

The City of Hanford
CALIFORNIA



City Council Meeting Agenda

August 18, 2020
7:00 PM – Regular Meeting
Council Chambers
400 N. Douty St.

5:30 PM CALL TO ORDER STUDY & CLOSED SESSION :

ROLL CALL BY CITY CLERK :

PUBLIC COMMENT :

*Comments from the public are limited to items on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

STUDY SESSION:

- A. Parks and Community Services: Presentation of Proposed Sites and Rankings for Community Park sites under the Prop 68 Statewide Park Development and Community Revitalization Program

CLOSED SESSION FOR DISCUSSION OF THE FOLLOWING :

- A. CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATIONS (GC 54956.8)

Property: APNs 028-240-018, 028-240-020, 08-310-005, 028-310-007, 028-310-008, 028-310-025

Agency Negotiators: Mario Cifuentez, John Doyel, Ty Mizote,

Negotiating Party: City Farm Industries, Inc.; Ross Lyndon-James and Mark Askey

- B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (GC 54956.9 (d)(1))

Helena v. City of Hanford

Kings County Case No. 17C0102

Cesar Pimentel v. Mark Carrillo and Alfred Rivera
Eastern District Case No.: 1:19-cv-1088

Antoine Barnes v. Officer Wyand
Eastern District Case No.: 1:20-cv-389

Montreal Hemphill v. Officer Farr, Officer Medeiros
Eastern District Case No.: 1:19-cv-1119

David Quair v. Hanford Police Department
Eastern District Case No.: 1:20-cv-570

7:00 PM CALL TO ORDER REGULAR SESSION:

ROLL CALL:

INVOCATION:

Alex Nava

FLAG SALUTE:

STAFF COMMUNICATIONS:

COUNCIL REPORTS/COMMENTS:

A. Council Comments

PUBLIC COMMENT:

*This is the time for citizens to comment on subject matters not on the agenda and that are within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed. A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence*

CONSENT CALENDAR:

Consent Calendar items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made and then the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

- A. City Clerk: Approval of the Minutes of the June 2, 2020 Meeting
- B. City Clerk: Approval of the Minutes of the June 16, 2020 Meeting
- C. City Clerk: Approval of the Minutes of the June 18, 2020 Special Meeting
- D. City Clerk: Approval of the Minutes of the June 23, 2020 Meeting

- E. City Clerk: Denial of a claim for damages and authorization for the City Clerk to send out notification of such to Stephen McLemore.
- F. City Clerk: Denial of a claim for damages and authorization for the City Clerk to send out notification of such to Alma McLemore.
- G. Administration: Second Reading of Ordinance No. 20-08 amending Municipal Code Section 2.01.18 fixing salaries for the City Council at \$500.00 per month pursuant to Government Code Section 36516 (a)(2)(C).
- H. Administration: Approval of an Avigation and Clearance Easement from EBC Farms, LLC, in conformance with the City's Airport Layout Plan (ALP), and authorization for the City Manager to sign and the City Clerk to notarize said easement and record said document with the Kings County Recorder's Office.
- I. Administration: Approval of a Lease Agreement with City Farm Industries, Inc. for 1,600 acres of property owned by the Wastewater Fund.
- J. Public Works: Approval of a Sole Source Purchase of two 2020 Global R4AIR Regenerative Air Sweepers from Terry Equipment Inc., of Bloomington, Ca., in the amount of \$619,454.55; and a declaration of two 2008 street sweeper vehicles as surplus and authorization for the sale of those vehicles in accordance with City policy.
- K. Public Works: Approval of the Notice of Completion for the Hanford Airport Runway 14-32 Rehabilitation Project, and authorization for the Mayor to execute and the City Clerk to attest and file said Notice with the Kings County Recorder's Office.
- L. Public Works: Award of Contracts and Authorization for the City Manager to execute, and the City Clerk to attest, the attached On-Call Materials Testing and Geotechnical Services agreements with Kleinfelder, Inc. of Fresno, CA, and Moore Twining Associates, Inc. of Fresno, CA to provide geotechnical services for all capital improvement projects for calendar years 2020-2023.

GENERAL BUSINESS:

- A. Administration: Discussion of the 2020 National Night Out event and Council direction regarding the regularly scheduled Council Meeting for that date.
- B. Administration: Discussion regarding the upcoming visit by the State Unified Support Team and direction from Council regarding topics of importance to be covered with the Team.
- C. Public Works: Introduction and waiver of the first reading of Ordinance 20-09 adding Section 12.20 to the Hanford Municipal Code pertaining to the duty of Property Owners to maintain and repair sidewalks and confirming the liability of property owners, under existing state law, for failing to satisfy such duty.

COUNCIL FUTURE AGENDA ITEMS:

- A. Council Future Agenda Items

Upcoming Dates

August 21: Movies in the Park, Civic Park, dusk
September 1: City Council Meeting
September 1: National Night Out, Civic Park, 5:30 PM -8:30 PM
September 15: City Council Meeting

ADJOURNMENT:

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available to public inspection in the City Clerk's Office located at 319 N. Douty Street, Hanford, California 93230, during normal business hours. Such agendas are also available at the city's website, www.cityofhanfordca.com subject to staff's ability to post the agenda before the meeting.

If you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's office, 559-585-2515, 319 N. Douty Street, Hanford, California 93230, at least 2 days prior to the meeting {28 CFR 35.102.35.104 ADA Title II}



AGENDA STAFF REPORT

MEETING DATE: 8/18/2020	AGENDA SECTION: A
--------------------------------	--------------------------

SUBJECT:

Parks and Community Services: Presentation of Proposed Sites and Rankings for Community Park sites under the Prop 68 Statewide Park Development and Community Revitalization Program

FISCAL IMPACT:**ATTACHMENTS:**

8.18.20 SPP Scoring Criteria

Competitive Chart

Statewide Park Development and Community Revitalization Program (SPP)

June, 2020

This Competitive Chart is an outline and planning tool for applicants.

If the answer to any of these questions is "No", the project may need to be reconsidered or adjusted to meet the competitive priorities.

- Detailed guidance is found in the June 1, 2020 Final Application Guide.
 - Page citations are listed in this table. Number 4 update is \$56,982
- The Application Guide and staff contacts are available at parks.ca.gov/spp
- Technical Assistance for this program is available through the Office of Grants and Local Services. See page 56 of the Guide for a summary of assistance available.

#	Competitive Chart Questions	Application Guide Page(s)	Yes/No
1	Applicant Eligibility: Is the applicant an eligible entity?	4	☐ ☐
2	Maximum Grant Amount, Process Overview: Does the applicant understand the grant request for up to \$8.5 million per application is competitive; funding is not guaranteed?	6-8	☐ ☐
3	Project site ownership, acquisition, lease, or turn-key. Does the applicant understand site control requirements?	48	☐ ☐
4	<u>Eligible Project Site:</u> Using the Community FactFinder, does the project site radius have either: - A ratio of less than 3 acres of parkland per 1,000 residents? <u>OR</u> - A median household income below \$51,026? <u>Competitive Project Site:</u> - Were the steps in the FactFinder Handbook followed for Project Selection Criteria #1 and #2? Community FactFinder: ParksforCalifornia.org/communities FactFinder Handbook: parks.ca.gov/spp	15-16, 57	☐ ☐
5	Type of Project: Project Selection Criterion #3 - Create a new park? (10 points) - Expand an existing park? (8 points) - Renovate an existing park? (7 or 6 points)	18, 58	☐ ☐
6	Community Based Planning with Residents: Project Selection Criteria #4 A. Five meetings at convenient times near project site, with at least two on a weekend or evening? B. Invited and involved a broad representation of residents? C. Residents engaged to design the project concept? Photos?	20-23, 49, 59-61	☐ ☐

7	Employment or Volunteer Opportunities: Project Selection Criteria #5 - At least 20 residents will receive meaningful employment or volunteer learning opportunities? - Corps Consultation Process followed?	24, 62	☐	[
8	Partnerships or Committed Funding: Project Selection Criteria #6 Project involves three partners, including health organization?	26, 63	☐	[
9	Environmental Design: Project Selection Criteria #7 Project will include seven techniques for conservation and "place-making", or SITES, or LEED certification?	27-29, 64-65	☐	[
10	Fees and Hours of Operation: Project Selection Criteria #8 After completion, park will be open to public seven days a week, long daily hours; no public use fees or fees will not deter daily access?	30, 66	☐	[
11	Community Challenges, Project Benefits, and Readiness: Project Selection Criteria #9 Summarize community's story - challenges and project benefits	31-32, 67-69	☐	[
12	Project Timeline and Applicant Capacity - Project timeline created with input from other responsible agencies? - Project is achievable within Grant Performance Period? - Applicant is capable of completing project on time? 30 year operation and maintenance?	42-44, 45	☐	[
13	Grant Scope/Cost Estimate The deliverables will be complete and open to public before final grant payment (20% retention of grant amount for final payment)?	37-39	☐	[
14	Funding Sources Grant by itself will pay for total project? Or, if other funds are needed, are the other funds committed/secured (fund raising is not needed)?	40-41	☐	[
15	CEQA Analysis is complete? Or will be complete within approximately three months from application due date?	46-47	☐	[
16	Authorizing Resolution Applicant's governing body approves filing of the application? Reviewed grant contract provisions?	35-36	☐	[
17	Preparing Application Use instructions/Checklist on pages 10-11 to send application	10-11	☐	[

Attachment: 8.18.20 SPP Scoring Criteria (Parks: Statewide Park Development and Community Revitalization Program)



**AGENDA
STAFF REPORT**

MEETING DATE: 8/18/2020	AGENDA SECTION: A
--------------------------------	--------------------------

SUBJECT:
Council Comments

FISCAL IMPACT:

ATTACHMENTS:



**AGENDA
STAFF REPORT**

MEETING DATE: 8/18/2020	AGENDA SECTION: A
--------------------------------	--------------------------

SUBJECT:

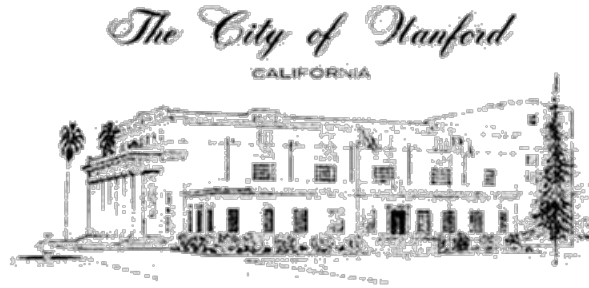
City Clerk: Approval of the Minutes of the June 2, 2020 Meeting

Approve the minutes of the June 2, 2020 meeting.

FISCAL IMPACT:

ATTACHMENTS:

6.2.2020 minutes



CITY COUNCIL MEETING MINUTES

**June 2, 2020 7:00 PM
Council Chambers
400 N. Douty Street**

Video Teleconference via Zoom. Council Members attended remotely.

5:30 PM CALL TO ORDER STUDY AND CLOSED SESSION:

Mayor Draxler called the Study Session to order at 5:30 p.m.

ROLL CALL BY THE CITY CLERK:

Present: John Draxler, Francisco Ramirez, Martin Devine, Sue Sorensen, and Art Brieno.

PUBLIC COMMENT:

This is the time for citizens to comment on subject matters not on the agenda within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed.

*A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

*Comments from the public are limited to items on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

Jack Schwartz asked about the funding source(s) and amounts of the Pavement Management System costs. He also asked how and why the City of Hanford allowed a backlog of deferred maintenance.

STUDY SESSION:

- A. Public Works: Presentation of the Pavement Management System Update for the City of Hanford.

Public Works Director John Doyel presented the Pavement Management System Update, with four scenario options. Council gave direction to stay with Scenario One (City's Existing Budget) and bring it back to Council for another Study Session, with potential revenue streams available.

- B. Finance: Presentation and discussion of the proposed Fiscal Year 2020/2021 General Fund budget for the City of Hanford.

Finance Director Paula Lofgren presented the overview of the proposed Fiscal Year 2020/2021 General Fund budget and an overview of the budget with COVID-19-impacting revenue. City Manager Mario Cifuentez discussed actions for the Council to consider to reach the goal of a balanced budget. Direction from Council is to have a special meeting, with a second General Fund study session, Thursday, June 18, 2020, 9:00 a.m. to 4:00 p.m.

Meeting Adjourned to Closed Session at 6:45 p.m.

CLOSED SESSION FOR DISCUSSION OF THE FOLLOWING:

A. CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATIONS (GC 54956.8)

Property: Nation Guard Armory, 905 N. 11th Ave. APN: 010-490-018
Agency Negotiators: Mario Cifuentez and Ty Mizote
Negotiating Party: State of California

Property: APNs 028-240-018, 028-240-020, 028-310-005, 028-310-007, 028-310-008, 028-310-025
Agency Negotiators: Mario Cifuentez and Ty Mizote
Negotiating Party: City Farm Industries, Inc.; Ross Lyndon-James

B. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (GC 54956.9(d)(2))

One potential case.

7:00 PM CALL TO ORDER REGULAR SESSION:

Mayor Draxler called the Regular Session to order at 7:00 p.m.

ROLL CALL:

Attendee Name	Title	Status	Arrived
John Draxler	Mayor	Present	5:30 PM
Martin Devine	Council Member	Present	5:30 PM
Sue Sorensen	Council Member	Present	5:30 PM
Art Brieno	Council Member	Present	5:30 PM
Francisco Ramirez	Vice Mayor	Present	5:30 PM

INVOCATION:

Invocation led by Police Chief Parker Sever.

FLAG SALUTE:

Mayor Draxler led the flag salute.

CLOSED SESSION ACTION REPORT:

City Attorney Mizote reported no actions taken; however, the Council will reconvene to Closed Session after the regular meeting to finish discussion.

RECOGNITIONS/PROCLAMATIONS:

A. National Public Works Week Proclamation

Mayor Draxler read the document proclaiming May 17-23, 2020 National Public Works Week. He expressed appreciation for our Public Works Department and its employees.

STAFF COMMUNICATIONS:

City Manager Cifuentez reported that he gave a presentation at a Rotary meeting on the State of the City, Council Goals and Objectives Sessions, City finances, and other project updates. He attended the Road Map to Reopening meeting on June 1. They continue to work on opening as quickly as possible. He reported that City offices opened June 1, in compliance with COVID-19 guidelines. The City was also able to open the skate park. Parks and Community Services Director Brad Albert has been diligently researching CDC guidelines on a variety of sports projects and other amenities we hope to open soon. He deferred to Community Development Director Mata to explain a new policy, which he approved as an emergency order.

Director Mata stated that, in order to reopen indoor dining, restaurants are required to reduce their capacity by fifty percent. In an effort to relieve some of that hardship, staff has created an expedited outdoor dining permit, for use during this emergency order approved by the City Manager. It would allow dining in unused adjacent parking or patio areas not already used for outdoor dining. The permit is free and will be approved in one day, providing all criteria are met. This went into effect last week and will require Council ratification, if there is a need to continue beyond the emergency order.

COUNCIL REPORTS/COMMENTS:

A. Council Comments

Vice Mayor Ramirez will attend his last WELL meeting this week.

Council Member Sorensen reported that she had spoken with several community members. She also spoke Michelle Brown (to follow up with Main Street Hanford), with Jeff Garner (KCAO) regarding CDBG funds, and with a representative of Kings Gospel Mission, about their needs. She expressed disappointment with the State's lack of commitment to our economy and to our people. She is excited about our new Parks and Community Services Director and encouraged support of youth programs. She asked Director Mata to answer, later, how we are getting info to restaurants regarding the new temporary outdoor dining permit.

Council Member Brieno agreed with the importance of supporting programs for the children. He reported that he had met with Director Albert and was impressed with his enthusiasm and speed in getting to work. He spoke with Dave Clevenger regarding Kings Gospel Mission projects, and he encouraged prayer for our police officers.

Council Member Devine was happy to see that things are starting to get back to normal. He attended LAFCO, KCAG, and KAPTA/KART meetings. The KAPTA budget is balanced for 2020-21, and they have closed on property for a new KART building.

Mayor Draxler appreciated the expedited outdoor dining permits and the ability to accommodate restaurant owners in a timely manner. He mentioned that the letter of support for Senator Hurtado was placed on the Consent Calendar because it was time sensitive. He notified the Council Members that they will receive information soon regarding their self-evaluations.

PUBLIC COMMENT:

This is the time for citizens to comment on subject matters not on the agenda within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed.

A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.

*This is the time for citizens to comment on subject matters not on the agenda and that are within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed. A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

Bob Ramos spoke in favor of the proposed video streaming of Council meetings. He refuted Council Member Sorensen's comment in the

May 19 meeting regarding misrepresentation of her position on selling the 18 acres adjacent to Hidden Valley Park, and he stated that a City survey indicated that 48% of Hanford residents wanted the 18 acres to be a park.

Mark Pratter stated that the staff report of the May 19 meeting regarding the Citizen's Initiative was incomplete and that the Northwest park exchange location was staff's idea. He feels that Hanford's growth will support a regional park.

Caleb shared a video clip of a hand-held sound level meter, indicating decibel levels up to 96.6 from the rail spur at Pitman Farms. He stated that he lives across the street, and the noise goes on at all hours of the night, with up to 100 railcars. He requested time on a future agenda to discuss the issue.

Lou Martinez reminded Council of the survey they paid for, and the results, and asked them to listen to the people.

Jeff Garner, Executive Director, KCAO, reported that they have increased food distributions throughout Kings County, partnering with Koinonia Church, serving nearly 38,000 pounds of food a week and assisting nearly 4,100 individuals a week. He announced two upcoming food distributions: June 3 and June 19, at Koinonia Church, at 9:00 a.m.

Ashley Neeley stated that she has organized Hanford Peaceful Protest for Saturday, June 6, 2:00-5:00 p.m., in Civic Park. She expressed disappointment from the black community that the City has not addressed the George Floyd situation. She has contacted the Police Department and the City Manager, and 262 people have responded to social media with an interest in attending the protest. Hand sanitizers, gloves, and masks will be provided. Almost \$300 has been raised for supplies. She requested City support of the peaceful protest and call for justice.

Diane Sharp thanked Ashley for organizing the peaceful protest. Ms. Sharp announced that the Art Center is opening one-week art programs for kids, and scholarships are available. She encouraged those interested in a scholarship to visit the Kings Art Center website. She thanked Council for the draft allocation for Kings Gospel Mission (KGM), to help build housing for the homeless. She gave a brief update of current and recent KGM projects and stated that KGM will be sending a newsletter to the Council Members every month. .

