Records Act, whether such information is developed by the Chamber, its officers, directors, employees, agents, or sub-consultants in the performance of this Agreement or provided to the Chamber by a third party, will be kept confidential by the parties and will not be made available to any individual, organization, or other entity without prior written approval of the Chamber.~~

#### **8.0 CONFLICT OF INTEREST**

The Chamber warrants that it presently has no interest and shall not acquire any interest during the term of this Agreement which would have the potential to conflict with the performance of the services required under this Agreement except those previously disclosed to the City. In the event such a conflict arises, it shall immediately be brought to the attention of the City and appropriate action acceptable to the City shall be taken.

#### **9.0 INDEPENDENT CONTRACTOR**

Nothing in this Agreement is intended or should be construed in any way to create or establish a partnership relationship between the Parties or to establish the Chamber as an agent, representative, or employee of the City for any purpose or any manner whatsoever. The Chamber and its employees shall not accrue leave, retirement, or other benefits afforded to employees of the City. The Chamber and its employees may participate in the City health insurance plan but will be responsible for the full cost plan premiums. The Chamber is an independent contractor for the City. The Chamber, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the City and shall not bind the City in any respect.

## **10.0 INDEMNIFICATION AND HOLD HARMLESS**

The Chamber shall indemnify, defend, and hold harmless the City, its employees, agents, officers and officials from any and all claims, demands, losses, causes of action, costs, expenses, and liability of any nature whatsoever, including court costs, attorney's fees, and any expenses incurred in enforcing this provision, which may result from, arise out of, be related to, or in any way be connected with this Program; provided, however, that nothing shall be construed to require or obligate the Chamber to indemnify the City of Lovington against or hold the City harmless from the City's own negligent acts or omissions.

## **11.0 VENUE AND JURISDICTION**

~~Agreement shall be governed by the laws of the State of New Mexico.~~ Jurisdiction and venue relating to any litigation or dispute arising out of this Agreement shall be in the District Court of Lea County, New Mexico, only. If any part of this contract shall be deemed in violation of the laws or Constitution of New Mexico, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable. If any party is found by a court to have breached this Agreement, the breaching party agrees to pay all reasonable costs, attorney's fees and expenses that shall be made or incurred by another party in enforcing any covenant or provision of this Agreement, including the expenses of in house counsel.

## **12.0 NON-APPROPRIATION**

The City's obligation to make payment under the terms of this Agreement is contingent upon its appropriation of sufficient funds to make those payments and the New Mexico Department of Finance's (DFA) final approval of the City's budget. If the City does not appropriate sufficient funds or DFA does not approve the City's final budget, this Agreement will terminate upon written notice of that effect to the Chamber. The City Commission's determination that sufficient funds have not been appropriated, through the City Commissioners or DFA action, is firm, binding, and not subject to review [by the Chamber](#).

## **13.0 NOTICE TO PROCEED OR COMMENCEMENT OF WORK**

It is expressly understood that this Agreement is not binding upon the City until approved and signed by the [City County](#) and, further, that the Chamber shall not proceed with its obligations until the Agreement has been signed by all Parties.

## **14.0 PROPRIETARY INFORMATION**

This Agreement shall not be construed as granting any license right or privileges to any proprietary information of the Chamber or third party. The Chamber retains all title, ownership and intellectual property rights to the proprietary information, including but not limited to the material and trademarks contained in materials used to carry out the scope of work described in this Agreement including any supporting documentation, files, marketing materials, and multimedia. The City is not acquiring any rights in any confidential information of the Chamber or of the customers and business affiliates of the Chamber whose confidential information may be disclosed pursuant to this Agreement.

## **15.0 RECORD KEEPING AND REPORTS**

15.1 The Chamber shall compile, maintain, and make available for inspection by City all records relating to the services provided under this Agreement. These records shall be subject to inspection by the City or designated auditor. The City shall have the right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the City to be reimbursed any excessive or illegal payment amounts made to the Chamber during the term of this Agreement. Pursuant to State of New Mexico General Records Retention requirements, the Chamber will retain all original, source and supporting documents and records related to this Agreement for a **minimum of six (6) years after** the ending date of this Agreement.

15.2 **Quarterly payment requests to the City shall include an invoice requesting the amount to be paid in addition to detailed documentation of services provided to the City during the quarter. Documentation will include an accounting of funds expended in the previous quarter, the items completed as identified in Section 3.0, the number of visitor contacts made, the number of business inquiries and recruitment conducted, and other information requested by the City Manager, Finance Department, or City Commission.**

## **16.0 SUBCONTRACTING**

The City bases this Agreement on the personnel skills and reliability of the Chamber as known at the time of execution of this Agreement. The Chamber is permitted to subcontract those components of this Agreement as it deems necessary, but the Chamber shall remain responsible for the professionalism and acceptability of the final work product.

## **17.0 INSURANCE**

The Chamber shall maintain general liability and workers compensation insurance as required by law. The City shall be listed as an additional insured on the general liability policy.

**18.0 SEVERABILITY**

If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provisions of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

**20.0 NOTICES**

All notices to be given with respect to this agreement shall be given in writing. Each notice shall be sent either by certified mail, postage prepaid, and return receipt requested to the party to be notified, or by personal delivery at the address set forth herein or at such other address as either party may from time to time designate in writing.

City of Lovington  
City Manager  
214 S. Love  
Lovington, NM 88260

Lovington Chamber of Commerce  
Executive Director  
201 S. Main St.  
Lovington, NM 88260

**19.0 REMEDIES**

In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may terminate the Agreement by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have 30 days from the effective date of such notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement. However, all obligations of the Chamber in the Sections regarding Insurance and Indemnification shall survive the termination of this Contract.

**20.0 TERMINATION**

20.1 The City may terminate this Agreement for convenience, in whole or in part, by providing written notice to the Chamber ninety (90) days prior to



termination. In the event of Agreement termination, the Chamber shall be paid for work completed to the date of termination. In no event shall the dollar amount be paid upon termination exceed a total of the maximum contracted amount and any additional amount provided for by amendment(s).

20.2 Where a Party to this Agreement has committed a breach that is capable of remedy **and has not cured** said breach the Party who is not in breach may serve written notice, with a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but subject to a minimum period of fourteen (14) days.

20.3 The City and the Chamber shall have the right, such right being exercised at their absolute discretion, to terminate this Agreement, in writing, if a breach has been committed that cannot be remedied. Further, the parties may terminate this Agreement, in writing, if a breach has not been remedied to the reasonable satisfaction of the Party serving the notice of breach within the period specified in any such notice.

#### **21.0 WAIVER**

Any waiver by the City of any breach of any covenant, term, condition, or agreement in this Agreement to be kept and performed by the Chamber shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent City from declaring a default for any succeeding breach either of the same covenant, term, condition, or agreement or another. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

#### **22.0 RELEASE**

The Chamber, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, and the City of Lovington from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees to not purport to bind the City to any obligations not assumed herein by the City of Lovington, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

#### **23.0 EQUAL OPPORTUNITY COMPLIANCE**

The Chamber agrees to abide by all Federal and State laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, the Chamber agrees to assure that no

person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the Chamber is found to not be in compliance with these requirements during the term of this agreement, the Chamber agrees to take appropriate steps to correct these deficiencies.

**24.0 ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreements between the parties.

**IN WITNESS WHEREOF**, we have hereunto affixed our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF LOVINGTON, NEW MEXICO**

**LOVINGTON CHAMBER OF COMMERCE**

By: \_\_\_\_\_  
Paul Campos, Mayor

By: \_\_\_\_\_  
Ryan Burkett, President

ATTEST: Lovington City Clerk

ATTEST: Board Secretary/Treasurer

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

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

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Lovington City Attorney

## **PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the City of Lovington (hereafter "City"), a New Mexico municipal corporation, and the Lovington Economic Development Corporation (hereafter "EDC") a New Mexico non-profit corporation.

### **1.0 FUNDING**

The terms of this agreement are contingent upon sufficient Local Option Gross Receipts Tax (LOGRT) and General Fund monies being made available by the City of Lovington for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City of Lovington, this Agreement shall terminate upon written notice being given by the City to the EDC. The City, in its sole discretion, will determine if sufficient appropriations are available for funding and its decision shall be accepted by the EDC and shall be final.

For services, as described in Section 3, funding will be computed as follows:

- 1.1 Commencing on the 1<sup>st</sup> day of January, 2017, the City agrees throughout the term of this Agreement to pay the EDC on a quarterly basis from the City of Lovington's LOGRT Fund. It is understood that the total expenditure by the City from the LOGRT Fund will be twenty-five thousand dollars (\$25,000), paid in quarterly amounts of twelve thousand five hundred dollars (\$12,500) during the initial term of this agreement. Upon renewal as set out more fully in Section 2.0, the total annual expenditure by the City from the LOGRT Fund will be fifty thousand dollars (\$50,000), paid in quarterly amounts of twelve thousand five hundred dollars (\$12,500). It is also understood that the total annual expenditure by the City from the General Fund will be five thousand dollars (\$5,000) that will be utilized to subsidize the GIS component of the EDC website.
- 1.2 The EDC agrees to receive, expend, and account for the entire expenditure of LOGRT and General Fund proceeds to facilitate and support the services identified in Section 3.0.
- 1.3 As set out more fully in Section 13.0, all performance by the City under this Agreement is subject to available funding and revenues from the City's LOGRT and General Funds and is subject to budget approval of the City Commission of the City of Lovington.
- 1.4 The EDC shall present to the City documentation of services provided and within fifteen (15) days after the end of the quarter, except for the last quarter when documents shall be presented fifteen (15) days prior to the end of the quarter. After certification by the City Manager that the services invoices have been received and accepted, payment shall be

tendered to the EDC within 30 days. Documentation required upon submittal for quarterly payment is identified in Section 16.0.