Shawn Warner, clinical lab scientist, expressed concern regarding reopening, noting an increase of walk-in patients from the Emergency Room. He cited a *New York Times* article that named Hanford-Corcoran as the third largest COVID-19 hot spot in the nation. He urged extreme caution in reopening.

Geni Lefler noted that June is Veteran Community PTSD Month. She requested usage of the Veterans Building for a Flag Day take-out dinner event on June 14. She mentioned that the waiver fireworks booth Temporary Use Fee will help them tremendously. Mayor Draxler encouraged her to speak to Director Albert or City Manager Cifuentez about use of the Veterans Building.

Nate Odom spoke in support of the peaceful protest. He requested a resolution from Council in support of the organized protest. Mayor Draxler responded that it would be difficult to get a resolution in time for Saturday's protest. Vice Mayor Ramirez stated that he would attend.

CONSENT CALENDAR:

Consent Calendar items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made and then the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

Consent calendar items are considered routine and will be enacted in one motion. There will be no separate discussion these matters unless a request is made and then the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

Council Member Sorensen requested to pull Item B [SB 1103 letter], Item C [SB 1110], and Item F [Employment Agreement]. A member of the public requested to pull Item D [Swagit]. Vice Mayor Ramirez requested to pull Item E [City Farms Inc. lease]. Council Member Brieno requested to pull Item G [Reso 18-26-R] and Item H [Fireworks Temporary Use Permit fees].

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Francisco Ramirez, Vice Mayor
SECONDER:	Martin Devine, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- A. City Clerk: Approval of the minutes from the City Council Meeting held on April 7, 2020.
- B. Public Works: Approve a Notice of Completion for the Civic Park Restroom Renovation Project and authorize the Mayor to execute and the City Clerk to attest and file said Notice with the Kings County Recorder's Office.
- C. Finance: Warrant Register

ITEMS PULLED FROM CONSENT:

- A. Administration: Approval of a Letter of Support, on behalf of the City of Hanford, for S.B. 1103, Access to Workforce Training Programs by Senator Melissa Hurtado.

Item pulled by Council Member Sorensen.

Marisol, representing Senator Melissa Hurtado's office, briefly explained the letter of support for SB-1103 and SB-1110.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Francisco Ramirez, Vice Mayor
SECONDER:	Art Brieno, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- B. Administration: Approval of a Letter of Support, on behalf of the City of Hanford, for S.B. 1110, California Medicine Scholar Program by Senator Melissa Hurtado.

Item B was pulled by Council Member Sorensen.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Art Brieno, Council Member
SECONDER:	Francisco Ramirez, Vice Mayor
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- C. ADMIN: Approval of an amendment to the existing service contract with Swagit to include video streaming of Council Meetings and approval of the purchase of a single camera solution at a One Time Cost of \$11,790 and video streaming services for the annual amount of \$10,200.

Item C was pulled by a member of the public.

IT Manager Forcey presented the staff report. Discussion followed. Mayor Draxler asked IT Manager Eric Forcey to explore the cost of adding closed captioning and present it to Council at a future date, if necessary.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sue Sorensen, Council Member
SECONDER:	Francisco Ramirez, Vice Mayor
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- D. Administration: Approval of Second Amendment of the existing Lease Agreement between City Farm Industries, Inc. and the City of Hanford for 960 acres of City-owned farmland.

Item pulled by Council Member Ramirez.

Ty Mizote made recommendation for Council to approve the second amendment to the lease, with the new fifty-thousand-dollar condition.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Francisco Ramirez, Vice Mayor
SECONDER:	Art Brieno, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- E. Administration: Approval of the First Amended and Restated Employment Agreement for the City Manager.

Item pulled by Council Member Sorensen.

Ty Mizote summarized the First Amended and Restated Employment Agreement for the City Manager.

Discussion followed.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Martin Devine, Council Member
SECONDER:	Sue Sorensen, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- F. Community Development: Adoption of Amended RESOLUTION NO. 18-26-R; Supporting an Application for Funding from the State of California Department of Housing and Community Development HOME Investment Partnership Program (HOME).

Council Member Brieno requested that this item be pulled.

Housing Analyst Sandra Lerma Martinez and Community Development Director Darlene Mata, explained the amendment. Discussion followed.

Motion to adopt.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sue Sorensen, Council Member
SECONDER:	Francisco Ramirez, Vice Mayor
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- G. Fire: Temporarily waive Temporary Use Permit fees to address revenue concerns caused by the Coronavirus 2019 pandemic.

Council Member Brieno requested that this item be pulled.

There was brief discussion.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Francisco Ramirez, Vice Mayor
SECONDER:	Martin Devine, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

PUBLIC HEARINGS:

- A. Community Development: Conduct a Public Hearing and Adopt Interim Urgency Ordinance No. 20-06 Extending Ordinance 19-08, an interim zoning/urgency ordinance of the City Council of the City of Hanford, restricting the commercial cultivation and manufacturing of industrial hemp (CBD) products in all zones pending enactment of an update to the City's Municipal Code.

Mayor Draxler opened the public hearing and called for the staff report.

Director Mata presented the staff report, recommended approval, and answered Council Members' questions.

Mayor Draxler opened Public Comment. There being no comments, Mayor Draxler closed the Public Comment portion of the hearing and invited addition questions from Council.

Following Council Members' questions, Mayor Draxler called for a motion.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sue Sorensen, Council Member
SECONDER:	Martin Devine, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- B. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG): Amendments to the CDBG Citizen Participation Plan, the 2019-2023 Consolidated Plan and the 2019-20 Action Plan, and adoption of the 2020-21 Action Plan.

Mayor Draxler opened the public hearing and called for the staff report.

Housing Administrative Analyst Lerma Martinez presented the staff report, recommended approval, and addressed questions from Council.

Mayor Draxler opened Public Comment:

IN FAVOR

Jack Schwartz asked if the funds will be administered in-house or through a third party, and what will be done to advertise availability of those funds.

Bob Ramos suggested that perhaps Kings County Community Action could administer the rental assistance program funds, since they already provide rental assistance.

OPPOSED

None.

Mayor Draxler closed Public Comment, and Director Mata answered questions. Discussion followed.

Mayor Draxler closed the public hearing

- C. Approve the proposed amendment to the Citizen Participation Plan and the 2019-2023 Consolidated Plan.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sue Sorensen, Council Member
SECONDER:	Francisco Ramirez, Vice Mayor
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- D. Approve and appropriate the 2019 Annual Action Plan Amendment, in order to utilize the CDBG-CV funds.

Motion to approve.

RESULT:	APPROVED [4 TO 1]
MOVER:	Sue Sorensen, Council Member
SECONDER:	Martin Devine, Council Member
AYES:	Draxler, Devine, Sorensen, Ramirez
NAYS:	Brieno

- E. Approve and adopt the proposed 2020-2021 Annual Action Plan.

Motion to approve.

RESULT:	APPROVED [4 TO 1]
MOVER:	Sue Sorensen, Council Member
SECONDER:	Martin Devine, Council Member
AYES:	Draxler, Devine, Sorensen, Ramirez
NAYS:	Brieno

GENERAL BUSINESS:

- A. Public Works: Adopt Resolution 20-08-R, approving the Annual Engineer's Report and Intention to Levy and Collect Assessments as outlined, pursuant to Chapter 3 of the Landscape and Lighting Act of 1972, and set July 17, 2020 as the Public Hearing date to consider the increases in assessments as proposed.

Director Doyel presented the staff report and answered Council Member's questions.

Motion to adopt.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Martin Devine, Council Member
SECONDER:	Francisco Ramirez, Vice Mayor
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- B. Public Works: Approval of a request to add a Refuse Coordinator position, within the Refuse Division of the Public Works Department, and authorization for the City Manager to start the recruitment process prior to July 1, 2020.

Director Doyel presented the staff report and answered Council Members' questions.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Francisco Ramirez, Vice Mayor
SECONDER:	Sue Sorensen, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- C. Administration: Discussion and Adoption of Resolution No. 20-09-R and Ordinance No. 20-07 thereby rescinding the City's Local Emergency Resolution and Modifying the the terms of the Ordinance to follow the updated State Guidance.

City Manager Cifuentez presented the staff report and recommended adoption.

Motion to adopt.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Francisco Ramirez, Vice Mayor
SECONDER:	Martin Devine, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

Attachment: 6.2.2020 minutes (Clerk: 6-02-2020 Minutes)

COUNCIL FUTURE AGENDA ITEMS:**A. Council Future Agenda Items**

City Clerk Sarah Martinez announced that the date for the Fire Dog swearing in at the City Hall Training Room had been changed to June 8.

Council Member Brieno requested going back to holding meetings in person again, as soon as possible.

ADJOURNMENT:

Mayor Draxler adjourned the meeting at 10:16 before returning to Closed Session.

There was nothing to report from Closed Session.

Respectfully submitted,

Diana Black
Deputy City Clerk

Attachment: 6.2.2020 minutes (Clerk: 6-02-2020 Minutes)



**AGENDA
STAFF REPORT**

MEETING DATE: 8/18/2020	AGENDA SECTION: B
--------------------------------	--------------------------

SUBJECT:

City Clerk: Approval of the Miniutes of the June 16, 2020 Meeting

RECOMMENDATION:

Approve the minutes of the June 16, 2020 meeting.

FISCAL IMPACT:

ATTACHMENTS:

6.16.20 Minutes



CITY COUNCIL MEETING MINUTES

**June 16, 2020 7:00 PM
Council Chambers
400 N. Douty Street**

Video Teleconference via Zoom. Council Members attended remotely.

5:30 PM CALL TO ORDER STUDY AND CLOSED SESSION:

Mayor Draxler Called the Study and Closed Sessions to order at 5:30 p.m.

ROLL CALL BY CITY CLERK:

Present: John Draxler, Francisco Ramirez, Martin Devine, Sue Sorensen, Art Brieno

PUBLIC COMMENT:

This is the time for citizens to comment on subject matters not on the agenda within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed.

*A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

*Comments from the public are limited to items on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

None.

STUDY SESSION:

A. City Attorney: Council review of the Brown Act.

City Attorney Mizote presented an overview of the Brown Act. City Manager Cifuentez answered Council questions.

B. Parks & Community Services: Discussion regarding Neighborhood Park and Landscape Development Standards

Parks & Community Services Director Albert presented the item for Council review and recommendations. Discussion followed, and Council made the following recommendations:

- Require provision of more shade, especially above seating.
- Frontages on two or more local streets

Attachment: 6.16.20 Minutes (Clerk: 6-16-2020 Minutes)

- Number of households in the neighborhood determines the number of tables and uses per acre
- Parks & Recreation Commission, and staff, review developer park plans for approval
- More amenities, where possible (look at funding)

Staff will incorporate these recommendations into the proposed standards and come back to Council, at a future Study Session, for further discussion and direction. City Manager Cifuentez recommended that a review of Landscape Assessment Districts, and the funding for these parks, be part of that discussion.

Mayor Draxler adjourned to Closed Session at 6:28 p.m.

CLOSED SESSION FOR DISCUSSION OF THE FOLLOWING:

A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (GC 54956.9(d)(1))

Helena v. City of Hanford
Kings County Case No. 17C0102

Cesar Pimentel v. Mark Carrillo and Alfred Rivera
Eastern District Case No. 1:19-cv-1088

Antoine Barnes v. Officer Wyand
Eastern District Case No. 1:20-cv-389

Montreal Hemphill v. Officer Farr, Officer Medeiros
Eastern District Case No. 1:19-cv-1119

David Quair v. Hanford Police Department
Eastern District Case No. 1:20-cv-570

Ivan Nicar v. Christopher Reeder
Kings County Case No. 20HR0055

B. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (GC 54956.9(d)(2))

One potential case.

C. CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATIONS (GC 54956.8)

Property: APNs 028-240-018, 028-240-020, 028-310-007, 028-310-008, 028-310-025
Agency Negotiators: Mario Cifuentez and Ty Mizote
Negotiating Party: City Farm Industries, Inc.: Ross Lyndon-James

Property: 109 E. Eighth St.
Agency Negotiators: Mario Cifuentez, Darlene Mata, and Ty Mizote
Negotiating Party: Carnegie Museum

CALL TO ORDER REGULAR SESSION:

Mayor Draxler called the meeting to order at 7:00 p.m.

Attachment: 6.16.20 Minutes (Clerk: 6-16-2020 Minutes)

ROLL CALL:

Attendee Name	Title	Status	Arrived
John Draxler	Mayor	Present	
Martin Devine	Council Member	Present	
Sue Sorensen	Council Member	Present	
Art Brieno	Council Member	Present	
Francisco Ramirez	Vice Mayor	Present	

INVOCATION:

Mayor Draxler led the invocation.

FLAG SALUTE:

Vice Mayor Ramirez led the flag salute.

CLOSED SESSION ACTION REPORT:

City Attorney Mizote reported that Council gave direction to City Farm Industries' negotiators with a counter-proposal. Regarding the existing litigation report, he stated that the report had not been completed. This item, and the remaining items, would be discussed in Closed Session following this meeting.

STAFF COMMUNICATIONS:

City Manager Cifuentez reported that staff has been involved with budget preparations, and they will have a good presentation at the special meeting June 18, at 9:00 a.m. He attended several meetings in the past couple weeks with the Chamber of Commerce regarding their rebirth. He and Parks & Community Services Director Albert met with the veterans group, and they are working on a plan to get the veterans and seniors activities reopened, in compliance with current guidelines. He and Community Development Director Mata came up with a plan to accommodate outdoor dining for restaurants, and personal services will open at the end of next week. He stressed that any businesses opening must comply with State guidelines.

COUNCIL REPORTS/COMMENTS:**A. Council Comments**

Before Council Reports, Mayor Draxler noted that Representative T. J. Cox was present, via Zoom, and welcomed him to speak. Rep. Cox reported that the House of Representatives was going back into session; and he was gathering input, regarding the Heroes Fund, to be sure the voices of local municipalities are heard. He welcomed information on the City's needs. He mentioned that he is looking for office space in Hanford or Lemoore. Mayor Draxler expressed appreciation and excitement that some funds will come to the City of Hanford—not just to the big cities. He assured Rep. Cox that the City will send the requested information to him.

Vice Mayor Ramirez reported that he, and Council Member Brieno, attended the Habitat for Humanity groundbreaking. He stated that he, Mayor Draxler, and Council Member Sorensen, walked some of the Landscape Assessment Districts (LADs). He was surprised at the amount of support from the citizens, once the LAD fees were explained. He attended a meeting at Longfield Center regarding program maintenance and revitalization. He reported that they had very good conversation. There will be one main committee and three sub-committees: Public Relations, Design, and Learning. He asked that the next meeting be posted on the City website and Facebook page.

Council Member Devine stated that he and City Manager Cifuentez met with the Chamber of Commerce, who will be presenting an update at a future Study Session.

Council Member Brieno reported that he would be attending the KCAO meeting June 17. He recommended the book, *The Death of Common Sense*, by Philip K. Howard, stating that the author provides a good perspective, especially for those who deal with policymaking.

Council Member Sorensen stated that she enjoyed the opportunity to walk through Gateway Estates. She stated that if more information had been provided to the LADs earlier, there may have been a better outcome. She recently attended Movies in the Park. She asked that staff work closer together in coordinating the calendar, as there were puddles everywhere.

Mayor Draxler thanked Ashley Neeley and Trey Gamble, for an excellent job in coordinating a very peaceful rally on June 6. He mentioned that T. J. Cox and Police Chief Sever were speakers, along with several others. He thanked City Fire and Police Departments for being there. Mayor Draxler attended the Homeless Coalition meeting, and there was a presentation on the Gap Analysis. Kings Gospel Mission gave an update of what they are doing, how they are using funds, and the new recycling facility that is now open. He agreed that walking the districts was beneficial and announced that his wife was organizing another walk for Saturday, June 20. He encouraged the Council Members to attend, if they can. He requested that Council Members return their self-evaluations to HR within a week.

PUBLIC COMMENT:

This is the time for citizens to comment on subject matters not on the agenda within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed.

*A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

*This is the time for citizens to comment on subject matters not on the agenda and that are within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed. A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

Jack Schwartz stated that he noticed that there was no approval of prior minutes on the agenda. He thanked Council for their votes on CDBG funds for small businesses and for rental assistance. He asked Community Development Director Mata to reach out to him this week with a status update of the HUD review, as he would like to write a letter to the editor, thanking Council. He requested that Item B on the Consent Calendar be pulled for separate consideration. He also requested that the meetings continue via Zoom or in the Civic Auditorium.

Bob Ramos, noting the discussion of the City Council Handbook on this agenda, requested consideration of an additional two minutes of Public Comment allowed at the end of each meeting. He also requested a status update on the cannabis businesses.

Lou Martinez asked how CDBG programs were noticed for community input this year and last year. He requested that Council Members look within the community when filling certain positions. He thanked the Police Department for a great job at the peaceful protest and stated his support and prayers for them.

Gida expressed her support for Hanford Police and encouraged others not to listen to the negative comments against law enforcement in our country.

CONSENT CALENDAR:

Consent Calendar items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made and then the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

Consent Calendar items are considered routine and will be enacted in one motion. There will be no separate discussion on these matters unless a request is made and then the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

The following items were pulled, for separate consideration:

Jack Schwartz (Public) - Item B
 Vice Mayor Ramirez - Item J
 Council Member Devine - Items A and F
 Council Member Sorensen - Item H

Motion to approve the remaining Consent Calendar.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Martin Devine, Council Member
SECONDER:	Francisco Ramirez, Vice Mayor
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

- A. [Item C] Community Development: MCA 2020-01
- B. [Item D] Community Development Temporary Outdoor Dining
- C. [Item E] Police: Second Reading Animal Control Ordinance Amendment to allow Chickens
- D. [Item G] Public Works: NOC FY 15/16 Minor Water Main Project
- E. [Item I] Public Works: Permission to Advertise for the FY 19/20 Pavement Resurfacing Project

XV. ITEMS PULLED FROM CONSENT CALENDAR:

A. [Item A] Clerk: Adopt Resolution 20-10-R

Council Member Devine asked how the situation would be resolved if, after elections and redistricting, a Council Member's residence is no longer within the district in which they were elected. City Clerk Martinez replied that the Elections Code requires the Council Member to reside within their district for the full term of office. City Attorney Mizote requested an opportunity to review the statute, in order to provide a definitive answer.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Martin Devine, Council Member
SECONDER:	Francisco Ramirez, Vice Mayor
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

B. [Item B] Resumption of In-Person Council Meetings

City Manager Cifuentez stated that location of meetings requires Council action. He noted that they did consider the Civic Auditorium, but there are limitations with recording the meeting and computer access for the Council Members. Discussion followed.