## **2.0 TERM OF AGREEMENT**

This Agreement shall be effective on the 1<sup>st</sup> day of January 2017, and shall continue until June 30, 2017, with an option to renew, at the discretion of the City, for three (3) additional one (1) year terms.

## **3.0 SCOPE OF SERVICES**

- 3.1 The EDC shall provide services to the City on matters relating to the EDC's specialized areas of expertise as defined in this Agreement and its referenced or incorporated Attachments. The EDC shall secure and remain current on all insurances, licenses, permits, certificates, fees, etc., required for the performance of this Agreement.
- 3.2 The EDC shall provide the required services for the City when and where appropriate or as indicated in the attached documents.
- 3.3 The following services will be provided by EDC during the term of this agreement:
  - 3.3.1 The EDC will provide assistance to qualifying businesses for furthering or implementing economic development plans and projects.
  - 3.3.2 The EDC will continue to update and the City of Lovington Economic Development Plan.
  - 3.3.3 The EDC will work with local business to improve the general climate so they may be successful in retaining and creating new jobs.
  - 3.3.4 The EDC will assist with the development of adequate infrastructure for business recruitment, retention, and expansion.
  - 3.3.5 The EDC will accept applications for LOGRT Fund assistance from existing or new businesses, review said applications, and provide recommendations to the City for funding.
  - 3.3.6 The EDC will create, implement, and maintain a strategic marketing plan for the City. This plan shall address, but not be

limited to the use and promotion of private sector facilities and infrastructure to support business development and the leveraging of applicable tax incentives, grants, promotions and other programs.

- 3.3.7 The EDC will research new business opportunities and interface with companies to facilitate locating operations to the City of Lovington.
- 3.3.8 The EDC will answer a minimum of ~~six (6)~~ four (4) PRO's or prepare targeted proposals specific to the manufacturing or retail industry in which the City is qualified for (i.e. site requirements, labor pool, prevailing wages, access to infrastructure, etc.).
- 3.3.9 The EDC will assist in the planning and development of the Lovington Industrial Park.
- 3.3.10 The EDC will contact a minimum of ~~twenty (20)~~ ten (10) manufacturing companies in which the City is qualified for (i.e. site requirements, labor pool, prevailing wages, access to infrastructure, etc.).
- 3.3.11 The EDC will attend or conduct a minimum of six (6) manufacturing site visits to Lovington or at existing company locations.
- 3.3.12 The EDC will conduct a minimum of six (6) retention/expansion visits to local companies to identify potential expansion opportunities in which the City is qualified for (i.e. site requirements, labor pool, prevailing wages, access to infrastructure, etc.).
- 3.3.13 The EDC will maintain fiscal and legal integrity of the non-profit organization, completing its annual reporting to the IRS, NM Secretary of State, and the Office of the New Mexico Attorney General.
- 3.3.14 The EDC will develop and maintain an email list serve to assist with delivery of information released by the City and its departments, local civic groups, and Chamber members.
- 3.3.15 The EDC will develop and maintain a website that will provide promote the City and provide information to visitors, businesses, and Chamber members. Components of this website shall

include, but not be limited to community profile, workforce, business and economy, infrastructure, City services, and quality of life.

- 3.3.16 The EDC will produce at least four (4) "Shop Local" advertisements that will be disseminated electronically.
  - 3.3.17 The EDC will provide a paid Executive Director to oversee the day-to-day operations of the organization.
  - 3.3.18 The EDC will work closely with the City's elected officials and professional staff, the Chamber of Commerce, the Lovington Economic Development Corporation and all organizations, individuals, and entities in order to draw on resources to augment the work of its staff and board to bring projects to completion and meet common goals.
  - 3.3.19 Other services, as determined by the EDC to be in the best interest of the City.
- 3.4 The City will provide the following to the EDC during the term of this Agreement:
- 3.4.1 Office space located at 201 S. Main St., Lovington, New Mexico.
  - 3.4.2 Provide utilities, to include landline telephone and Internet access.
  - 3.4.3 Provide building maintenance as required.
  - 3.4.4 Provide janitorial services for the facility.
  - 3.4.5 Allow usage of the City multi-function printer at City Hall. Usage will be limited to no more than 250 copies or scans per month. In the event copies or scans exceed the monthly amount, EDC will be required to compensate the City \$0.12 per copy or scan.
- 3.5 Both parties will agree to additional services requested by the City to be provided by the \_ in writing. Any additional funding for agreed upon services will require amendment to this agreement as provided for in Section 4.0.

#### **4.0 AMENDMENTS**

This Agreement shall not be altered, changed, or amended except by written instrument signed by both parties.

**5.0 ASSIGNMENT**

The EDC shall not assign nor delegate specific duties as part of this Agreement nor transfer any interest nor assign any claims for money due or become due under this Agreement without the written consent of the City.

**6.0 BINDING EFFECT OF AGREEMENT**

Both Parties agree that the terms of this Agreement and any extension or renewal thereof shall extend to and be binding upon the administrators, assigns, successors, and transferees of the contracting parties.

**7.0 COMPLIANCE WITH GOVERNING LAW**

This Agreement shall be construed in agreement with New Mexico law. The EDC shall comply with all applicable federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies having any jurisdiction or authority, which in any manner affect the performance of the scope of work completed by the EDC.

**8.0 CONFIDENTIAL INFORMATION**

Any confidential information provided to the City, not subject to disclosure by the City under the Inspection of Public Records Act, whether such information is developed by the EDC its officers, directors, employees, agents, or sub-consultants in the performance of this Agreement or provided to the EDC by a third party, will be kept confidential by the parties and will not be made available to any individual, organization, or other entity without prior written approval of the EDC.

**9.0 CONFLICT OF INTEREST**

The EDC warrants that it presently has no interest and shall not acquire any interest during the term of this Agreement which would have the potential to conflict with the performance of the services required under this Agreement except those previously disclosed to the City. In the event such a conflict arises, it shall immediately be brought to the attention of the City and appropriate action acceptable to the City shall be taken.

**10.0 INDEPENDENT CONTRACTOR**

Nothing in this Agreement is intended or should be construed in any way to create or establish a partnership relationship between the Parties or to establish the EDC as an agent, representative, or employee of the City for any purpose or any manner whatsoever. The EDC and its employees shall not accrue leave, retirement, or other benefits afforded to employees of the City. The EDC and its employees may participate in the City health insurance plan but will be responsible for the full cost of the monthly premium. The EDC is an independent contractor for the City. The EDC, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the City and shall not bind the City in any respect.

**11.0 INDEMNIFICATION AND HOLD HARMLESS**

The EDC shall indemnify, defend, and hold harmless the City, its employees, agents, officers and officials from any and all claims, demands, losses, causes of action, costs, expenses, and liability of any nature whatsoever, including court costs, attorney's fees, and any expenses incurred in enforcing this provision, which may result from, arise out of, be related to, or in any way be connected with this Program; provided, however, that nothing shall be construed to require or obligate the EDC to indemnify the City of Lovington against or hold the City harmless from the City's own negligent acts or omissions.

**12.0 VENUE AND JURISDICTION**

Jurisdiction and venue relating to any litigation or dispute arising out of this Agreement shall be in the District Court of Lea County, New Mexico, only. If any part of this contract shall be deemed in violation of the laws or Constitution of New Mexico, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable. If any party is found by a court to have breached this Agreement, the breaching party agrees to pay all reasonable costs, attorney's fees and expenses that shall be made or incurred by another party in enforcing any covenant or provision of this Agreement, including the expenses of in house counsel.

**13.0 NON-APPROPRIATION**

The City's obligation to make payment under the terms of this Agreement is contingent upon its appropriation of sufficient funds to make those payments and the New Mexico Department of Finance's (DFA) final approval of the City's budget. If the City does not appropriate sufficient funds or DFA does not approve the City's final budget, this Agreement will terminate upon written notice of that effect to the EDC. The City Commission's determination that sufficient funds have not been appropriated, through the City Commissioners or DFA action, is firm, binding, and not subject to review by EDC.



#### **14.0 NOTICE TO PROCEED OR COMMENCEMENT OF WORK**

It is expressly understood that this Agreement is not binding upon the City until approved and signed by the City and, further, that the EDC shall not proceed with its obligations until the Agreement has been signed by all Parties.

#### **15.0 PROPRIETARY INFORMATION**

This Agreement shall not be construed as granting any license right or privileges to any proprietary information of the EDC or third party. The EDC retains all title, ownership and intellectual property rights to the proprietary information, including but not limited to the material and trademarks contained in materials used to carry out the scope of work described in this Agreement including any supporting documentation, files, marketing materials, and multimedia. The City is not acquiring any rights in any confidential information of the EDC or of the customers and business affiliates of the EDC whose confidential information may be disclosed pursuant to this Agreement.

#### **16.0 RECORD KEEPING**

16.1 The EDC shall compile, maintain, and make available for inspection by the City all records relating to the services provided under this Agreement. These records shall be subject to inspection by the City or designated auditor. The City shall have the right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the City to be reimbursed any excessive or illegal payment amounts made to the EDC during the term of this Agreement. Pursuant to State of New Mexico General Records Retention requirements, the EDC will retain all original, source and supporting documents and records related to this Agreement for a minimum of six (6) years after the ending date of this Agreement.