Motion to approve, as amended, to add the Zoom remote to the in-person meetings, beginning with the July 7, 2020 City Council regular meeting.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Art Brieno, Council Member
SECONDER:	Francisco Ramirez, Vice Mayor
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

C. [Item F] Contract for Building Maintenance

City Manager Cifuentez noted that the new budget included a request for another full-time building maintenance employee. Police Chief Sever agreed to test an alternative outsourced service. He and his staff received three competitive quotes from private companies, for possible outsourced custodial services at the police station. The company would provide all the cleaning supplies and would cost approximately \$1,100 less than the cost of a new employee, with additional savings of CalPers costs. City Manager Cifuentez then answered questions from Council.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Martin Devine, Council Member
SECONDER:	Francisco Ramirez, Vice Mayor
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

D. [Item H] Public Works: NOC FY 17/18 CDBG Pedestrian & Safety Project

Council Member Sorensen asked if funding surplus of \$27,000 in the fund balance for CDBG would go back into CDBG. Public Works Director Doyel replied that the balance will go back into CDBG. Director Mata answered additional questions.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sue Sorensen, Council Member
SECONDER:	Martin Devine, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

E. [Item J] FINANCE: WARRANT REGISTER

Attachment: 6.16.20 Minutes (Clerk: 6-16-2020 Minutes)

Vice Mayor Ramirez asked about the City Council payment to Rotary. City Manager Cifuentez replied that those were his basic dues, and they should have been billed to City Manager, not City Council. It will be corrected. Staff answered additional Council questions.

Motion to approve.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Francisco Ramirez, Vice Mayor
SECONDER:	Sue Sorensen, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

XVI. GENERAL BUSINESS:

A. City Council Handbook

City Manager Cifuentez noted that the City Council Handbook item corresponds with City Attorney's Brown Act presentation from Study Session. He stated that the specificity of certain items requires more frequent amendments. He was bringing this before Council to address some of those areas, so that fewer and less frequent amendments would be required. He then gave a presentation of proposed amendments and answered Council's questions.

After discussion, Council recommended increasing the Individual Use of City Attorney proposed reduction per use cap to \$600 and the proposed annual cap to \$2,500.

City Manager Cifuentez will bring this back to Council on July 7, 2020.

COUNCIL FUTURE AGENDA ITEMS:

Upcoming Dates

June 18: City Council Special Meeting for FY 20/21 Budget Review
 June 26: Movies in the Park, Centennial Park, dusk
 July 3: *Tentative* Opening Day of the Hanford Plunge, 1:00 p.m.
 July 3: Independence Day (observed) - City Offices Closed
 July 7: City Council Meeting
 July 17: Movies in the Park, Hidden Valley Park, dusk
 July 21: City Council Meeting
 July 31: Movies in the Park, Civic Park, dusk

A. Council Future Agenda Items

Council Member Brieno requested that the City Council salary be placed on a future agenda. City Clerk Martinez announced that the July 3 opening of The Plunge has been confirmed.

ADJOURNMENT:

Mayor Draxler adjourned to Closed Session at 7:55 p.m. There was no action taken in Closed Session.

Respectfully submitted,

Diana Black
 Deputy City Clerk



**AGENDA
STAFF REPORT**

MEETING DATE: 8/18/2020	AGENDA SECTION: C
--------------------------------	--------------------------

SUBJECT:

City Clerk: Approval of the Minutes of the June 18, 2020 Special Meeting

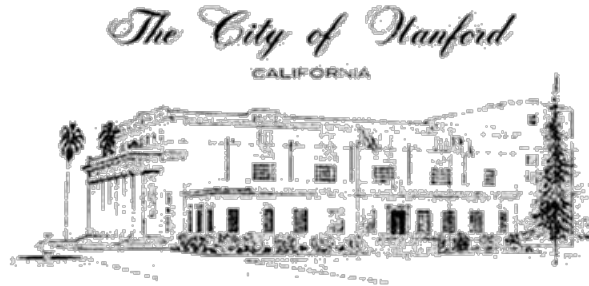
RECOMMENDATION:

Approve Minutes of the June 18, 2020 Special Meeting

FISCAL IMPACT:

ATTACHMENTS:

6.18.2020 Minutes



CITY COUNCIL MEETING MINUTES

June 18, 2020 9:00 AM

**Training Room
319 N. Douty Street**

9:00 A.M. CALL TO ORDER SPECIAL SESSION:

Mayor Draxler called the Special Meeting to order at 9:00 a.m.

ROLL CALL BY THE CITY CLERK:

Attendee Name	Title	Status	Arrived
John Draxler	Mayor	Present	9:00 AM
Martin Devine	Council Member	Present	9:00 AM
Sue Sorensen	Council Member	Present	9:00 AM
Art Brieno	Council Member	Late	9:05 AM
Francisco Ramirez	Vice Mayor	Present	9:00 AM

PUBLIC COMMENT:

*Comments from the public are limited to items listed on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

*Comments from the public are limited to items on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

Diane Sharp asked for an extra budget binder to be used by the audience.

Lance Lippincott, of Kings County Economic Development Corporation (EDC), thanked the Council for their support to EDC/JTO.

GENERAL FUND BUDGET WORKSHOP:

A. Finance: Resolution 20-12-R approving the Preliminary FY 2020-21 Budget.

Finance Director Lofgren introduced Finance Manager Matt Kredit. He briefly stated some of his finance background. City Manager Cifuentez welcomed Council and stated that another special meeting could be scheduled for next week, if they choose.

Director Lofgren presented the 2020-21 Operations Budget, with input from City Manager Cifuentez, and they responded to Council questions. She reported that the budget process began with a deficit of approximately \$3.4 million. She reviewed the adjustments and justifications and reported a resulting net surplus of \$100,136. Other

highlights: Director Lofgren and Manager Kredit will be working on a Cost Allocation Plan. Finance Manager Kredit and Accountant Alejandro Solorio are exploring an available grant for a kiosk in the Finance Department. The budget book will be available on the website, immediately following approval.

Council directed staff to provide information on the criteria for purchasing local preference, at a future meeting. Director Lofgren will also provide a list of full-time and part-time employees in each division.

RECESS - 9:40 a.m.-9:50 a.m.

Department heads for Human Resources, Finance, Community Development, Police, Fire, and Parks & Community Services presented their budgets and responded to questions. Parks & Community Services Director Albert announced that Parks Superintendent Alvin Dias is leaving for a new career opportunity with City of Visalia. He wished him well and expressed appreciation for everything he has done.

RECESS FOR LUNCH - 11:40 a.m.-12:30 p.m.

Public Works Director Doyel presented the Public Works and Street Maintenance budgets, with input from City Manager Cifuentez. Council directed a budget amendment to discontinue the leaf pick-up and Christmas-tree pick-up programs and notify residents through social media and utility-bill inserts.

Special Fund Budget

Director Lofgren presented a review of these funds and answered questions. Community Development Director Mata responded to questions regarding the previous small-business loan program. She stated that, once the program's one outstanding loan is paid off, the program will be gone. She confirmed that, when the program has ceased, Council can create a new program for those funds, if they choose. Mayor Draxler suggested that the funding go to the Kings County Economic Development Corporation (EDC).

Cannabis - Director Mata presented the Cannabis budget. She will provide an update of anticipated changes in State Cannabis permit requirements at the July 7, 2020 City Council meeting.

Intermodal - Director Mata provided an overview of the AmTrak station and tenants' budget. She stated that it is time to negotiate for a new lease.

Courthouse - Director Mata reported that the Courthouse expense to the City is approximately \$120,000/year, and there are five paying tenants. She will provide an update at a future study session, reporting the amount of rentable square footage, what market value is (not under market), and options.

Enterprise Funds

City Manager Cifuentez presented the Airport Fund budget, noting corrections made to revenue figures. He stated that the airport fund lost \$24,000 this year. He will bring proposed new rates and a new lease agreement to Council at the July 21, 2020 meeting.

Public Works Director Doyel provided an overview of the Public Works budgets for Enterprise Funds.

Director Lofgren covered the utility billing Enterprise Funds budget.

RECESS - 2:28 p.m. - 2:34 p.m.

Five-Year Capital Improvement Plan

Directors Doyel and Lofgren explained possible changes in the budget. There was discussion regarding the appropriations limits for the EDC and for the Chamber of Commerce. Director Lofgren stated that the Chamber would be presenting at the July 7 study session. City Attorney Mizote will review their agreement. Mayor Draxler stated his preference was to increase funding of EDC and reduce funding of Chamber of Commerce.

Table approval of the Preliminary Budget to a second Special Meeting to be held on June 23 at 6:00 p.m.

RESULT:	CONSENSUS
----------------	------------------

B. Finance: Adopt Resolution 20-13-R establishing Fiscal Year 2020-21 Appropriations Limit

Finance Director Lofgren explained the Appropriations Limit.

Motion to adopt Resolution No. 20-13-R, establishing Fiscal Year 2020-2021 appropriations limit, pursuant to Article XIII B of the California Constitution.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Francisco Ramirez, Vice Mayor
SECONDER:	Martin Devine, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

ADJOURNMENT:

Mayor Draxler adjourned the Special Meeting at 3:49 p.m.

Respectfully Submitted,

Diana Black
Deputy City Clerk

Attachment: 6.18.2020 Minutes (Clerk: 6-18-2020 Minutes)



**AGENDA
STAFF REPORT**

MEETING DATE: 8/18/2020	AGENDA SECTION: D
--------------------------------	--------------------------

SUBJECT:

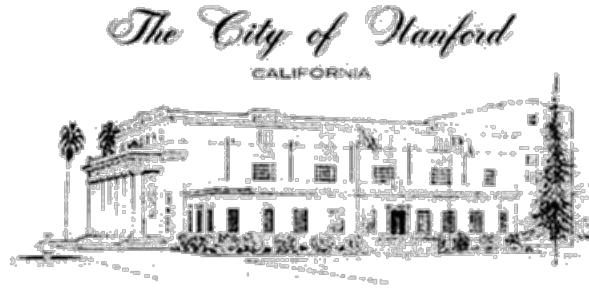
City Clerk: Approval of the Minutes of the June 23, 2020 Meeting

Approve the minutes of the June 23, 2020 meeting.

FISCAL IMPACT:

ATTACHMENTS:

6.23.2020 Minutes



CITY COUNCIL MEETING MINUTES

June 23, 2020 6:00 PM

Training Room

319 N. Douty

6:00 PM CALL TO ORDER SPECIAL SESSION:

Mayor Draxler called the meeting to order at 6:00 p.m.

ROLL CALL BY THE CITY CLERK:

Attendee Name	Title	Status	Arrived
John Draxler	Mayor	Present	5:40 PM
Martin Devine	Council Member	Present	5:48 PM
Sue Sorensen	Council Member	Present	5:51 PM
Art Brieno	Council Member	Late	6:03 PM
Francisco Ramirez	Vice Mayor	Present	5:45 PM

FLAG SALUTE:

PUBLIC COMMENT:

*Comments from the public are limited to items on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing you city of residence.*

Jerry Irons asked to make public comment after the vote.

GENERAL FUND BUDGET WORKSHOP:

A. Finance: Adoption of Resolution 20-12-R, approving the Fiscal Year 2020-21 Annual Budget.

Finance Director Lofgren continued the General Fund review. It was the consensus of the Council for surplus priorities: Fire Staffing at Station 2, Police Cadet Program, Public Works funding for Senior Engineer and Street Maintenance Worker, and Parks and Community Services redo of Longfield and staffing. Questions from Council were answered by staff and Director Lofgren assured the Council that she will provide a mid-year view of the budget in January 2021.

Motion to approve Adoption of Resolution 20-12 R, FY2020-21 Annual Budget.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Martin Devine, Council Member
SECONDER:	Sue Sorensen, Council Member
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

ADJOURNMENT:

Mayor Draxler adjourned meeting at 7:12 p.m.

Respectfully Submitted,

Natalie Ortega
Interim City Clerk

Attachment: 6.23.2020 Minutes (Clerk: 6-23-2020 Minutes)



AGENDA STAFF REPORT

MEETING DATE: 8/18/2020	AGENDA SECTION: E
--------------------------------	--------------------------

SUBJECT:

City Clerk: Denial of a claim for damages and authorization for the City Clerk to send out notification of such to Stephen McLemore.

RECOMMENDATION:

That the City Council, by motion, approve the denial of the following claim as the original claim form was insufficient and no amended claim form has been received and authorize the City Clerk to send out notification of such to the claimant.

BACKGROUND:

A claim for damages against the City was received by the following claimant: Stephen McLemore.

After review by the Third Party Administrator, it is the City Manager's decision to act in accordance with the recommendation of the Administrator to deny the claim.

FISCAL IMPACT:

ATTACHMENTS:



AGENDA STAFF REPORT

MEETING DATE: 8/18/2020	AGENDA SECTION: F
--------------------------------	--------------------------

SUBJECT:

City Clerk: Denial of a claim for damages and authorization for the City Clerk to send out notification of such to Alma McLemore.

RECOMMENDATION:

That the City Council, by motion, approve the denial of the following claim as the original claim form was insufficient and no amended claim form has been received and authorize the City Clerk to send out notification of such to the claimant.

BACKGROUND:

A claim for damages against the City was received by the following claimant: Alma McLemore.

After review by the Third Party Administrator, it is the City Manager's decision to act in accordance with the recommendation of the Administrator to deny the claim.

FISCAL IMPACT:

ATTACHMENTS:



AGENDA STAFF REPORT

MEETING DATE: 8/18/2020

AGENDA SECTION: G

SUBJECT:

Administration: Second Reading of Ordinance No. 20-08 amending Municipal Code Section 2.01.18 fixing salaries for the City Council at \$500.00 per month pursuant to Government Code Section 36516 (a)(2)(C).

RECOMMENDATION:

That the City Council, by motion, approve the Second reading of Ordinance No. 20-08, amending Municipal Code Section 2.01.18 fixing salaries for the City Council at \$500.00 per month pursuant to Government Code Section 36516 (a)(2)(C).

BACKGROUND:

At the June 16, 2020, City Council meeting, Council directed staff to bring back a future item for Council consideration of an increase to the monthly compensation for Council members.

Pursuant to Government Code §36516 (a) (1) a City Council may adopt an Ordinance setting the salary of Councilmembers based on the population of the City. According to the California Department of Finance the population of Hanford is approximately 59,349.

The last time an Ordinance was adopted to increase Council Salaries was in 1996. Therefore, the current salary for City Council members is \$400.00 per month, based on a population of 35,000 to 50,000. Section 36516(a) (2) (C) provides that, in Cities with a population over 50,000 and up to and including 75,000, the salary may be up to \$500.00 per month.

Government Code §36516.5 prohibits any change in compensation during the council member's term of office. This does not mean that a Councilmember, elected in 2018, must wait until their next term of office begins in 2022. Because city council members serve staggered terms, a Councilmember will be eligible for an increase following the next municipal election in November 2020, when two of their compatriots must run for reelection, even though that Councilmember is in the middle of their own term. Therefore, by Council adopting this Ordinance now, the entire Council will begin to receive the adjusted compensation amount (\$500/month) following the installation of new Councilmembers later this year.

FISCAL IMPACT:

The adoption of this resolution, and corresponding raise to the monthly compensation for each Councilmember, would result in an additional cost to the General Fund of \$4,800 per year with a potential increase of \$6,000 per year if all members of a future Council accept the salary.

ATTACHMENTS:

GOV_36516. Council Salary Statute
Proposed Ordinance 20-08 Council Salaries

State of California

GOVERNMENT CODE

Section 36516

36516. (a) (1) A city council may enact an ordinance providing that each member of the city council shall receive a salary based on the population of the city as set forth in paragraph (2).

(2) The salaries approved by ordinance under paragraph (1) shall be as follows:

(A) In cities up to and including 35,000 in population, up to and including three hundred dollars (\$300) per month.

(B) In cities over 35,000 up to and including 50,000 in population, up to and including four hundred dollars (\$400) per month.

(C) In cities over 50,000 up to and including 75,000 in population, up to and including five hundred dollars (\$500) per month.

(D) In cities over 75,000 up to and including 150,000 in population, up to and including six hundred dollars (\$600) per month.

(E) In cities over 150,000 up to and including 250,000 in population, up to and including eight hundred dollars (\$800) per month.

(F) In cities over 250,000 population, up to and including one thousand dollars (\$1,000) per month.

(3) For the purposes of this subdivision, the population of a city shall be determined by the last preceding federal census, or a subsequent census, or estimate validated by the Department of Finance.

(4) The salary of council members may be increased beyond the amount provided in this subdivision by an ordinance or by an amendment to an ordinance, but the amount of the increase shall not exceed an amount equal to 5 percent for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted. No ordinance shall be enacted or amended to provide automatic future increases in salary.

(b) Notwithstanding subdivision (a), at any municipal election, the question of whether city council members shall receive a salary for services, and the amount of that salary, may be submitted to the electors. If a majority of the electors voting at the election favor it, all of the council members shall receive the salary specified in the election call. The salary of council members may be increased beyond the amount provided in this section or decreased below the amount in the same manner.

(c) Unless specifically authorized by another statute, a city council may not enact an ordinance providing for compensation to city council members in excess of that authorized by the procedures described in subdivisions (a) and (b). For the purposes of this section, compensation includes payment for service by a city council member on a commission, committee, board, authority, or similar body on which the city

council member serves. If the other statute that authorizes the compensation does not specify the amount of compensation, the maximum amount shall be one hundred fifty dollars (\$150) per month for each commission, committee, board, authority, or similar body.

(d) Any amounts paid by a city for retirement, health and welfare, and federal social security benefits shall not be included for purposes of determining salary under this section, provided that the same benefits are available and paid by the city for its employees.

(e) Any amounts paid by a city to reimburse a council member for actual and necessary expenses pursuant to Section 36514.5 shall not be included for purposes of determining salary pursuant to this section.

(f) A city council member may waive any or all of the compensation permitted by this section.

(Amended by Stats. 2009, Ch. 332, Sec. 68. (SB 113) Effective January 1, 2010.)

ORDINANCE NO. 20-08

AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF HANFORD FIXING SALARIES FOR CITY COUNCIL MEMBERS
PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36516

The City Council of the City of Hanford does hereby ordain as follows:

Section 1.

WHEREAS, California Government Code Section 36516(a)(l) provides that "A city council may enact an ordinance providing that each member of the city council shall receive a salary based on the population of the city as set forth in paragraph (2) ...

"(C) In cities over 50,000 up to and including 75,000 in population, up to and including five hundred dollars (\$500) per month."

WHEREAS, Section 2-1.18 of the Hanford Municipal Code provides that salaries of City Council members may be fixed in accordance with the provisions of California Government Code Section 36516 and any amendments thereto; and

WHEREAS, as of the date of passage of this Ordinance, the latest estimate of the population of the City of Hanford made by the Department of the Finance of the State of California is 59,349.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

Section 2. Compensation.

a. On the effective date of this Ordinance, the salary for each member of the Hanford City Council shall be the sum of Five Hundred Dollars (\$500) per month. Said salary shall be payable at the same time and in the same manner as salaries of other officers and employees of the City of Hanford.

b. The salary as fixed in this Ordinance shall, per Government Code Section 36516.5, become payable to all Hanford City Council members only on and after the date upon which one or more members of the Hanford City Council become eligible therefore by virtue of beginning a new term of office.

Section 3. This Ordinance shall be listed in Table 4 of the Appendix of the Hanford Municipal Code as a general ordinance not codified but to remain in effect pending revision or repeal.

Section 4. Any and all existing ordinances regarding compensation of City Council members of the City of Hanford are hereby repealed.

Section 5. This Ordinance shall take effect thirty (30) days after its passage, and shall be published once in the Hanford Sentinel within fifteen (15) days after its passage.

Passed and adopted at a regular meeting of the City Council of the City of Hanford, duly called and held on the 4th day of August, 2020, by the following vote:

AYES
NOES
ABSENT
ABSTAIN

APPROVED

JOHN DRAXLER
Mayor

ATTEST:

NATALIE ORTEGA
INTERIM CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF KINGS) ss.
CITY OF HANFORD)

I, NATALIE ORTEGA, Interim City Clerk of the City of Hanford, do hereby certify that the foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Hanford held on the 4th day of August, 2020.



AGENDA STAFF REPORT

MEETING DATE: 8/18/2020	AGENDA SECTION: H
--------------------------------	--------------------------

SUBJECT:

Administration: Approval of an Avigation and Clearance Easement from EBC Farms, LLC, in conformance with the City's Airport Layout Plan (ALP), and authorization for the City Manager to sign and the City Clerk to notarize said easement and record said document with the Kings County Recorder's Office.

RECOMMENDATION:

That the City Council, by motion, accept the attached Avigation and Clearance Easement from EBC Farms, LLC, in conformance with the City's Airport Layout Plan (ALP), and authorize the City Manager to sign and the City Clerk to notarize said easement and record said document with the Kings County Recorder's Office.

BACKGROUND:

The City's Airport Layout Plan (ALP) identifies the need to protect the air space immediately over the airports runway approach to ensure that encroachment does not occur. These types of protections are necessary to protect the airspace surrounding airports and is required so that planes landing and departing from the Hanford Airport have an acceptable level of clearance for such operations. The City's ALP and corresponding zoning restrictions require that all property owners who wish to construct facilities located within the Airport's landing flight path shall enter into an Avigation and Clearance Easement with the City. EBC Farms, LLC, has agreed to grant this easement to the City to ensure the airspace over their property will remain free from obstructions in the future and allow for airport operations.

FISCAL IMPACT:

There is no cost to the City for this easement.

ATTACHMENTS:

EBC Farms Easement

RECORDING REQUESTED BY:

CITY OF HANFORD

WHEN RECORDED RETURN TO:

CITY OF HANFORD
ADMINISTRATION
319 N. DOUTY STREET
HANFORD, CA 93230

AVIGATION AND CLEARANCE EASEMENT

THIS AVIGATION AND CLEARANCE EASEMENT is made and entered into this ____ day of _____, 20__, between _____ ("Grantor") and the CITY OF HANFORD, a municipal corporation ("Grantee").

RECITALS

A. Grantor is the owner or has a beneficial interest in certain real property in the City of Hanford, County of Kings, State of California and more particularly described in Exhibit "A", which is attached hereto and made a part hereof ("Real Property").

B. The Real Property is located approximately 3,000 feet from the Hanford Municipal Airport ("Airport"). Grantor desires to construct certain improvements upon the Real Property.

C. Grantee wishes to insure that the construction of any improvements upon the Real Property will not interfere with the use of the Airport, including, without limitation, aircraft passing over the Real Property on take-off from or landing at the Airport.

D. As a requirement of approval to construct any improvements upon the Real Property, Grantor agrees to grant the Grantee the easement described herein.

NOW, THEREFORE, it is agreed as follows:

1. Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to the Grantee, its successors and assigns, a perpetual and assignable easement and right-of-way over all of the Real Property.

2. This easement applies to the airspace above an imaginary plane over the Real Property ("Airspace"). The imaginary plane is described as follows:

The imaginary plane above the Real Property, as such plane is defined by Part 77 of the Federal Aviation Regulations, or any amendment, modification or replacement of Part 77 of the Federal Aviation Regulations, and consists of a plane; the elevation of said plane being based upon the Airport official runway end elevation of 242 feet Above Mean Sea Level (AMSL), as determined by Hanford Airport Layout Plan, the approximate dimensions of which said plane are described and shown on Exhibit "B", which is attached hereto and made a part hereof.

Attachment: EBC Farms Easement (Admin: Acceptance of Avigation Easement)

3. This easement and right-of-way includes, but is not limited to:

- (a) For the use and benefit of the public, an easement and continuing right to fly, or cause or permit the flight by any and all persons, or any aircraft, of any and all kinds now or hereafter known, in, through, across, or about any portion of the Airspace.
- (b) The easement and right to cause or create, or permit or allow to be caused or created within all space above the existing surface of the Real Property and any and all Airspace laterally adjacent to the Real Property, such noise, vibration, currents, dust, discomfort or inconvenience and other effects of air, illumination and fuel consumption as may be inherent in, or may arise or occur from or during the operation of aircraft or any and all kinds, now or hereafter known or used, for navigation of or flight in air.
- (c) A continuing right to clear and keep clear from the Airspace any obstructions, including, without limitation, portions or buildings, structures, or improvements of any kind, trees, vegetation or other objects, including the right to remove or demolish those portions of such buildings, structures, improvements, trees, vegetation or other things which extend into or above said Airspace, and the right to cut to the ground level and remove any trees or vegetation which extend into or above the Airspace.
- (d) The right to mark and light, or cause or require to be marked or lighted, as obstructions to air navigation, including, without limitation, any and all buildings, structures, or other improvements, trees, vegetation or other objects, which extend into or above the Airspace.
- (e) The right to regulate or prohibit the release into the air of any substance which would impair the visibility or otherwise interfere with the operations of aircraft such as, but not limited to, steam, dust, and smoke.
- (f) The right to regulate or prohibit light emissions, either direct, indirect or reflective, which might interfere with pilot vision or the operation of any aircraft.
- (g) The right to prohibit electrical emissions which would interfere with aircraft communication systems or aircraft navigational equipment.
- (h) The right of ingress to, passage within and over, and egress from the Real Property, for the purposes described in subparagraphs (c) through (g), inclusive, above at reasonable times.

4. For and behalf of itself, its successors and assigns, the Grantor hereby covenants with Grantee for the direct benefit of the Real Property constituting the Airport, that neither the Grantor, nor its successors in interest or assigns will construct, install, erect, place or grow in or upon the Real Property which constitutes an obstruction to air navigation, or which obstructs or interferes with the use of the easement and rights-of-way herein granted, nor will they permit to allow, any building, structure, improvement, tree, vegetation or other object to extend into or above the Airspace.

5. The easements and rights-of-way herein granted shall be deemed both appurtenant to and for the direct benefit of that Real Property which constitutes the Airport; and shall further be deemed in gross, being conveyed to the Grantee for the benefit of the Grantee and any and all members of the general public who may use said easement or right-of-way, in landing at, taking off from or operating such aircraft in or about the Airport, or in otherwise flying through said Airspace.

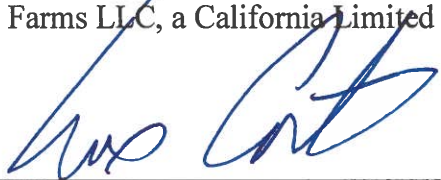
6. This grant of easement shall not operate to deprive the Grantor, its successors or assigns, of any rights, which it may from time to time have against any air carrier or private operator for negligent or unlawful operation of aircraft.

7. These covenants, agreements and rights identified herein run with the land and are binding upon the heirs, administrators, executors, successors and assigns of the Grantor, and, for the purpose of this instrument, the Real Property is the servant tenement and is the dominant tenement.

Dated: _____

8/4/20

EBC Farms LLC, a California Limited Liability Company



By Ernie Costamagna, President

Attachment: EBC Farms Easement (Admin: Acceptance of Avigation Easement)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

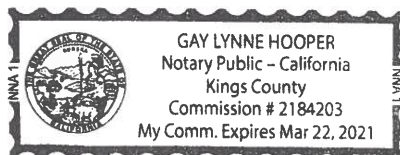
State of California)

County of Kings)On August 4, 2020 before me, GAY LYNNE HOOPER Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared Ernie Costamagna
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature GAY LYNNE HOOPER
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Avigation And Clearance Document Date: August 4, 2020
Number of Pages: 6 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Ernie Costamagna☐ Corporate Officer — Title(s): President☐ Partner — ☒ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Exhibit A

The land referred to herein is situated. in the State of California, County of Kings Unincorporated Area and described as follows:

All that portion of the Southeast Quarter-of the Southeast Quarter of Section 30, Township 18 South, Range 22 East, Mount Diablo Base-and Meridian, in-the unincorporated area, County of Kings, State-of- California, according to the Official Plat thereof recorded, Kings County Records, described as-follows:

Beginning at a point 856.33 feet East and 40 feet North-Of-the Southwest corner of said Southeast Quarter of the Southeast Quarter of said Section 30; thence East parallel with the South line of said Southeast Quarter of the Southeast Quarter of said Section 30 a distance of 150 feet to a point; thence North Parallel to the- East line of said Southeast Quarter of the Southeast Quarter of said Section 30 to the Southerly right of way line of the Southern Pacific Railroad Company's right of way through said property; thence in a Southwesterly direction along the South line of said right of way line to the Northeast corner of the parcel of land deeded by Edward J. Budlong to Mitch G. Hitchcock and Mabel Hitchcock husband and wife, by Deed dated April 8, 1940 and recorded in Book 227, page 266 of Official Records, Kings County; thence South along the East line of the property last herein referred to, a distance of 249.93 feet more or less to the point of beginning.

Excepting therefrom that portion thereof, if any, lying within the boundaries of the right of way of the Southern Pacific Railroad Company as vested in said company by Act of Congress or by Deed from J. N. Benedict recorded December 16, 1876, in Book T, at Page 242, Tulare County-Records.

Also Excepting therefrom one-half of all oil; gas and minerals, in, on or under said land, by Deed recorded June 10, 1965 in Book 873 at Page 727 of Official-Records, as Document No. 7935, said Deed reciting in- part as follows:

"Except that sellers waive the right of surface entry to a depth-of 500 feet for the exploration and production of said oil, gas and minerals."

APN: 014-230-023

Attachment: EBC Farms Easement (Admin: Acceptance of Avigation Easement)

EXHIBIT "B"

**CERTIFICATE OF ACCEPTANCE OF
AVIGATION AND CLEARANCE EASEMENT**

This is to certify that the interest in real property conveyed by the Avigation and Clearance Easement dated _____, 20__ from _____ to the City of Hanford, a municipal corporation, is hereby accepted by the undersigned officer or agent on behalf of the City Council of the City of Hanford pursuant to authority conferred by resolution of the City Council adopted on _____, 20__, and the grantee consents to recordation thereof by its duly authorized officer.

CITY OF HANFORD, a municipal corporation

Date: _____

By: _____
MARIO CIFUENTEZ
City Manager

Attachment: EBC Farms Easement (Admin: Acceptance of Avigation Easement)



AGENDA STAFF REPORT

MEETING DATE: 8/18/2020	AGENDA SECTION: I
--------------------------------	--------------------------

SUBJECT:

Administration: Approval of a Lease Agreement with City Farm Industries, Inc. for 1,600 acres of property owned by the Wastewater Fund.

RECOMMENDATION:

It is recommended that the City Council consider the attached Lease and to take the action that the Council deems appropriate.

BACKGROUND:

The City previously executed a Lease with City Farm Industry, Inc. (CFI) for 960 acres of the 1,600-acre property located in the vicinity of 14th Ave. and Laurel Ave.

The expired Lease required CFI to deposit \$9,000,000.00 into an escrow by March 31, 2020. This amount was to be used for various purposes, including:

1. Payment of \$432,000.00 to the City for 2020, 2021, and 2022 rent;
2. Payment of vendors who are owed money by a prior tenant; and
3. Payment of costs and expenses associated with CFI's farming operations at the leased premises.

COVID-19 hampered CFI's effort to obtain financing for its hemp operations. As a result, CFI requested two (2) extensions of the deadline to deposit funds into escrow. Each extension was for two (2) months, with the second extension expiring on July 31. CFI \$50,000.00 to the City for the second extension.

CFI is in the process of obtaining financing from another source, and it desires to lease the entire 1,600-acre property. A new Lease (copy attached) has been prepared. A redline draft is also attached that identifies the changes that were made to the original Lease to create the new Lease.

The following is a summary of the key provisions of CFI's new Lease:

- **Term:**
 - o 25 years, starting on September 1, 2020.
- **Rent:**
 - o The annual rental rate will start at \$100.00 per acre per year and will increase by \$50.00 per acre each year.
 - o Rent for the first year will total \$160,000.00. When the Lease is signed, CFI will pay \$110,000.00, and the \$50,000.00 previously paid by CFI will be credited toward the rent.
 - o Future rent will be paid annually in advance. Rent for the second year will be paid on September 1, 2021, and so forth.
 - o Under the expired Lease, CFI was to pay the \$432,000.00 in advance for the first 3 years, and future rent payments were to be made so that the rent would always be prepaid 3 years in advance.
- **Weeds:** CFI will address existing weeds by October 31, 2020. The City recently received a \$97,800.00 quote for such work. Upon signature of the new Lease, CFI will present proof of funds to the City that shows CFI's ability to pay for this work.
- **Default:** CFI will have 15 days from the date on which CFI receives a written notice from the City to cure a default.
- **Lender Rights:**
 - o CFI's lender will have the right to cure CFI's defaults under the Lease. The cure period will be 90 days from the date on which the lender receives a written notice from the City.
 - o If CFI defaults, the lender will have the right to assume the Lease from CFI.
- **Lease Termination:** The City may terminate the Lease only if: (i) CFI fails to pay rent; or (ii) CFI engages in illegal activity at the property. The City may **not** terminate for other types of default. For example, if CFI fails to address the weeds, the City may not terminate the Lease.

- **Recording of Lease:** The Lease will be recorded against the property.

ATTACHMENTS: Clean and redline versions of new Lease.

FISCAL IMPACT:

ATTACHMENTS:

Agricultural Ground Lease (clean)

Agricultural Ground Lease (redline)

AGRICULTURAL GROUND LEASE

THIS AGRICULTURAL GROUND LEASE (“**Lease**”) is effective the 1st day of September 2020, is by and between the CITY OF HANFORD, a municipal corporation (“**Lessor**”), and CITY FARM INDUSTRIES, INC., a Nevada Corporation (“**Lessee**”). Use of the term “Lender” in this document refers to any company holding a lien on this Ground Lease under an active loan.

WITNESSETH

In consideration of the mutual covenants set forth herein between the parties, the parties hereto agree as follows:

1. **Lease of Real Property.** Lessor hereby leases to Lessee and Lessee hereby hires from Lessor on the terms and conditions set forth in this Lease, approximately 1,600 acres of real property situated in the County of Kings, State of California, and more particularly described in Exhibit “A”, which is attached hereto and made part hereof. It is the express intent of the parties that this document establishes a recordable ground lease. The leased premises (“**Premises**”) are comprised of:
 - a. APN# 028-240-018 (160 acres)
 - b. APN# 028-240-020 (160 acres)
 - c. APN# 028-310-008 (60 acres)
 - d. APN# 028-310-025 (200 acres)
 - e. APN# 028-310-005 (320 acres)
 - f. APN# 028-310-007 (60 acres)
 - g. APN# 028-240-008-000 (160.0 acres)
 - h. APN# 028-240-016-000 (160.0 acres)
 - i. APN# 028-240-021-000 (160.0 acres)
 - j. APN# 028-240-019-000 (160.0 acres)
2. **Disclaimer of Warranty-Soil.** Lessor makes no warranty of soil suitability for the growing of crops which the Lessee is authorized to grow under this Lease nor any warranty as to the suitability or productivity of such soil.
3. **Lease Subject to Existing Rights of Others.** This Lease is subject to: (a) all existing easements, servitudes, licenses, and rights of way for canals, ditches, levies, roads, highways and telephone and electric power lines and railroads, pipelines and other purposes, whether recorded or not; and (b) the rights of Lessor under any existing or future oil, gas, or mineral lease or leases affecting the entire or any portion of the Premises, whether recorded or not. Lessee shall have no right, title and interest, in any way, to any oil, gas, or mineral rights presently existing or to be existing on or about said Premises.
4. **Term.**
 - A. Except as otherwise provided herein, the term of this Lease shall commence on September 1, 2020 and shall continue for a period of twenty-five (25) years, terminating on August 31, 2045 (“**Term**”).

5. **Rent.**

- A. Lessee shall pay annual rent in advance on September 1 of each year that this Lease remains in effect. The rental rate for the period September 1, 2020 through August 31, 2021 shall be One Hundred Dollars (\$100.00) per acre. For purposes of calculating rental amounts, the parties agree that the Premises are comprised of sixteen hundred (1600) acres.
- B. Beginning on September 1, 2021, the rental amount shall increase by Fifty Dollars (\$50.00) per acre and continue to increase by the same amount on September 1 of each year that this Lease remains in effect.
- C. The rent shall be paid by Lessee, without deduction, offset, prior notice or demand, in lawful money of the United States of America, which shall be legal tender at the time of payment, at the following address or at such other place as Lessor may, from time to time, designate in writing:

 City of Hanford
 Attn: Finance Dept.
 315 N. Douty St.
 Hanford, CA 93230
- D. The annual rent payment for 2020 shall be due and payable at the signing of this lease. The total amount due for the first year of this lease is One Hundred and Sixty Thousand Dollars (\$160,000). Fifty Thousand Dollars (\$50,000) has already been paid and the remaining One Hundred and Ten Thousand Dollars (\$110,000) shall be paid at lease execution. In addition, proof of available funds in the amount of One Hundred Thousand Dollars (\$100,000) shall be provided on or before lease signing to ensure adequate funds are available to clear the property of the current growth of weeds. Lessee shall clear the Property by chopping the existing weeds and discing the land no later than October 31, 2020.