16.2 Quarterly payment requests to the City shall include an invoice requesting the amount to be paid in addition to detailed documentation of services provided to the City during the quarter. Documentation will include an accounting of funds expended in the previous quarter, the items completed as identified in Section 3.0, and other information requested by the City Manager, Finance Department, or City Commission.

#### **17.0 SUBCONTRACTING**

The City bases this Agreement on the personnel skills and reliability of the EDC as known at the time of execution of this Agreement. The EDC is permitted to subcontract those components of this Agreement as it deems necessary, but the EDC shall remain responsible for the professionalism and acceptability of the final work product.

**18.0 INSURANCE**

EDC shall maintain general liability and workers compensation insurance as required by law. The City shall be listed as an additional insured on the general liability policy.

**19.0 SEVERABILITY**

If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provisions of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

**20.0 NOTICES**

All notices to be given with respect to this agreement shall be given in writing. Each notice shall be sent either by certified mail, postage prepaid, and return receipt requested to the party to be notified, or by personal delivery at the address set forth herein or at such other address as either party may from time to time designate in writing.

City of Lovington  
City Manager  
214 S. Love  
Lovington, NM 88260

Lovington Economic Development  
Corp.  
Executive Director  
201 S. Main Street  
Lovington, NM 88260

**20.0 REMEDIES**

In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may terminate the Agreement by

providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have 30 days from the effective date of such notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement. However, all obligations of the EDC in the Sections regarding Insurance and Indemnification shall survive the termination of this Contract.

## **21.0 TERMINATION**

- 21.1 The City may terminate this Agreement for convenience, in whole or in part, by providing written notice to the EDC ninety (90) days prior to termination. In the event of Agreement termination, the EDC shall be paid for work completed to the date of termination. In no event shall the dollar amount be paid upon termination exceed a total of the maximum contracted amount and any additional amount provided for by amendment(s).
- 21.2 Where a Party to this Agreement has committed a breach that is capable of remedy and has not cured said breach the Party who is not in breach may serve written notice, with a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but subject to a minimum period of fourteen (14) days.
- 21.3 The City and the EDC shall have the right, such right being exercised at their absolute discretion, to terminate this Agreement, in writing, if a breach has been committed that cannot be remedied. Further, the parties may terminate this Agreement, in writing, if a breach has not been remedied to the reasonable satisfaction of the Party serving the notice of breach within the period specified in any such notice.

## **22.0 WAIVER**

Any waiver by the City of any breach of any covenant, term, condition, or agreement in this Agreement to be kept and performed by the EDC shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent City from declaring a default for any succeeding breach either of the same covenant, term, condition, or agreement or another. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

## **23.0 RELEASE**

The EDC, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, and the City of Lovington from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees to not purport to bind the City to any obligations not assumed herein by the City of Lovington, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**24.0 EQUAL OPPORTUNITY COMPLIANCE**

The EDC agrees to abide by all Federal and State laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, the EDC agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the EDC is found to not be in compliance with these requirements during the term of this agreement, the EDC agrees to take appropriate steps to correct these deficiencies.

**25.0 ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreements between the parties.

**IN WITNESS WHEREOF**, we have hereunto affixed our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF LOVINGTON, NEW MEXICO**

**LOVINGTON ECONOMIC DEVELOPMENT CORP.**

By: \_\_\_\_\_  
Paul Campos, Mayor

By: \_\_\_\_\_  
, President

ATTEST: Lovington City Clerk

ATTEST: Board Secretary

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

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

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Lovington City Attorney

## PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the City of Lovington (hereafter "City"), a New Mexico municipal corporation, and Lovington MainStreet (hereafter "LMS") a New Mexico non-profit corporation.

### **1.0 FUNDING**

The terms of this agreement are contingent upon sufficient General Fund monies being made available by the City of Lovington for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City of Lovington, this Agreement shall terminate upon written notice being given by the City to LMS. The City, in its sole discretion, will determine if sufficient appropriations are available for funding and its decision shall be accepted by LMS and shall be final.

For services, as described in Section 3, funding will be computed as follows:

- 1.1 Commencing on the 1<sup>st</sup> day of January, 2017, the City agrees throughout the term of this Agreement to pay LMS on a quarterly basis from the City of Lovington's General Fund. It is understood that the total expenditure by the City from the General Fund will be twenty-five thousand dollars (\$25,000), paid in quarterly amounts of twelve thousand five hundred dollars (\$12,500) during the initial term of this agreement. Upon renewal as set out more fully in Section 2.0, the total annual expenditure by the City from the General Fund will be fifty thousand dollars (\$50,000), paid in quarterly amounts of twelve thousand five hundred dollars (\$12,500).
- 1.2 LMS agrees to receive, expend, and account for the entire General Fund proceeds to facilitate and support the services identified in Section 3.0.
- 1.3 As set out more fully in Section 12.0, all performance by the City under this Agreement is subject to available funding and revenues from the City's General Fund and is subject to budget approval of the City Commission of the City of Lovington.
- 1.4 LMS shall present to the City documentation of services provided and within fifteen (15) days after the end of the quarter, except for the last quarter when documents shall be presented fifteen (15) days prior to the end of the quarter. After certification by the City Manager that the services invoices have been received and accepted, payment shall be tendered to the ~~EDC~~ LMS within 30 days. Documentation required upon submittal for quarterly payment is identified in Section 16.0.