6. **Late Charge and Interest.** Lessee acknowledges that late payment by Lessee to Lessor of rent or any other amount due under this Lease will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such cost being extremely difficult and impracticable to fix. Therefore, if any installment of rent or any other amount due from Lessee is not received by Lessor within ten (10) days from the date when said rent or other amount was due, Lessee shall pay to Lessor the additional sum of ten percent (10%) of the overdue rent or other amount as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the cost that Lessor will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount or prevent Lessor from exercising any of the other rights and remedies available to Lessor. Also, any installment of rent that Lessee fails

to pay within ten (10) days of the date on which payment is due shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, whichever is less.

7. **Use.** The Premises shall be used for agricultural purposes only and for no other purpose whatsoever; provided however, Lessee shall not plant permanent crops at the Premises. This use includes the farming of industrial hemp under the definitions and regulations as allowed by law in Kings County, CA. Lessee agrees to farm the Premises in accordance with good husbandry and generally accepted farming practices in the area and agrees to keep the Premises and, in particular, the ditches, rights of ways and areas under or around fences, free of noxious weeds, grasses and brush. Lessee shall, at its sole cost and expense, apply soil supplements as necessary to maintain and improve the integrity of the soil of the Premises. In the event that Lessee does not farm the Premises in accordance with generally accepted farming practices in the area, Lessor may, after reasonable notice to Lessee and after Lessee's failure to do so within ten (10) days after the date of such notice, implement such generally accepted farming practices at Lessee's expense.

8. **Improvements by Lessor or Lessee.**

- A. Except as otherwise provided herein, Lessor shall not be obligated to make any improvements, alterations or repairs to the Premises or any portion thereof or pay or reimburse Lessee for any part of the cost thereof.
- B. Lessee acknowledges that the Premises lack water wells. Landlord will have no obligation to drill a water well or take any other action to cause a source of water to be available to the Premises.

9. **Utilities and Miscellaneous Expenses.**

- A. Lessee shall pay (before delinquency) any and all costs and assessments for water and irrigation, whether district water, canal or ditch water or pump water including, but not limited to, the payment of all canal or ditch company assessments. Lessee shall irrigate the Premises in accordance with generally accepted farming practices in the area.
- B. Lessee shall be responsible for the payment of any increase in the real property taxes for the Premises as a result of Lessee's improvement of the Premises.
- C. Lessee shall be responsible for and shall promptly pay for all labor, farm implements, tools, seed, electricity, gas, harvesting expenses, chemicals, sprays, fertilizers, soil amendments, and any and all other materials and services of whatsoever kind or nature which may be used for the planting, cultivation, irrigation, production and harvesting of the crops on the Premises and in the performance of Lessee's other obligations under this Lease, and Lessor shall not be liable for any part thereof.

10. **Repairs and Maintenance.**

- A. Lessee shall care for both the Premises and the approaches to and appurtenances of the Premises including , but not limited to, all fences, corrals (if any), ditches and roadways and shall maintain them in the same order and condition in which received, ordinary wear and tear excepted.
- B. Lessee shall be solely responsible for maintaining and repairing any improvements that Lessee constructions or installs on the Premises.

11. **Improvements and Waste.** Lessee shall not construct any improvements on the Premises or make any alterations in any existing improvements without the prior written consent of Lessor, which shall not be unreasonably withheld. Lessee hereby acknowledges and agrees that any and all improvements and equipment placed upon or affixed to the Premises by Lessee shall become the sole property of Lessor upon termination of this Lease and shall not be removed by Lessee without the express written consent of Lessor. Lessee shall not commit or permit or suffer the commission of any waste upon or do or permit or suffer any damage to be done on the Premises.

12. **Compliance with the Law.** In all operations under this Lease or on the Premises, Lessee shall, at its own expense, promptly comply with any and all laws, ordinances, rules, regulations, requirements and orders whatsoever , present or future, of the national, state, county or municipal government or any other governmental jurisdiction which may, in any way, apply to the use, maintenance or occupation or other operation on the Premises or the production of crops thereon or for the sale or other disposition of such crops.

13. **Relationship of Parties.** At all times herein mentioned and while Lessee is planting, propagating, harvesting, or performing any other activity under this Lease or in connection with the Premises, Lessor and Lessee's relationship shall be one of landlord and tenant. Lessee is not an agent, employee, representative, co-venturer, or partner of Lessor. Any persons employed by Lessee on or in connection with the Premises shall be the Lessee's employees or agents and shall not be the employees (either regular or special) or agents of Lessor.

14. **Use of Effluent.**

- A. Lessee acknowledges that Lessor acquired the Premises as a potential location for the discharge of effluent from the City of Hanford Waste Water Treatment Plan (“**Treatment Plant**”). Lessee further acknowledges that effluent is not currently transported to the Premises and that Lessor is under no duty or obligation to supply effluent to the

Premises but may elect to do so in the future.

- B. In the event Lessor elects to transport effluent to the Premises from the Treatment Plant, Lessee agrees that it shall receive and spread upon the Premises the effluent from the Treatment Plant ("**Effluent**") as the same is transported to the Premises.
- C. Lessee's use of Effluent upon the Premises shall be in conformance with any and all permits or approvals issued by applicable governmental agencies which regulate the use of the Effluent upon the Premises and in a manner consistent with all applicable laws, statutes, rules, regulations, and ordinances.

Lessor will notify Lessee in writing ("**Effluent Notice**") if it becomes desirable to Lessor to transport Effluent to the Premises. Lessor and Lessee will confer within fifteen (15) calendar days of Lessee's receipt of the Effluent Notice from Lessor, and Lessor and Lessee will, in good faith, negotiate the terms under which the infrastructure improvements needed to transport the Effluent from the Treatment Plant to the Premises ("**Improvements**") will be constructed. The following terms shall be the basis for such negotiations : (i) Lessee will submit design plans for the Improvements , which shall be prepared by a licensed professional, to Lessor for review and approval before construction commences; (ii) Lessee shall construct the Improvements at its initial cost; (iii) Lessee's total cost to construct the Improvements will be amortized over a ten (10) year period and will be credited equally against the annual rental installments paid by Lessee over a ten (10) year period; (iv) the amount reimbursed to Lessee shall be the total amount paid by Lessee for construction of the Improvements and will not include interest; and (v) the rent installment due immediately following Lessor's written acceptance of the Improvements shall be the first (1st) of ten (10) rental installments against which the amortized construction costs will be credited.

- D. Should Lessor and Lessee be unable to successfully negotiate terms under which Lessee constructs the Improvements, this Lease will remain in full force and effect, and Lessor may, but will not be required to, construct such improvements at Lessor's sole cost, and Lessee will accept all Effluent that is transported to the Premises from the Treatment Plant.

Lessor shall be responsible for complying with any requirements of the California Regional Quality Control Board ("**Regional Board**") regarding monitoring the use of the Effluent upon the Premises and providing quarterly reports to the Regional Board ("**Quarterly Reports**"). However, at least seven (7) days prior to the date that any Quarterly Report is due, Lessee shall provide to Lessor a written report for the same quarter as the Quarterly Report identifying: (i) the amount of well, canal or ditch water applied upon the Premises during such quarter;

and (ii) the amount of chemical fertilizer applied to the Premises during such quarter. The failure of Lessee to provide such written Quarterly Report to Lessor within the time period identified in this subsection, shall constitute a material breach of this Lease.

15. **Use of Biosolids.** Lessee agrees that it shall receive, if Lessor elects to provide, upon the Premises biosolids from the Treatment Plant up to the amount that would be used in accordance with generally accepted good farming practices in the area for double cropping the Premises during each year of the term of Lease. Lessor shall pay the cost of transporting the biosolids to the Premises and spreading the same upon the Premises. Prior to the spreading of biosolids upon the Premises, Lessor shall obtain all permits and approvals required in order to allow the spreading and use of biosolids upon the Premises. Lessor shall indemnify, defend and hold Lessee harmless from any and all damages, losses and claims (including, without limitation, reasonable attorneys' fees and expenses) resulting from or during: (i) the transportation of biosolids from the Treatment Plant to the Premises; or (ii) any claims of third parties for damage caused by the content of the biosolids. Lessee shall indemnify, defend and hold Lessor and its appointed and elected officials, officers, employees, agents, and volunteers, and each of them, harmless from any and all damages, losses and claims (including, without limitation, reasonable attorneys' fees and expenses) resulting from: (i) the use of biosolids upon the Premises by Lessee in violation of any permits or approvals obtained by Lessor to allow the spreading and use of the biosolids on the Premises issued by applicable governmental agencies which regulate the use of the biosolids by lessees; or (ii) the transportation by Lessee of the biosolids from the Premises. The indemnity provisions of this section shall survive the termination of this Lease. Lessee's use of the biosolids upon the Premises shall be in conformance with any and all permits and approvals obtained by Lessor issued by applicable governmental agencies which regulate the use of biosolids upon the Premises.

16. **Taxes and Liens.**

- A. Lessee agrees to pay and discharge, at maturity, all taxes or assessments levied or assessed against any personal property put or placed by Lessee on or in the Premises and not allow any liens or encumbrances to be placed or remain against its property on the Premises or against the Premises insofar as such liens or encumbrances may be asserted by reason of Lessee's acts or occupation or use of said Premises. Payment of all such taxes, as set forth above, shall be the sole and separate responsibility of Lessee. Lessee agrees to keep the Premises and all improvements thereon, free from all liens and claims of mechanics, laborers, materialmen and others for work done and materials furnished to Lessee, and Lessee shall not create or suffer to be created any lien or encumbrance on the Premises.
- B. Lessor will promptly pay all real property taxes charged by Kings County

as a result of Lessor's ownership of the Premises.

17. Insurance.

- A. Lessee will, during the term of this Lease, maintain insurance coverage which shall be at least as broad as:
- (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 0001 1207 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000) per occurrence and FOUR MILLION (\$4,000,000) aggregate. Alternatively, Lessee may maintain a CGL policy with limits of no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per occurrence and an umbrella coverage policy with coverage limits of no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) and which has a scope of coverage as broad as Lessee's CGL policy.
 - (2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Lessee has no owned autos, hired (Code 8), and non-owned autos (Code 9), with a limit no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per accident for bodily injury and property damage
 - (3) Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per accident for bodily injury or disease.

If Lessee maintains higher limits than the minimums shown above, Lessor requires and shall be entitled to coverage for the higher limits maintained by Lessee.

- B. Lessee's deductible amounts must be approved by Lessor. Lessor may require Lessee to purchase coverage with a lower deductible.
- C. Lessee's insurance policies are to contain, or be endorsed to contain, the following provisions:
- (1) Lessor and its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy. General liability coverage can be provided in the form of an endorsement to Lessee's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to Lessor and its officers, officials, employees or volunteers.

- (2) For any claims related to this Lease, Lessee's insurance coverage shall be the primary insurance as respects Lessor and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Lessor and/or its officers, officials, employees, or volunteers shall be in excess of Lessee's insurance and shall be non-contributory.
- (3) Each insurance policy required above shall provide that coverage shall not be canceled, except with written notice to Lessor.
- D. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- E. Lessee shall furnish Lessor with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by Lessor before Lessee takes possession of the Premises. However, failure to obtain the required documents prior to Lessee taking possession of the Premises shall not waive Lessee's obligation to provide them. Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- F. Lessee hereby grants to Lessor and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of Lessee may acquire against Lessor and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. Lessee agrees to obtain endorsements necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Lessor has received a waiver of subrogation endorsement from the insurer.
- G. Lessor reserves the right to modify the insurance requirements contained in this Lease at the beginning of the ten (10) year extension term, including , without limitation , coverage limits , based on the nature of the risk, prior experience, insurer , coverage, or otherspecial circumstances.
- H. Lessee shall obtain, at Lessee's sole cost, insurance coverage on Lessee 's property and improvements at their full replacement value. Lessor will not be responsible for obtaining insurance on Lessee's property and improvements.

18. Indemnification. Except as otherwise set forth in Section 15 of this Lease, Lessee agrees to defend, protect , indemnify and hold harmless Lessor and its elected and appointed officials , officers, employees, agents, and volunteers, and each of them, from and against any and all liabilities , losses, damages , costs, expenses, any and all attorney ' s fees and expenses of Lessor, causes of action , suits, claims, demands or judgments of any nature whatsoever relating to or arising from: (i) any work or thing done during the Lease term in, on or about the Premises or any part thereof by Lessee, its agents, contractors, servants,

employees, licensees or invitees ; (ii) injury to or the death of persons or damage to property during the Lease term on the Premises or adjoining ditches , rights of way, fences, canals, levies , roads, highways and the like, or in any manner arising out of or connected with the use, nonuse, condition, possession, operation, maintenance, management or occupation of the Premises by Lessee, or any of its agents, contractors, servants, employees, licensees or invitees during the Lease term or resulting from the condition thereof; (iii) any negligence or intentional misconduct on the part of Lessee or any of its agents, contractors, servants, employees, licensees or invitees; (iv) violation by Lessee or any of its agents, contractors, servants, employees, licensees or invitees of any covenant or restriction or any governmental restriction, statute, charter law, rule, ordinance or regulation affecting the Premises or the ownership, occupancy or use thereof; and (v) the occurrence of any event of default as described in Section 27 below, provided such losses, claims or expenses are not caused in any part by the willful misconduct or gross negligence of Lessor, its agents or employees. The provisions of this Section 18 shall survive the termination of this Lease.

19. **Entry by Lessor.** Lessee shall permit Lessor and Lessor's agents and assigns, at all reasonable times, to enter the Premises and to use the roads established on the Premises now or in the future for the purpose of inspection , compliance with the terms of this Lease, exercise of all rights under this Lease, posting of notices and all other lawful purposes. Lessee shall supply Lessor and Lessor's agents and assigns with keys and other instruments necessary to affect entry on the Premises.
20. **Surrender Upon Termination.** Whenever any lands constituting all or any part of the Premises shall cease to be subject to this Lease by lapse of time, termination or otherwise, Lessee shall promptly and peacefully surrender up the possession of all such lands and all improvements thereon to the Lessor in as nearly their original condition as may be practicable, considering Lessee' s improvements thereon and reasonable use thereof and, if requested by Lessor, shall duly and promptly execute, acknowledge and deliver to Lessor a good, sufficient and recordable quitclaim deed covering all rights of Lessee in and to such lands. Surrender to the Lessor under this Lease prior to expiration of the lease term, shall be subject to Lender's right to assume this Lease in accordance with Section 23 hereinbelow.
21. **Holding Over.** In the event Lessee holds over and remains in possession of the Premises or any part thereof after expiration of this Lease with the express consent of Lessor, such holding over shall be construed to be a month-to-month tenancy only with rent payable at the times and in the amounts specified by Lessor. Such tenancy shall be subject to all terms and conditions of this Lease.
22. **Assignment and Subletting.**
 - A. Lessee may assign its rights hereunder or sublease the Premises to an Affiliate (defined below) of Lessee as long as such successor-in-interest confirms in writing that it shall be bound by the terms of this Lease and Lessee guarantees in writing the Affiliate's performance hereunder.

- B. The term "**Affiliate**" means any person or entity directly or indirectly controlling, controlled by or under common Control with the person or entity to which such term applies. "**Control**," as applied to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies and decision-making of such person or entity, whether through the ownership of voting interests or by contract or otherwise, including, without limitation, the possession of direct or indirect equity or beneficial interests in at least ten percent (10%) of any entity, or voting control of any entity.
 - C. No assignment of this Lease or sublease of the Premises by Lessee shall release Lessee from the obligations imposed upon Lessee hereunder.
 - D. This Ground Lease may be used as collateral for a loan and may be assumed by the Lender under the terms of said loan in the event of default. In such a case, the Lender will assume the role of the Lessee and be bound as such under this Agreement. Once the default to the Lender is satisfied, control of the property may be returned to Lessee for the duration of the Lease.
 - E. Should the Lender take over the Lease, any further assignment other than back to Lessee, shall be subject to approval by Lessor, which consent will not be unreasonably withheld.
23. **Nonwaiver.** The failure or omission of Lessor to terminate this Lease for any violation of any of its terms, conditions or covenants by Lessee shall in no way bar, stop or prevent Lessor from terminating this Lease thereafter, either for such or any other subsequent violation of any such term, condition or covenant of this Lease. The acceptance of rent hereunder shall not be, or construed to be, a waiver of any breach of any term, covenant or condition of this Lease by Lessor.
24. **Time is of the Essence.** Time is hereby expressly declared to be of the essence of this Lease and of each and every provision hereof and each such provision is hereby made and declared to be the material, necessary and essential part of this Lease.
25. **Insurance Hazards.** Lessee shall not use the Premises or permit others to use the Premises, nor permit acts that will increase the existing rates of insurance on the improvements on the Premises, or cause a cancellation of any insurance policy covering in whole or in part any improvements on the Premises; nor shall Lessee sell or permit to be kept, used or sold, in or about the Premises, any article that is prohibited by the standard form of insurance policies. Lessee shall comply with all requirements, applying to the Premises of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance covering the improvements on the Premises.

26. **Default.** The occurrence of any one or more of the following events shall constitute a default hereunder by Lessee:
- A. The failure of Lessee or Lender to observe or perform any covenant or provision of this Lease, whether express or implied, required to be observed or performed by Lessee when such failure shall continue for a period of fifteen (15) days or such shorter period as may be expressly provided herein after the date written notice thereof from Lessor to Lessee and Lender; provided, however, that such notice shall be in lieu of and shall not be in addition to any notice required under California Code of Civil Procedure Section 1161.
 - B. Abandonment of the Premises by Lessee for a continuous thirty (30) day period.
 - C. Lessee's application for or consent to the appointment of a receiver, trustee or liquidator of all or of a substantial portion of its assets; making a general assignment for the benefit of creditors; being adjudicated as bankrupt or becoming insolvent; filing a voluntary petition in bankruptcy or filing a petition or answer seeking reorganization or a rearrangement with creditors or seeking to take advantage of any other law (whether federal or state) relating to relief of debtor ; suffering or permitting to continue unstayed and in effect for ten (10) consecutive days any judgment, decree or order entered by a court of competent jurisdiction which approves the petition seeking reorganization of Lessee or which appoints a receiver, trustee or liquidator of Lessee for all or a part of any of its assets; and an attachment, execution or judicial seizure of all or substantially all of Lessee's assets or of Lessee's interest in this Lease which such seizure is not discharged within ten (10) days.
 - D. Lessee's dissolution as a business entity.
27. **Termination Provisions.** Lessee shall have the right to terminate the lease at any time with 120 days advance notice, during the term of the lease if local, state, or federal law changes to prohibit or restrict the cultivation, transportation, selling, or harvesting of industrial hemp at any time during the term of this lease. If there is an active loan in place at the time of termination, Lessee agrees to work with the Lender to provide an opportunity to cure or mitigate the damages as a result of termination.
28. **Remedies.** Upon the occurrence of any event or default set forth above, in addition to any other remedies available to Lessor at law or in equity or under this Lease:
- A. Lessor expressly waives the right of early termination of this lease for anything other than a monetary default or illegal operations on the property. In the event of early termination, Lessor agrees to notify any active Lender and give said Lender a 90-day opportunity to cure the

reason for the early termination and allow the Lender and/or the Lessee to continue with uninterrupted use of the leased land. This remedy provision includes, but is not limited to, a Lessee declaration of bankruptcy or filing of reorganization under the bankruptcy code.

In the event the Lessor elects to terminate this Lease, for monetary default or illegal operations on the property, and the Lender is unable or unwilling to cure said defect, then Lessor may recover from Lessee all damages specified or permitted under California Civil Code Section 1951.2, including, without limitation, the worth at the time of award of the amount by which unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided. Lessor or Lender assuming the position of the Lessee may relet the entire or any part of the Premises for such terms (which may extend beyond the term of this Lease) and at such rentals and other conditions as Lessor in Lessor's sole discretion deems advisable; Lessor's reletting of the Premises shall not waive or affect any rights that Lessor may have against Lessee. On each such reletting:

- (1) Lessee shall immediately become liable for payment to Lessor of:
 - (i) Lessor's reasonable expenses of reletting and making replacements and repairs in order to restore the Premises to their present condition, reasonable wear and tear excepted, (ii) the amount of rent specified in this Lease and (iii) all other amounts due under the Lease; and
- (2) At Lessor's option, rents received by Lessor from reletting shall be applied, first, to the payment of any indebtedness, except rent, due under this Lease from Lessee to Lessor; second, to the payment of expenses of reletting and the alterations and repairs; third, to the payment of rent due under the Lease and unpaid.

- B. Upon the occurrence of any event of default and termination of this Lease by Lessor, Lessor shall have the right to reenter the premises and remove all persons and property and store the same at Lessee's expense and for its account. Lessor may also take possession of all crops, both harvested and unharvested, and shall become the owner of all crops of which Lessor has so taken possession without being obligated to compensate Lessee in any way for them. In the event Lessor takes possession of the Premises and crops as provided herein, Lessee shall be liable to Lessor for all cultural costs incurred by Lessor to cultivate and harvest said crop in excess of any amounts received by Lessor, if any, from the sale of the crop. Lessee hereby waives all claims for damages which may be reasonably caused by Lessor's reentering and taking possession of the Premises, removing or storing the property of Lessee and cultivating and harvesting Lessor's crop as hereinafter provided, to the extent that such damages are not caused by the intentional misconduct or gross negligence of Lessor or its agents or

employees, and Lessee shall hold Lessor harmless from all reasonable loss, costs or damages occasioned by Lessor thereby, and no such reentry shall be considered or construed as a forcible entry.

- C. In the event of a default and abandonment of the Premises by Lessee, then if Lessor does not elect to terminate this Lease as provided in subsection A. above, Lessor will have the remedy described in California Civil Code Section 1951.4 (Lessor may continue this Lease in effect after Lessee's breach and abandonment and recover rent as it becomes due, if Lessee has the right to sublet or assign, subject only to reasonable limitations).
- D. No reentry or taking of possession of the Premises by Lessor shall be construed as an election by Lessor to terminate this Lease unless written notice of such an intention to terminate is given to Lessee or the Lease is declared to be terminated by Lessor.
- E. Cancellation or Modification of Lease. Except as otherwise provided herein, no Termination, surrender, supplement, or material amendment or alteration of the Lease shall be effective without the prior written consent of any active Lender.
- F. Right to Cure Defaults. Lender shall have the right, but not the duty, to remedy or cause to be remedied, any act, event or condition which, with or without notice, the passage of time or both, would be an event of default under the Lease or a breach of any obligation of Lessee to Lessor which could affect the continued existence of the Lease, and Lessor shall accept such performance from Lender as if it had been done by Lessee. Lessor and Lessee authorize Lender to take any such action at its option and hereby authorize entry upon the Premises and all improvements thereon by Lender for such purpose. The foregoing rights of Lender are intended to be in addition to the cure provisions set forth in the general provisions of the Lease. Lessor shall have the right, but will not be obligated, to enter the property and cure a default not cured by Lessee and Lender, and Lessee will be liable for the costs incurred by Lessor in effecting such cure.

The foregoing remedies of Lessor shall not be exclusive but shall be cumulative and in addition to all rights and remedies now or hereafter received or allowed by law.

- 29. **Termination Cooperation.** Lessee and Lender specifically agree to cooperate in the event of lease termination with removal of any lease from chain of title. Within fifteen (15) calendar days of the expiration or termination of this Lease, Lessee and Lender will submit a duly executed and acknowledged Quitclaim Deed or similar document to remove this Lease from the Premises' chain of title. Lender further agrees that once Lender has been repaid, Lender will release its interest established hereunder, and Lessor and Lessee agree to modify this ground lease into a standard land lease.
- 30. **Notice.** Except as otherwise expressly provided herein, any notice, consent,

authorization or other communication to be given hereunder shall be in writing and shall be deemed duly given and received when delivered personally, when transmitted by facsimile or e-mail if receipt is acknowledged by the addressee, one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or three business days after being mailed by first class mail, charges and postage prepaid, properly addressed to the party to receive such notice at the last address furnished for such purposes by the party to whom notice is directed and addresses as follows:

If to Lessor:

If to Lessee:

City of Hanford
Attn: Utilities and Engineering Director
900 S. 10th Ave.
Hanford, CA 93230

City Farm Industries, Inc.
Attn: Ross Lyndon-James
2361 Campus Drive, Ste. 140
Irvine, CA 92612

Notice to Lenders. Upon providing Lessee with any notice of an act, event or condition which is, or with notice, the passage of time or both would be, an event of default under the Lease or a breach of any obligation of Lessee to Lessor which could affect the continued existence of the Lease, Lessor shall, as a condition of the effectiveness of such notice, at the same time provide a copy of such notice to any active Lender.

31. Environmental Matters.

- A. Compliance with Environmental Law. Lessee shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations (collectively "**Hazardous Materials Laws**") relating to industrial and agricultural hygiene, environmental protection or use, analysis, generation, manufacture, storage, disposal, or transportation of any hazardous, toxic, contaminated or polluting materials, substances or wastes, including without limitation, any "pesticides," "herbicides," "petroleum products," "hazardous substances," "hazardous waste," "hazardous materials," or "toxic substances" (collectively "**Hazardous Materials**"). The term "Hazardous Materials" does not include any Effluent or biosolids applied to the Premises in accordance with the provisions of this Lease.
- B. Hazardous Materials Handling. Lessee shall at its own cost, procure and maintain in effect during the entire term of this Lease or any extension thereof, and comply with all conditions of any and all permits, licenses or government and regulatory approvals required for Lessee's use, analysis, generation, manufacture, storage, disposal or transportation of the Hazardous Materials on or from the Premises. Lessee shall cause any and all Hazardous Materials removed from the Premises to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and waste. Lessee shall in all respects use,

handle, treat, deal and manage any and all Hazardous Materials in, on, under or about the Premises in total conformity with all applicable Hazardous Materials Laws and pursuant to prudent industry and agricultural practices. Upon expiration or earlier termination of the term of this Lease or any extension thereof, Lessee shall cause all Hazardous Materials to be removed from the Premises and transported for use, storage or disposal in accordance and in compliance with all applicable Hazardous Material Laws. Lessee shall not take any remedial action in response to the presence of any Hazardous Materials in or about the Premises or any building, or enter into any settlement agreement, constant decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the Premises, without first notifying Lessor of Lessee's intention to do so and affording Lessor ample opportunity to appear, intervene or otherwise appropriately assert and protect Lessor's interest with respect thereto.

Notices. Lessee shall immediately notify Lessor in writing of: (i) any enforcement, clean up, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Materials Laws; (ii) any claim made or threatened by any person against Lessee or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any governmental agency arising out of or in connection with any Hazardous Materials used or stored upon or removed from the Premises, including any complaints, notices, warnings or asserted violations in connection therewith. Lessee shall also supply to Lessor as promptly as possible, and in any event within five (5) days after Lessee first receives or sends the same, with copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Lessor's use thereof. Upon Lessor's request, Lessee shall promptly deliver to Lessor copies of hazardous waste manifests reflecting the legal and proper use and disposal of all Hazardous Materials used or removed from the Premises.

- C. Indemnification of Lessor. Lessee shall indemnify, defend (by counsel reasonably acceptable to Lessor), protect and hold Lessor, its officials, officers, employees, agents, attorneys, successors, assigns, and officials, free and harmless from and against any and all claims liabilities, penalties, forfeitures, losses or expenditures (including attorneys' fees) or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by: (i) the presence in, on, upon or about the Premises or a discharge in or from the Premises of any Hazardous Materials caused by Lessee or Lessee's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, upon, about or from the Premises or (ii) Lessee's failure to comply with any Hazardous Materials Law; provided such loss, damage or claim is not the direct and sole result of the use of the Premises by Lessor subsequent to termination of this Lease or the conduct or actions of Lessor, its agents, or employees. Lessee's obligations hereunder

shall include, without limitation and whether foreseeable or unforeseeable, all costs of any required or necessary repair, clean up or detoxification or decontamination of the Premises and the preparation and implementation of any closure , remedial action or other required plans in connection therewith and shall survive the expiration or earlier termination of the term of this Lease or any extension thereof.

32. **Attorney's Fees.** If any arbitration is initiated or an action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorney ' s fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Lease, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California, for any proceeding arising hereunder.
33. **Sole and Only Agreement.** This Lease supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to their rights and obligations as identified in this Lease and contains all of the covenants and agreements between the parties with respect to said rights and obligations under this Lease in any manner whatsoever. Each party to this Lease acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Lease, and no other agreement, statement or promises shall be valid or binding.
34. **Invalidity.** If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.
35. **Successors and Assigns.** Subject to Section 22 of this Lease, this Lease shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.
36. **Amendment.** No change, amendment or modification of this Lease shall be valid unless the same be in writing and signed by the parties hereto.
37. **Governing Law.** This Lease shall be construed and governed pursuant to the laws of the State of California.

///

///

///

///

IN WITNESS WHEREOF, the parties have executed this Lease effective on the day and in the year first set forth above.

LESSOR:

**City of Hanford, a municipal
corporation**

By: _____
John Draxler
Mayor

LESSEE:

**CITY FARM INDUSTRIES, INC.
a Nevada corporation**

By: _____
Ross Lyndon-James,
CEO

Attachment: Agricultural Ground Lease (clean) (Admin: Approval of City Farm Industries, Inc. Lease)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
 COUNTY OF KINGS)

On August ____, 2020, before me, _____, Notary Public, personally appeared JOHN DRAXLER, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
 (Seal)

 NOTARY PUBLIC

Attachment: Agricultural Ground Lease (clean) (Admin: Approval of City Farm Industries, Inc. Lease)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

[illegible]

On August ____, 2020, before me, _____, Notary Public, personally appeared ROSS LYNDON-JAMES, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
(Seal)

NOTARY PUBLIC

Attachment: Agricultural Ground Lease (clean) (Admin: Approval of City Farm Industries, Inc. Lease)

EXHIBIT "A"
(Legal Description of
Premises)

Location:

Kings County,
California

Attachment: Agricultural Ground Lease (clean) (Admin: Approval of City Farm Industries, Inc. Lease)

AGRICULTURAL GROUND LEASE

THIS AGRICULTURAL GROUND LEASE (“Lease”) is effective the ~~February-September~~ 1st day of 2020, is by and between the CITY OF HANFORD, a municipal corporation (“Lessor”), and CITY FARM INDUSTRIES, INC., a Nevada Corporation (“Lessee”). ~~Monte-Cristo Capital Management, Inc. is hereinafter referred to as-~~ “Lender.” Use of the term “Lender” in this document refers to any company holding a lien on this Ground Lease under an active loan.

WITNESSETH

In consideration of the mutual covenants set forth herein between the parties, the parties hereto agree as follows:

1. **Lease of Real Property.** Lessor hereby leases to Lessee and Lessee hereby hires from Lessor on the terms and conditions set forth in this Lease, approximately ~~960 of the total~~ 1,600 acres of real property situated in the County of Kings, State of California, and more particularly described in Exhibit “A”, which is attached hereto and made part hereof. It is the express intent of the parties that this document establishes a recordable ground lease. The leased premises (“Premises”) are comprised of:
 - a. APN# 028-240-018 (160 acres)
 - b. APN# 028-240-020 (160 acres)
 - c. APN# 028-310-008 (60 acres)
 - d. APN# 028-310-025 (200 acres)
 - e. APN# 028-310-005 (320 acres)
 - f. APN# 028-310-007 (60 acres)
 - g. APN# 028-240-008-000 (160.0 acres)
 - h. APN# 028-240-016-000 (160.0 acres)
 - i. APN# 028-240-021-000 (160.0 acres)
 - f.j. APN# 028-240-019-000 (160.0 acres)
2. **Disclaimer of Warranty-Soil.** Lessor makes no warranty of soil suitability for the growing of crops which the Lessee is authorized to grow under this Lease nor any warranty as to the suitability or productivity of such soil.
3. **Lease Subject to Existing Rights of Others.** This Lease is subject to: (a) all existing easements, servitudes, licenses, and rights of way for canals, ditches, levies, roads, highways and telephone and electric power lines and railroads, pipelines and other purposes, whether recorded or not; and (b) the rights of Lessor under any existing or future oil, gas, or mineral lease or leases affecting the entire or any portion of the Premises, whether recorded or not. Lessee shall have no right, title and interest, in any way, to any oil, gas, or mineral rights presently existing or to be existing on or about said Premises.
4. **Term.**
 - A. Except as otherwise provided herein, the term of this Lease shall

commence on ~~February-September~~ 1, 2020 and shall continue for a period of twenty-five (25) years, terminating on ~~January-August~~ 31, 2045 ("Term").

- ~~B. — Once Lender is paid in full, the Term shall automatically adjust such that the initial term of this Lease shall be ten (10) years, beginning on February 1, 2020 ("Initial Term") and ending on January 31, 2030.~~
- ~~C. — If Lessee is not in default upon the expiration of the Initial Term, the term of this Lease shall be extended, at the option of Lessee, an additional fifteen (15) years. If the term of this Lease is extended pursuant to this subsection C., the total term of the Lease shall be twenty (25) years. If Lessee is in default at the end of the Initial Term, this Lease shall automatically expire at the end of the Initial Term.~~

5. **Rent.**

- A. Lessee shall pay annual rent in advance on ~~February-September~~ 1 of each year that this Lease remains in effect. The rental rate for the period ~~February-September~~ 1, 2020 through ~~January-August~~ 31, 2021 shall be One Hundred Dollars (\$100.00) per acre. For purposes of calculating rental amounts, the parties agree that the Premises are comprised of ~~nine hundred-sixty-sixteen hundred~~ (9601600) acres.
- B. Beginning on ~~February-September~~ 1, 2021, the rental amount shall increase by Fifty Dollars (\$50.00) per acre and continue to increase by the same amount on ~~February-September~~ 1 of each year that this Lease remains in effect.
- C. The rent shall be paid by Lessee, without deduction, offset, prior notice or demand, in lawful money of the United States of America, which shall be legal tender at the time of payment, at the following address or at such other place as Lessor may, from time to time, designate in writing:
- City of Hanford
Attn: Finance Dept.
315 N. Douty St.
Hanford, CA 93230
- D. The annual rent payment for 2020 shall be due and payable at the signing of this lease. The total amount due for the first year of this lease is One Hundred and Sixty Thousand Dollars (\$160,000). Fifty Thousand Dollars (\$50,000) has already been paid and the remaining One Hundred and Ten Thousand Dollars (\$110,000) shall be paid at lease execution.; In addition, proof of available funds in the amount of One Hundred Thousand Dollars (\$100,000) shall be provided on or before lease signing to ensure adequate funds are available to clear the property of the current growth of weeds. Lessee shall clear the Property shall be cleared of by chopping the existing weeds and discing the land within 60 days of the lease execution no later than October 31, 2020., as

~~well as advance payments for 2021 and 2022 shall be paid into escrow for this transaction upon the parties' execution of this Lease. The rental payments for 2020, 2021, and 2022, total Four Hundred Thirty Two Thousand Dollars (\$432,000.000) ("Prepaid Rent"). Annual rental payments shall be made such that rent will always be prepaid three (3) years in advance. For example, the annual rental installment for the period February 1, 2023 through January 31, 2024 will be no later than February 1, 2021.~~

~~E. — An escrow account will be established with Orange Coast Title Company of Southern California ("Escrow Holder"). As a condition of this Lease becoming effective, Lessee shall: (i) deposit no less than Nine Million Dollars (\$9,000,000.00) with Escrow Holder; (ii) deposit a true and correct copy of this Lease with Escrow Holder; (iii) cause Escrow Holder to disburse the Prepaid Rent amount to Lessor; and (iv) cause Escrow Holder to disburse remaining escrowed funds in accordance with the terms of the Escrow Instructions executed by Lessee and Escrow Holder. This Lease shall become null and void if the foregoing contingencies are not satisfied or waived by the close of business on March 31, 2020; if the contingencies have not been satisfied or waived by such date, this Lease shall no longer be in effect and Lessor, Lessee, and Lender shall have no further obligations or rights hereunder. Lessee shall be solely responsible for the payment of all escrow fees and costs.—~~

6. **Late Charge and Interest.** Lessee acknowledges that late payment by Lessee to Lessor of rent or any other amount due under this Lease will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such cost being extremely difficult and impracticable to fix. Therefore, if any installment of rent or any other amount due from Lessee is not received by Lessor within ten (10) days from the date when said rent or other amount was due, Lessee shall pay to Lessor the additional sum of ten percent (10%) of the overdue rent or other amount as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the cost that Lessor will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee 's default with respect to the overdue amount or prevent Lessor from exercising any of the other rights and remedies available to Lessor. Also, any installment of rent that Lessee fails to pay within ten (10) days of the date on which payment is due shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, whichever is less.
7. **Use.** The Premises shall be used for agricultural purposes only and for no other purpose whatsoever; provided however, Lessee shall not plant permanent crops at the Premises. This use includes the farming of industrial hemp under the definitions and regulations as allowed by law in Kings County, CA. Lessee agrees to farm the Premises in accordance with good husbandry and generally accepted farming practices in the area and agrees to keep the Premises and, in particular, the ditches, rights of ways and areas under or around fences, free of noxious weeds, grasses and brush. Lessee shall, at its sole cost and expense, apply soil supplements as necessary to maintain and improve the integrity of the soil of the Premises. In the event that Lessee does not farm the Premises in accordance

with generally accepted farming practices in the area, Lessor may, after reasonable notice to Lessee and after Lessee's failure to do so within ten (10) days after the date of such notice, implement such generally accepted farming practices at Lessee's expense.