## **2.0 TERM OF AGREEMENT**

This Agreement shall be effective on the 1<sup>st</sup> day of January 2017, and shall continue until June 30, 2017, with an option to renew, at the discretion of the City, for three (3) additional one (1) year terms.

## **3.0 SCOPE OF SERVICES**

- 3.1 LMS shall provide services to the City on matters relating to LMS specialized areas of expertise as defined in this Agreement and its referenced or incorporated Attachments. LMS shall secure and remain current on all insurances, licenses, permits, certificates, fees, etc., required for the performance of this Agreement.
- 3.2 LMS shall provide the required services for the City when and where appropriate or as indicated in the attached documents.
- 3.3 The following services will be provided by LMS during the term of this agreement:
  - 3.3.1 LMS will provide unified management and coordination for the revitalization and economic development activities in the downtown MainStreet district of the City.
  - 3.3.2 LMS will promote and operate programs to help the business and property owners within the designated Historic MainStreet District ("Downtown") in accordance with the New Mexico MainStreet guidelines and objectives.
  - 3.3.3 LMS will strengthen the role and relationship between the Lovington MainStreet District, Lovington **Downtown** district merchants and the NM MainStreet program, related to technical assistance on Economic Vitality, Design, Organization and Promotions activities.
  - 3.3.4 LMS will work closely with the City's elected officials and professional staff, the Chamber of Commerce, the Lovington Economic Development Corporation and all organizations, individuals, and entities in order to draw on resources to augment the work of its staff and board to bring projects to completion and meet common goals.
  - 3.3.5 LMS will work with and coordinate activities between community civic groups, Downtown business, financial institutions, and the

government; forge new and stronger relationships with public and private agencies and the Downtown business community to ensure that teamwork would be in place for the success of the Lovington MainStreet District.

- 3.3.6 LMS will ~~provide~~ **employ** a qualified, experienced Main Street Director whose duties would be, among others, to provide documentation for the Lovington MainStreet District. The MainStreet Director would be the principal onsite staff person responsible for coordinating all project activities and volunteers locally, as well as for representing the community regionally and nationally as appropriate and dealing with the New Mexico MainStreet staff of the State Economic Development office.
- 3.3.7 LMS will develop and update a consistent promotion and marketing program for the Lovington MainStreet District.
- 3.3.8 LMS will engage community members, businesses, property owners, local government and other stakeholders in design and implementation of projects for the downtown district, including, but not limited to improvements to building facades, street/landscaping activities, signage, lighting, and the overall look of the downtown area.
- 3.3.9 LMS will strengthen the existing economic assets of the Lovington MainStreet District by diversifying the economic base through recruitment of new business, marketing empty space, and strengthening existing merchants.
- 3.3.10 LMS will develop and maintain a website that will promote the downtown district and MainStreet program.
- 3.3.11 LMS will develop and maintain an email list serve to assist with delivery of information released by the City and its departments, local civic groups, and LMS members.
- 3.3.12 ~~LMS shall coordinate and facilitate events for the City to promote the downtown district, to include at a minimum, the following events or activities~~ **shall, within the framework of adopted Economic Transformation Strategies, coordinate and oversee the implementation of the promotional events in partnership with the County, the City and other key community stakeholders or civic groups. Services include coordination of event security, vendors,**



marketing/public relations, entertainment and other activities pertaining to the following events:

- 3.3.12.1 Downtown Roundup and Tax Free Weekend
  - 3.3.12.2 Small Business Saturday
  - 3.3.12.3 Halloween on the Plaza
  - 3.3.12.4 Downtown Christmas Event
  - 3.3.12.5 Smokin' on the Plaza
  - 3.3.12.6 ~~Three (3)~~ **One (1)** additional events that promotes the downtown district in an effort to increase tourism and promote local businesses.
- 3.3.13 LMS shall conduct two (2) business development workshops/**meetings** for existing, expanding, or new downtown district businesses.
- 3.3.14 Fiscal Responsibility: ~~The Chamber~~ LMS will maintain fiscal and legal integrity of the non-profit organization, completing its annual reporting to the IRS, NM Secretary of State, and the Office of the New Mexico Attorney General.
- 3.3.15 LMS will produce at least ~~five (5)~~ **four (4)** "Shop Local" advertisements that will be disseminated electronically.
- 3.3.16 LMS will assist in updating the Downtown Master Plan/**MRA**.
- 3.3.17 Other services, as determined by LMS to be in the best interest of the City.
- 3.4 The City will provide the following to LMS during the term of this Agreement:
- 3.4.1 Office space located at 201 S. Main St., Lovington, New Mexico.
  - 3.4.2 Provide utilities, to include landline telephone and internet access.
  - 3.4.3 Provide building maintenance as required.
  - 3.4.4 Provide janitorial services for the facility.