8. Improvements by Lessor or Lessee.

- A. Except as otherwise provided herein, Lessor shall not be obligated to make any improvements, alterations or repairs to the Premises or any portion thereof or pay or reimburse Lessee for any part of the cost thereof.
- B. Lessee acknowledges that the Premises lack water wells. Landlord will have no obligation to drill a water well or take any other action to cause a source of water to be available to the Premises.

9. Utilities and Miscellaneous Expenses.

- A. Lessee shall pay (before delinquency) any and all costs and assessments for water and irrigation, whether district water, canal or ditch water or pump water including, but not limited to, the payment of all canal or ditch company assessments. Lessee shall irrigate the Premises in accordance with generally accepted farming practices in the area.
- B. Lessee shall be responsible for the payment of any increase in the real property taxes for the Premises as a result of Lessee's improvement of the Premises.
- C. Lessee shall be responsible for and shall promptly pay for all labor, farm implements, tools, seed, electricity, gas, harvesting expenses, chemicals, sprays, fertilizers, soil amendments, and any and all other materials and services of whatsoever kind or nature which may be used for the planting, cultivation, irrigation, production and harvesting of the crops on the Premises and in the performance of Lessee's other obligations under this Lease, and Lessor shall not be liable for any part thereof.

10. Repairs and Maintenance.

- A. Lessee shall care for both the Premises and the approaches to and appurtenances of the Premises including , but not limited to, all fences, corrals (if any), ditches and roadways and shall maintain them in the same order and condition in which received, ordinary wear and tear excepted.
- B. Lessee shall be solely responsible for maintaining and repairing any improvements that Lessee constructions or installs on the Premises.

11. **Improvements and Waste.** Lessee shall not construct any improvements on the Premises or make any alterations in any existing improvements without the prior written consent of Lessor, which shall not be unreasonably withheld. Lessee hereby acknowledges and agrees that any and all improvements and equipment placed upon or affixed to the Premises by Lessee shall become the sole property of Lessor upon termination of this Lease and shall not be removed by Lessee without the express written consent of Lessor. Lessee shall not commit or permit or suffer the commission of any waste upon or do or permit or suffer any damage to be done on the Premises.
12. **Compliance with the Law.** In all operations under this Lease or on the Premises, Lessee shall, at its own expense, promptly comply with any and all laws, ordinances, rules, regulations, requirements and orders whatsoever, present or future, of the national, state, county or municipal government or any other governmental jurisdiction which may, in any way, apply to the use, maintenance or occupation or other operation on the Premises or the production of crops thereon or for the sale or other disposition of such crops.
13. **Relationship of Parties.** At all times herein mentioned and while Lessee is planting, propagating, harvesting, or performing any other activity under this Lease or in connection with the Premises, Lessor and Lessee's relationship shall be one of landlord and tenant. Lessee is not an agent, employee, representative, co-venturer, or partner of Lessor. Any persons employed by Lessee on or in connection with the Premises shall be the Lessee's employees or agents and shall not be the employees (either regular or special) or agents of Lessor.
14. **Use of Effluent.**
 - A. Lessee acknowledges that Lessor acquired the Premises as a potential location for the discharge of effluent from the City of Hanford Waste Water Treatment Plan ("**Treatment Plant**"). Lessee further acknowledges that effluent is not currently transported to the Premises and that Lessor is under no duty or obligation to supply effluent to the Premises but may elect to do so in the future.
 - B. In the event Lessor elects to transport effluent to the Premises from the Treatment Plant, Lessee agrees that it shall receive and spread upon the Premises the effluent from the Treatment Plant ("**Effluent**") as the same is transported to the Premises.
 - C. Lessee's use of Effluent upon the Premises shall be in conformance with any and all permits or approvals issued by applicable governmental agencies which regulate the use of the Effluent upon the Premises and in a manner consistent with all applicable laws, statutes, rules, regulations, and ordinances.

Lessor will notify Lessee in writing ("**Effluent Notice**") if it becomes

desirable to Lessor to transport Effluent to the Premises. Lessor and Lessee will confer within fifteen (15) calendar days of Lessee's receipt of the Effluent Notice from Lessor, and Lessor and Lessee will, in good faith, negotiate the terms under which the infrastructure improvements needed to transport the Effluent from the Treatment Plant to the Premises ("**Improvements**") will be constructed. The following terms shall be the basis for such negotiations : (i) Lessee will submit design plans for the Improvements , which shall be prepared by a licensed professional, to Lessor for review and approval before construction commences; (ii) Lessee shall construct the Improvements at its initial cost; (iii) Lessee's total cost to construct the Improvements will be amortized over a ten (10) year period and will be credited equally against the annual rental installments paid by Lessee over a ten (10) year period; (iv) the amount reimbursed to Lessee shall be the total amount paid by Lessee for construction of the Improvements and will not include interest; and (v) the rent installment due immediately following Lessor's written acceptance of the Improvements shall be the first (1st) of ten (10) rental installments against which the amortized construction costs will be credited.

- D. Should Lessor and Lessee be unable to successfully negotiate terms under which Lessee constructs the Improvements, this Lease will remain in full force and effect, and Lessor may, but will not be required to, construct such improvements at Lessor's sole cost, and Lessee will accept all Effluent that is transported to the Premises from the Treatment Plant.

Lessor shall be responsible for complying with any requirements of the California Regional Quality Control Board ("**Regional Board**") regarding monitoring the use of the Effluent upon the Premises and providing quarterly reports to the Regional Board ("**Quarterly Reports**"). However, at least seven (7) days prior to the date that any Quarterly Report is due, Lessee shall provide to Lessor a written report for the same quarter as the Quarterly Report identifying: (i) the amount of well, canal or ditch water applied upon the Premises during such quarter; and (ii) the amount of chemical fertilizer applied to the Premises during such quarter. The failure of Lessee to provide such written Quarterly Report to Lessor within the time period identified in this subsection, shall constitute a material breach of this Lease.

15. **Use of Biosolids.** Lessee agrees that it shall receive, if Lessor elects to provide, upon the Premises biosolids from the Treatment Plant up to the amount that would be used in accordance with generally accepted good farming practices in the area for double cropping the Premises during each year of the term of Lease. Lessor shall pay the cost of transporting the biosolids to the Premises and spreading the same upon the Premises. Prior to the spreading of biosolids upon the Premises, Lessor shall obtain all permits and approvals required in order to allow the spreading and use of biosolids upon the Premises. Lessor shall

indemnify, defend and hold Lessee harmless from any and all damages, losses and claims (including, without limitation, reasonable attorneys' fees and expenses) resulting from or during: (i) the transportation of biosolids from the Treatment Plant to the Premises; or (ii) any claims of third parties for damage caused by the content of the biosolids. Lessee shall indemnify, defend and hold Lessor and its appointed and elected officials, officers, employees, agents, and volunteers, and each of them, harmless from any and all damages, losses and claims (including, without limitation, reasonable attorneys' fees and expenses) resulting from: (i) the use of biosolids upon the Premises by Lessee in violation of any permits or approvals obtained by Lessor to allow the spreading and use of the biosolids on the Premises issued by applicable governmental agencies which regulate the use of the biosolids by lessees; or (ii) the transportation by Lessee of the biosolids from the Premises. The indemnity provisions of this section shall survive the termination of this Lease. Lessee's use of the biosolids upon the Premises shall be in conformance with any and all permits and approvals obtained by Lessor issued by applicable governmental agencies which regulate the use of biosolids upon the Premises.

16. Taxes and Liens.

- A. Lessee agrees to pay and discharge, at maturity, all taxes or assessments levied or assessed against any personal property put or placed by Lessee on or in the Premises and not allow any liens or encumbrances to be placed or remain against its property on the Premises or against the Premises insofar as such liens or encumbrances may be asserted by reason of Lessee's acts or occupation or use of said Premises. Payment of all such taxes, as set forth above, shall be the sole and separate responsibility of Lessee. Lessee agrees to keep the Premises and all improvements thereon, free from all liens and claims of mechanics, laborers, materialmen and others for work done and materials furnished to Lessee, and Lessee shall not create or suffer to be created any lien or encumbrance on the Premises.
- B. Lessor will promptly pay all real property taxes charged by Kings County as a result of Lessor's ownership of the Premises.

17. Insurance.

- A. Lessee will, during the term of this Lease, maintain insurance coverage which shall be at least as broad as:
 - (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 0001 1207 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000) per occurrence and FOUR MILLION (\$4,000,000) aggregate. Alternatively, Lessee may maintain a CGL policy with limits of no less than ONE MILLION

AND NO/100 DOLLARS (\$1,000,000) per occurrence and an umbrella coverage policy with coverage limits of no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) and which has a scope of coverage as broad as Lessee's CGL policy.

- (2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Lessee has no owned autos, hired (Code 8), and non-owned autos (Code 9), with a limit no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per accident for bodily injury and property damage
- (3) Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer ' s Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per accident for bodily injury or disease.

If Lessee maintains higher limits than the minimums shown above, Lessor requires and shall be entitled to coverage for the higher limits maintained by Lessee.

- B. Lessee's deductible amounts must be approved by Lessor. Lessor may require Lessee to purchase coverage with a lower deductible.
- C. Lessee's insurance policies are to contain, or be endorsed to contain, the following provisions:
 - (1) Lessor and its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy. General liability coverage can be provided in the form of an endorsement to Lessee's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to Lessor and its officers, officials, employees or volunteers.
 - (2) For any claims related to this Lease, Lessee's insurance coverage shall be the primary insurance as respects Lessor and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Lessor and/or its officers, officials, employees, or volunteers shall be in excess of Lessee's insurance and shall be non-contributory.
 - (3) Each insurance policy required above shall provide that coverage shall not be canceled, except with written notice to Lessor.
- D. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- E. Lessee shall furnish Lessor with original certificates and amendatory

endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by Lessor before Lessee takes possession of the Premises. However, failure to obtain the required documents prior to Lessee taking possession of the Premises shall not waive Lessee's obligation to provide them. Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- F. Lessee hereby grants to Lessor and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of Lessee may acquire against Lessor and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. Lessee agrees to obtain endorsements necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Lessor has received a waiver of subrogation endorsement from the insurer.
- G. Lessor reserves the right to modify the insurance requirements contained in this Lease at the beginning of the ten (10) year extension term, including , without limitation , coverage limits , based on the nature of the risk, prior experience, insurer , coverage, or otherspecial circumstances.
- H. Lessee shall obtain, at Lessee's sole cost, insurance coverage on Lessee 's property and improvements at their full replacement value. Lessor will not be responsible for obtaining insurance on Lessee's property and improvements.

18. Indemnification. Except as otherwise set forth in Section 15 of this Lease, Lessee agrees to defend, protect , indemnify and hold harmless Lessor and its elected and appointed officials , officers, employees, agents, and volunteers, and each of them, from and against any and all liabilities , losses, damages , costs, expenses, any and all attorney ' s fees and expenses of Lessor, causes of action , suits, claims, demands or judgments of any nature whatsoever relating to or arising from: (i) any work or thing done during the Lease term in, on or about the Premises or any part thereof by Lessee, its agents, contractors, servants, employees, licensees or invitees ; (ii) injury to or the death of persons or damage to property during the Lease term on the Premises or adjoining ditches , rights of way, fences, canals, levies, roads, highways and the like, or in any manner arising out of or connected with the use, nonuse, condition, possession, operation, maintenance, management or occupation of the Premises by Lessee, or any of its agents, contractors, servants, employees, licensees or invitees during the Lease term or resulting from the condition thereof; (iii) any negligence or intentional misconduct on the part of Lessee or any of its agents, contractors, servants, employees, licensees or invitees; (iv) violation by Lessee or any of its agents, contractors, servants, employees, licensees or invitees of any covenant or restriction or any governmental restriction, statute, charter law, rule, ordinance or regulation affecting the Premises or the ownership, occupancy or use thereof; and (v) the occurrence of any event of default as described in Section 27 below, provided such losses, claims or expenses are not caused in any part by the willful

misconduct or gross negligence of Lessor, its agents or employees. The provisions of this Section 18 shall survive the termination of this Lease.

19. **Entry by Lessor.** Lessee shall permit Lessor and Lessor's agents and assigns, at all reasonable times, to enter the Premises and to use the roads established on the Premises now or in the future for the purpose of inspection, compliance with the terms of this Lease, exercise of all rights under this Lease, posting of notices and all other lawful purposes. Lessee shall supply Lessor and Lessor's agents and assigns with keys and other instruments necessary to affect entry on the Premises.
20. **Surrender Upon Termination.** Whenever any lands constituting all or any part of the Premises shall cease to be subject to this Lease by lapse of time, termination or otherwise, Lessee shall promptly and peacefully surrender up the possession of all such lands and all improvements thereon to the Lessor in as nearly their original condition as may be practicable, considering Lessee's improvements thereon and reasonable use thereof and, if requested by Lessor, shall duly and promptly execute, acknowledge and deliver to Lessor a good, sufficient and recordable quitclaim deed covering all rights of Lessee in and to such lands. Surrender to the Lessor under this Lease prior to expiration of the lease term, shall be subject to Lender's right to assume this Lease in accordance with Section 23 hereinbelow.
21. **Holding Over.** In the event Lessee holds over and remains in possession of the Premises or any part thereof after expiration of this Lease with the express consent of Lessor, such holding over shall be construed to be a month-to-month tenancy only with rent payable at the times and in the amounts specified by Lessor. Such tenancy shall be subject to all terms and conditions of this Lease.
22. **Assignment and Subletting.**
 - A. Lessee may assign its rights hereunder or sublease the Premises to an Affiliate (defined below) of Lessee as long as such successor-in-interest confirms in writing that it shall be bound by the terms of this Lease and Lessee guarantees in writing the Affiliate's performance hereunder.
 - B. The term "**Affiliate**" means any person or entity directly or indirectly controlling, controlled by or under common Control with the person or entity to which such term applies. "**Control**," as applied to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies and decision-making of such person or entity, whether through the ownership of voting interests or by contract or otherwise, including, without limitation, the possession of direct or indirect equity or beneficial interests in at least ten percent (10%) of any entity, or voting control of any entity.
 - C. No assignment of this Lease or sublease of the Premises by Lessee shall release Lessee from the obligations imposed upon Lessee

hereunder.

- D. This Ground Lease may be used as collateral for a loan and may be assumed by the Lender under the terms of said loan in the event of default. In such a case, the Lender will assume the role of the Lessee and be bound as such under this Agreement. Once the default to the Lender is satisfied, control of the property may be returned to Lessee for the duration of the Lease.
 - E. Should the Lender take over the Lease, any further assignment other than back to Lessee, shall be subject to approval by Lessor, which consent will not be unreasonably withheld.
23. **Nonwaiver.** The failure or omission of Lessor to terminate this Lease for any violation of any of its terms, conditions or covenants by Lessee shall in no way bar, stop or prevent Lessor from terminating this Lease thereafter, either for such or any other subsequent violation of any such term, condition or covenant of this Lease. The acceptance of rent hereunder shall not be, or construed to be, a waiver of any breach of any term, covenant or condition of this Lease by Lessor.
24. **Time is of the Essence.** Time is hereby expressly declared to be of the essence of this Lease and of each and every provision hereof and each such provision is hereby made and declared to be the material, necessary and essential part of this Lease.
25. **Insurance Hazards.** Lessee shall not use the Premises or permit others to use the Premises, nor permit acts that will increase the existing rates of insurance on the improvements on the Premises, or cause a cancellation of any insurance policy covering in whole or in part any improvements on the Premises; nor shall Lessee sell or permit to be kept, used or sold, in or about the Premises, any article that is prohibited by the standard form of insurance policies. Lessee shall comply with all requirements, applying to the Premises of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance covering the improvements on the Premises.
26. **Default.** The occurrence of any one or more of the following events shall constitute a default hereunder by Lessee:
- A. The failure of Lessee or Lender to observe or perform any covenant or provision of this Lease, whether express or implied, required to be observed or performed by Lessee when such failure shall continue for a period of fifteen (15) days or such shorter period as may be expressly provided herein after the date written notice thereof from Lessor to Lessee and Lender; provided, however, that such notice shall be in lieu of and shall not be in addition to any notice required under California Code of Civil Procedure Section 1161.
 - B. Abandonment of the Premises by Lessee for a continuous thirty (30) day

period.

- C. Lessee's application for or consent to the appointment of a receiver, trustee or liquidator of all or of a substantial portion of its assets; making a general assignment for the benefit of creditors; being adjudicated as bankrupt or becoming insolvent; filing a voluntary petition in bankruptcy or filing a petition or answer seeking reorganization or a rearrangement with creditors or seeking to take advantage of any other law (whether federal or state) relating to relief of debtor ; suffering or permitting to continue unstayed and in effect for ten (10) consecutive days any judgment, decree or order entered by a court of competent jurisdiction which approves the petition seeking reorganization of Lessee or which appoints a receiver, trustee or liquidator of Lessee for all or a part of any of its assets; and an attachment, execution or judicial seizure of all or substantially all of Lessee's assets or of Lessee's interest in this Lease which such seizure is not discharged within ten (10) days.
 - D. Lessee's dissolution as a business entity.
27. **Termination Provisions.** Lessee shall have the right to terminate the lease at any time with 120 days advance notice, during the term of the lease if local, state, or federal law changes to prohibit or restrict the cultivation, transportation, selling, or harvesting of industrial hemp at any time during the term of this lease. If there is an active loan in place at the time of termination, Lessee agrees to work with the Lender to provide an opportunity to cure or mitigate the damages as a result of termination.
28. **Remedies.** Upon the occurrence of any event or default set forth above, in addition to any other remedies available to Lessor at law or in equity or under this Lease:
- A. Lessor expressly waives the right of early termination of this lease for anything other than a monetary default or illegal operations on the property. In the event of early termination, Lessor agrees to notify any active Lender and give said Lender a 90-day opportunity to cure the reason for the early termination and allow the Lender and/or the Lessee to continue with uninterrupted use of the leased land. This remedy provision includes, but is not limited to, a Lessee declaration of bankruptcy or filing of reorganization under the bankruptcy code.