3.4.5 Allow usage of the City multi-function printer at City Hall. Usage will be limited to no more than 250 copies or scans per month. In the event copies or scans exceed the monthly amount, LMS will be required to compensate the City \$0.12 per copy or scan.

3.5 Both parties will agree to additional services requested by the City to be provided by LMS in writing. Any additional funding for agreed upon services will require amendment to this agreement as provided for in Section 4.0.

#### **4.0 AMENDMENTS**

This Agreement shall not be altered, changed, or amended except by written instrument signed by both parties.

#### **5.0 ASSIGNMENT**

LMS shall not assign nor delegate specific duties as part of this Agreement nor transfer any interest nor assign any claims for money due or become due under this Agreement without the written consent of the City.

#### **6.0 BINDING EFFECT OF AGREEMENT**

Both Parties agree that the terms of this Agreement and any extension or renewal thereof shall extend to and be binding upon the administrators, assigns, successors, and transferees of the contracting parties.

#### **7.0 COMPLIANCE WITH GOVERNING LAW**

This Agreement shall be construed in agreement with New Mexico law. LMS shall comply with all applicable federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies having any jurisdiction or authority, which in any manner affect the performance of the scope of work completed by LMS.

#### **8.0 CONFLICT OF INTEREST**

LMS warrants that it presently has no interest and shall not acquire any interest during the term of this Agreement which would have the potential to conflict with the performance of the services required under this Agreement except those previously disclosed to the City. In the event such a conflict arises, it shall immediately be brought to the attention of the City and appropriate action acceptable to the City shall be taken.

## **9.0 INDEPENDENT CONTRACTOR**

Nothing in this Agreement is intended or should be construed in any way to create or establish a partnership relationship between the Parties or to establish LMS as an agent, representative, or employee of the City for any purpose or any manner whatsoever. LMS and its employees shall not accrue leave, retirement, or other benefits afforded to employees of the City. LMS and its employees may participate in the City health insurance plan but will be responsible for the full cost of the monthly premium. LMS is an independent contractor for the City. LMS its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the City and shall not bind the City in any respect.

## **10.0 INDEMNIFICATION AND HOLD HARMLESS**

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## **11.0 VENUE AND JURISDICTION**

Jurisdiction and venue relating to any litigation or dispute arising out of this Agreement shall be in the District Court of Lea County, New Mexico, only. If any part of this contract shall be deemed in violation of the laws or Constitution of New Mexico, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable. If any party is found by a court to have breached this Agreement, the breaching party agrees to pay all reasonable costs, attorney's fees and expenses that shall be made or incurred by another party in enforcing any covenant or provision of this Agreement, including the expenses of in house counsel.

## **12.0 NON-APPROPRIATION**

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notice of that effect to LMS. The City Commission's determination that sufficient funds have not been appropriated, through the City Commissioners or DFA action, is firm, binding, and not subject to review by LMS.

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### **15.0 RECORD KEEPING**

15.1 LMS shall compile, maintain, and make available for inspection by City all records relating to the services provided under this Agreement. These records shall be subject to inspection by the City or designated auditor. The City shall have the right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the City to be reimbursed any excessive or illegal payment amounts made to LMS during the term of this Agreement. Pursuant to State of New Mexico General Records Retention requirements, LMS will retain all original, source and supporting documents and records related to this Agreement for a minimum of six (6) years after the ending date of this Agreement.

15.2 Quarterly payment requests to the City shall include an invoice requesting the amount to be paid in addition to detailed documentation of services provided to the City during the quarter. Documentation will include reports indicating number of businesses, partners, and volunteers

participating in promotional events or activities sponsored by LMS, job creation, ~~estimates of gross receipt tax generated during downtown events,~~ and the items completed as identified in Section 3.0.

**16.0 SUBCONTRACTING**

The City bases this Agreement on the personnel skills and reliability of LMS as known at the time of execution of this Agreement. LMS is permitted to subcontract those components of this Agreement as it deems necessary, but LMS shall remain responsible for the professionalism and acceptability of the final work product.

**17.0 INSURANCE**

LMS shall maintain general liability and workers compensation insurance as required by law. The City shall be listed as an additional insured on the general liability policy.

**18.0 SEVERABILITY**

If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provisions of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

**20.0 NOTICES**

All notices to be given with respect to this agreement shall be given in writing. Each notice shall be sent either by certified mail, postage prepaid, and return receipt requested to the party to be notified, or by personal delivery at the address set forth herein or at such other address as either party may from time to time designate in writing.

City of Lovington  
City Manager  
214 S. Love  
Lovington, NM 88260

Lovington MainStreet  
Executive Director  
201 S. Main Street  
Lovington, NM 88260

## **19.0 REMEDIES**

In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may terminate the Agreement by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have 30 days from the effective date of such notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement. However, all obligations of LMS in the Sections regarding Insurance and Indemnification shall survive the termination of this Contract.

## **20.0 TERMINATION**

- 20.1 The City may terminate this Agreement for convenience, in whole or in part, by providing written notice to LMS ninety (90) days prior to termination. In the event of Agreement termination, LMS shall be paid for work completed to the date of termination. In no event shall the dollar amount be paid upon termination exceed a total of the maximum contracted amount and any additional amount provided for by amendment(s).
- 20.2 Where a Party to this Agreement has committed a breach that is capable of remedy and has not cured said breach the Party who is not in breach may serve written notice, with a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but subject to a minimum period of fourteen (14) days.
- 20.3 The City and LMS shall have the right, such right being exercised at their absolute discretion, to terminate this Agreement, in writing, if a breach has been committed that cannot be remedied. Further, the parties may terminate this Agreement, in writing, if a breach has not been remedied to the reasonable satisfaction of the Party serving the notice of breach within the period specified in any such notice.

## **21.0 WAIVER**

Any waiver by the City of any breach of any covenant, term, condition, or agreement in this Agreement to be kept and performed by LMS shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent City from declaring a default for any succeeding breach either of the same covenant, term, condition, or agreement or another. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

**22.0 RELEASE**

LMS upon final payment of the amount due under this Agreement, releases the City, its officers and employees, and the City of Lovington from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees to not purport to bind the City to any obligations not assumed herein by the City of Lovington, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**23.0 EQUAL OPPORTUNITY COMPLIANCE**

LMS agrees to abide by all Federal and State laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, LMS agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If LMS is found to not be in compliance with these requirements during the term of this agreement, LMS agrees to take appropriate steps to correct these deficiencies.

**24.0 ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreements between the parties.

**IN WITNESS WHEREOF**, we have hereunto affixed our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF LOVINGTON, NEW MEXICO**

**LOVINGTON MAINSTREET**

By: \_\_\_\_\_  
Paul Campos, Mayor

By: \_\_\_\_\_  
, President

ATTEST: Lovington City Clerk

ATTEST: Board Secretary

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

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

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Lovington City Attorney

DRAFT



CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: November 28, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** CDBG Engineering Services RFP Award  
**DEPARTMENT:** Executive  
**SUBMITTED BY:** James R. Williams, City Manager  
**DATE SUBMITTED:** November 22, 2016

**STAFF SUMMARY:**

Staff issued an RFP for Design Professional Services for the 2016 CDBG Projects and tentative 2017 projects. The 2016 projects are as follows:

West Jefferson: 13th to 17th  
Avenue H: 2nd Street to 5th Street  
2nd Street: Avenue D to Jackson

2017 projects are as follows:  
5th Street: Avenue D to Avenue K  
1st Street: Avenue J to Avenue O

Three responses were received and are tabulated on the response sheet and letter to DFA for approval.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

Letter to DFA recommending award.

**RECOMMENDATION:**

Staff are recommending awarding this bid to Pettigrew and Associates contingent upon DFA approval.

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager



# City of Lovington

214 S. Love St.  
PO Box 1268  
Lovington, NM 88260

Bus: 575-396-2884  
Fax: 575-396-6328  
[jwilliams@lovington.org](mailto:jwilliams@lovington.org)

November 21, 2016

Maxx PL Hendren  
NM DFA, Local Government Division  
Bataan Memorial Building  
407 Galisteo St., Suite 202  
Santa Fe, NM 87501

RE: City of Lovington CDBG 2016 Allocation  
RFP Award Recommendation for Design Professional Services

Maxx,

The City has advertised and received the RFP for Design Professional Services for the City of Lovington 2016 CDBG Allocation for street and sidewalk improvement. The City evaluation team has evaluated the proposal and below is a summary of the results.

Respondent	EV1	EV2	EV3	EV4	Average
Ideals, Inc.	150	167	154	100	142.75
Pettigrew & Associates	161	167	167	135	157.50
Occam Engineers, Inc	153	168	165	120	151.50

City staff are recommending award of this RFP to Pettigrew and Associates, PA. We ask that you review the presented proposals and provide us your approval prior to submitting our recommendations to City Commission. Please do not hesitate to contact me should you have any questions or require additional information.

Sincerely,

James R. Williams,  
City Manager