In the event the Lessor elects to terminate this Lease, for monetary default or illegal operations on the property, and the Lender is unable or unwilling to cure said defect, then Lessor may recover from Lessee all damages specified or permitted under California Civil Code Section 1951.2, including, without limitation, the worth at the time of award of the amount by which unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided. Lessor or Lender assuming the position of the Lessee may relet the entire or any part of the Premises

for such terms (which may extend beyond the term of this Lease) and at such rentals and other conditions as Lessor in Lessor's sole discretion deems advisable; Lessor's reletting of the Premises shall not waive or affect any rights that Lessor may have against Lessee. On each such reletting:

- (1) Lessee shall immediately become liable for payment to Lessor of:
 - (i) Lessor's reasonable expenses of reletting and making replacements and repairs in order to restore the Premises to their present condition, reasonable wear and tear excepted, (ii) the amount of rent specified in this Lease and (iii) all other amounts due under the Lease; and
- (2) At Lessor's option, rents received by Lessor from reletting shall be applied, first, to the payment of any indebtedness, except rent, due under this Lease from Lessee to Lessor; second, to the payment of expenses of reletting and the alterations and repairs; third, to the payment of rent due under the Lease and unpaid.

- B. Upon the occurrence of any event of default and termination of this Lease by Lessor, Lessor shall have the right to reenter the premises and remove all persons and property and store the same at Lessee's expense and for its account. Lessor may also take possession of all crops, both harvested and unharvested, and shall become the owner of all crops of which Lessor has so taken possession without being obligated to compensate Lessee in any way for them. In the event Lessor takes possession of the Premises and crops as provided herein, Lessee shall be liable to Lessor for all cultural costs incurred by Lessor to cultivate and harvest said crop in excess of any amounts received by Lessor, if any, from the sale of the crop. Lessee hereby waives all claims for damages which may be reasonably caused by Lessor's reentering and taking possession of the Premises, removing or storing the property of Lessee and cultivating and harvesting Lessor's crop as hereinafter provided, to the extent that such damages are not caused by the intentional misconduct or gross negligence of Lessor or its agents or employees, and Lessee shall hold Lessor harmless from all reasonable loss, costs or damages occasioned by Lessor thereby, and no such reentry shall be considered or construed as a forcible entry.
- C. In the event of a default and abandonment of the Premises by Lessee, then if Lessor does not elect to terminate this Lease as provided in subsection A. above, Lessor will have the remedy described in California Civil Code Section 1951.4 (Lessor may continue this Lease in effect after Lessee's breach and abandonment and recover rent as it becomes due, if Lessee has the right to sublet or assign, subject only to reasonable limitations).
- D. No reentry or taking of possession of the Premises by Lessor shall be construed as an election by Lessor to terminate this Lease unless written notice of such an intention to terminate is given to Lessee or the Lease is

declared to be terminated by Lessor.

- E. Cancellation or Modification of Lease. Except as otherwise provided herein, no Termination, surrender, supplement, or material amendment or alteration of the Lease shall be effective without the prior written consent of any active Lender.
- F. Right to Cure Defaults. Lender shall have the right, but not the duty, to remedy or cause to be remedied, any act, event or condition which, with or without notice, the passage of time or both, would be an event of default under the Lease or a breach of any obligation of Lessee to Lessor which could affect the continued existence of the Lease, and Lessor shall accept such performance from Lender as if it had been done by Lessee. Lessor and Lessee authorize Lender to take any such action at its option and hereby authorize entry upon the Premises and all improvements thereon by Lender for such purpose. The foregoing rights of Lender are intended to be in addition to the cure provisions set forth in the general provisions of the Lease. Lessor shall have the right, but will not be obligated, to enter the property and cure a default not cured by Lessee and Lender, and Lessee will be liable for the costs incurred by Lessor in effecting such cure.

The foregoing remedies of Lessor shall not be exclusive but shall be cumulative and in addition to all rights and remedies now or hereafter received or allowed by law.

- 29. **Termination Cooperation.** — Lessee and Lender specifically agree to cooperate in the event of lease termination with removal of any lease from chain of title. Within fifteen (15) calendar days of the expiration or termination of this Lease, Lessee and Lender will submit a duly executed and acknowledged Quitclaim Deed or similar document to remove this Lease from the Premises' chain of title. Lender further agrees that once Lender has been repaid, Lender will release its interest established hereunder, and Lessor and Lessee agree to modify this ground lease into a standard land lease.
- 30. **Notice.** Except as otherwise expressly provided herein, any notice, consent, authorization or other communication to be given hereunder shall be in writing and shall be deemed duly given and received when delivered personally, when transmitted by facsimile or e-mail if receipt is acknowledged by the addressee, one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or three business days after being mailed by first class mail, charges and postage prepaid, properly addressed to the party to receive such notice at the last address furnished for such purposes by the party to whom notice is directed and addresses as follows:

If to Lessor:

City of Hanford
Attn: Utilities and Engineering Director
900 S. 10th Ave.

If to Lessee:

City Farm Industries, Inc.
Attn: Ross Lyndon-James
2361 Campus Drive, Ste. 140

Hanford, CA 93230

Irvine, CA 92612

~~If to Lender:~~

~~Montecristo Capital Management, Inc.~~

~~19200 Von Karmen Ave, 6th Floor~~

~~Irvine, CA 92612~~

Notice to Lenders. Upon providing Lessee with any notice of an act, event or condition which is, or with notice, the passage of time or both would be, an event of default under the Lease or a breach of any obligation of Lessee to Lessor which could affect the continued existence of the Lease, Lessor shall, as a condition of the effectiveness of such notice, at the same time provide a copy of such notice to any active Lender.

Attachment: Agricultural Ground Lease (redline) (Admin: Approval of City Farm Industries, Inc. Lease)

31. Environmental Matters.

- A. Compliance with Environmental Law. Lessee shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations (collectively "**Hazardous Materials Laws**") relating to industrial and agricultural hygiene, environmental protection or use, analysis, generation, manufacture, storage, disposal , or transportation of any hazardous, toxic , contaminated or polluting materials, substances or wastes, including without limitation, any " pesticides," "herbicides," "petroleum products," "hazardous substances," "hazardous waste," "hazardous materials," or "toxic substances" (collectively "**Hazardous Materials**"). The term "Hazardous Materials" does not include any Effluent or biosolids applied to the Premises in accordance with the provisions of this Lease.
- B. Hazardous Materials Handling. Lessee shall at its own cost, procure and maintain in effect during the entire term of this Lease or any extension thereof , and comply with all conditions of any and all permits, licenses or government and regulatory approvals required for Lessee's use, analysis, generation, manufacture , storage, disposal or transportation of the Hazardous Materials on or from the Premises. Lessee shall cause any and all Hazardous Materials removed from the Premises to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and waste. Lessee shall in all respects use, handle, treat, deal and manage any and all Hazardous Materials in, on, under or about the Premises in total conformity with all applicable Hazardous Materials Laws and pursuant to prudent industry and agricultural practices. Upon expiration or earlier termination of the term of this Lease or any extension thereof, Lessee shall cause all Hazardous Materials to be removed from the Premises and transported for use, storage or disposal in accordance and in compliance with all applicable Hazardous Material Laws. Lessee shall not take any remedial action in response to the presence of any Hazardous Materials in or about the Premises or any building, or enter into any settlement agreement, constant decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the Premises, without first notifying Lessor of Lessee's intention to do so and affording Lessor ample opportunity to appear, intervene or otherwise appropriately assert and protect Lessor' s interest with respect thereto.

Notices. Lessee shall immediately notify Lessor in writing of: (i) any enforcement, clean up, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Materials Laws; (ii) any claim made or threatened by any person against Lessee or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iii) any reports made to any governmental

agency arising out of or in connection with any Hazardous Materials used or stored upon or removed from the Premises , including any complaints, notices, warnings or asserted violations in connection therewith . Lessee shall also supply to Lessor as promptly as possible, and in any event within five (5) days after Lessee first receives or sends the same, with copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Lessor' s use thereof . Upon Lessor's request, Lessee shall promptly deliver to Lessor copies of hazardous waste manifests reflecting the legal and proper use and disposal of all Hazardous Materials used or removed from the Premises.

- C. **Indemnification of Lessor.** Lessee shall indemnify, defend (by counsel reasonably acceptable to Lessor), protect and hold Lessor, its officials, officers, employees, agents, attorneys, successors, assigns, and officials, free and harmless from and against any and all claims liabilities, penalties, forfeitures, losses or expenditures (including attorneys' fees) or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by: (i) the presence in, on, upon or about the Premises or a discharge in or from the Premises of any Hazardous Materials caused by Lessee or Lessee's use, analysis , storage, transportation, disposal , release, threatened release , discharge or generation of Hazardous Materials to, in, on, upon, about or from the Premises or (ii) Lessee's failure to comply with any Hazardous Materials Law; provided such loss, damage or claim is not the direct and sole result of the use of the Premises by Lessor subsequent to termination of this Lease or the conduct or actions of Lessor, its agents, or employees. Lessee's obligations hereunder shall include, without limitation and whether foreseeable or unforeseeable, all costs of any required or necessary repair, clean up or detoxification or decontamination of the Premises and the preparation and implementation of any closure , remedial action or other required plans in connection therewith and shall survive the expiration or earlier termination of the term of this Lease or any extension thereof.
32. **Attorney's Fees.** If any arbitration is initiated or an action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorney ' s fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Lease, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California, for any proceeding arising hereunder.
33. **Sole and Only Agreement.** This Lease supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to their rights and obligations as identified in this Lease and contains all of the covenants and agreements between the parties with respect to said rights and obligations under this Lease in any manner whatsoever. Each party to this Lease acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are

not embodied in this Lease, and no other agreement, statement or promises shall be valid or binding.

34. **Invalidity.** If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.
35. **Successors and Assigns.** Subject to Section 22 of this Lease, this Lease shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.
36. **Amendment.** No change, amendment or modification of this Lease shall be valid unless the same be in writing and signed by the parties hereto.
37. **Governing Law.** This Lease shall be construed and governed pursuant to the laws of the State of California.

///

///

///

///

///

Attachment: Agricultural Ground Lease (redline) (Admin: Approval of City Farm Industries, Inc. Lease)

IN WITNESS WHEREOF, the parties have executed this Lease effective on the day and in the year first set forth above.

LESSOR:

City of Hanford, a municipal corporation

By:
John Draxler
Mayor

LESSEE:

CITY FARM INDUSTRIES, INC.
a Nevada corporation

By:
Ross Lyndon-James,
CEO

LESSOR:

City of Hanford,
—a municipal-
corporation

By:
John Draxler
Mayor

LESSEE:

CITY FARM INDUSTRIES, INC.
a California Nevada corporation

By:
Ross Lyndon-James,
CEO

Attachment: Agricultural Ground Lease (redline) (Admin: Approval of City Farm Industries, Inc. Lease)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF KINGS)

On ~~February-August~~ ____, 2020, before me, _____, Notary Public, personally appeared JOHN DRAXLER, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
(Seal)

NOTARY PUBLIC

Attachment: Agricultural Ground Lease (redline) (Admin: Approval of City Farm Industries, Inc. Lease)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.

COUNTY OF ~~KINGS~~ _____)

On ~~February-August~~____, 2020, before me, _____, Notary Public, personally appeared ROSS LYNDON-JAMES, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
(Seal)

NOTARY PUBLIC

Attachment: Agricultural Ground Lease (redline) (Admin: Approval of City Farm Industries, Inc. Lease)

EXHIBIT "A"
(Legal Description of
Premises)

Location:

Kings County,
California

Southeast $\frac{1}{4}$ Section 17, Township 21S, Range 21E; 160 Acres
Southwest $\frac{1}{4}$ Section 16, Township 20S, Range 21E; 160 Acres
Northeast $\frac{1}{4}$ Section 20, Township 20S, Range 21E ; 160 Acres
Northwest $\frac{1}{4}$ Section 21, Township 20S, Range 21E; 160 Acres
Southeast $\frac{1}{4}$ Section 20, Township 20S, Range 21E; 160 Acres
Southwest $\frac{1}{4}$ Section 21, Township 20S, Range 21E ; 160 Acres
Northeast $\frac{1}{4}$ Section 29, Township 20S, Range 21E; 160 Acres
Northwest $\frac{1}{4}$ Section 28, Township 20S, Range 21E; 160 Acres
Southeast $\frac{1}{4}$ Section 29, Township 20S, Range 21E ; 160 Acres
Southwest $\frac{1}{4}$ Section 28, Township 20S, Range 21E; 160 Acres



AGENDA STAFF REPORT

MEETING DATE: 8/18/2020

AGENDA SECTION: J

SUBJECT:

Public Works: Approval of a Sole Source Purchase of two 2020 Global R4AIR Regenerative Air Sweepers from Terry Equipment Inc., of Bloomington, Ca., in the amount of \$619,454.55; and a declaration of two 2008 street sweeper vehicles as surplus and authorization for the sale of those vehicles in accordance with City policy.

RECOMMENDATION:

That the City Council, by motion:

1. Approve the Sole Source Purchase of two 2020 Global R4AIR Regenerative Air Sweepers from Terry Equipment Inc., of Bloomington, Ca., in the amount of \$619,454.55; and
2. Declare two existing 2008 street sweepers as surplus and authorize the sale of these vehicles in accordance with City policy.

BACKGROUND:

The City's Fleet Replacement Reserve allocates funds to replace two existing street sweeper vehicles that have outlived their useful life. The vehicles that are scheduled to be replaced have exceeded the City's established replacement lifecycle criteria of a minimum eight years of service and are showing signs of advanced wear as documented by maintenance records. Maintenance costs have steadily increased over the years and the vehicles have become unreliable for everyday front line duty. The new Global R4AIR Regenerative Air Sweepers are PM -10 compliant and meet all San Joaquin Valley Air Pollution Control District (SJVAPCD) standards.

The City was successful in applying for Congestion Mitigation/Air Quality ("CMAQ") grant funds to assist in the purchase of these sweepers. In order to comply with the CMAQ guidelines, the purchase must meet federal "Buy America" requirements. This limits the number of vendors who can supply "Buy America" compliant vehicles. City staff could identify only one (1) vendor who fully complies with these requirements. City staff tested this equipment and determined that

it would meet the City's needs for the street sweeping program. Caltrans Local Assistance has reviewed and approved the purchase of these vehicles as compliant with CMAQ guidelines.

The FY 19/20 Budget has an approved purchase of \$520,194.00 for the replacement of two street sweepers. The Fleet Replacement Reserve has already collected the \$520,194.00 necessary to cover the budgeted expense. The City was successful in obtaining Congestion Mitigation/Air Quality grant funds in the amount of \$536,500.00 for the purchase of these two vehicles. Given the total purchase price for the new street sweepers is \$619,454.55 including tax and delivery, the street sweeping fund will only need to contribute \$82,954.55 to cover the cost of the vehicle purchase. The remaining funds of approximately \$437,240, previously collected for replacement of these two vehicles, will be returned to the street sweeping reserves.

FISCAL IMPACT:

\$82,954.55 will be funded from the Vehicle Replacement Reserve to cover the cost of the vehicle purchase. The remaining funds of approximately \$437,240, previously collected for replacement of these two vehicles, will be returned to the street sweeping reserves.

ATTACHMENTS:

Quote

CMAQ Authorization



City of Hanford

900 S. 10th Avenue

Hanford, CA 93230

Attention: Tommy Bettencourt

June 17, 2020

We are pleased to provide you a quote for our **2020 Global R4AIR Regenerative Air Sweeper** on **Governmental Sourcewell Contract** equipped as follows:

- High Visibility Cab (Glass Entry Door Included)
- 78 dBA In-Cab Noise Level
- Dust & Weather Sealed Cab
- Multi-Adjustable Suspension Seat
- Tilt & Telescoping Steering Wheel
- Tinted Safety Windows & Windshield
- Windshield Wiper/Washer
- Ergonomic Go Pedal
- Coolant Temp, Oil Pressure & Voltmeter Gauges
- Coolant, Eng Oil Pressure & Low Hyd Oil Warning Lts.
- Speedometer, Tachometer & Hourmeter
- Fuel Level Gauge
- 130 amp Heavy-Duty Alternator
- 250 gal (945 L) Polyethylene & SS Water Tank
- Gutter Broom Water Spray Jets
- Pick Up Hood Water Spray Jets
- Low Water Level Light in Cab
- 15' (4.6 m) Hydrant Hose with Coupling & Wrench
- Front Spray Bar
- Engine Block Heater
- Centauri Precleaner
- Electrical Systems Locker
- Four Wheel Disk Brakes
- ABS Brake System
- LED Stop/Tail Lights, Clearance Lights
- LED Gutter Broom Spotlights
- Sealed Beam Headlights
- 2019 Cummins Engine with 5 gal. DEF Tank
- 5.8 cu yd (4.3 cu meter) Hopper (Volumetric)
- Auto Safety Hopper Props0 Hopper

Southern California: 205 W. Slover Ave., Bloomington, CA 92316 - Phone No. (909) 879-1438

Northern California: 4 Wyne Court Bldg. 6, Sacramento, CA 95829 - Phone No. (916) 388-2480

Las Vegas: 2522 Abels Lane, Las Vegas, NV 89115

www.terryequipment.com

Attachment: Quote (PW: Purchase of Two Replacement Street Sweepers)



- *Hopper Dump Alarm*
- *47" (1194 mm) dia. Gutter Brooms*
- *In-Cab Gutter Broom Pressure Adjustment*
- *Tuf-Grip Disposable Gutter Broom Segments*
- *72" Wide Pick-Up Hood with Carbide Dirt Shoes*
- *32" Diameter Impeller Includes wear-resistant coating*
- *Internal Impeller Housing components inc. Rubber Lining*
- *Two 18 gal (68 L) Hydraulic Oil Tanks*
- *Hydraulic Manifolds in LH Fender*
- *18.5' Turning Radius with Front Suspension*
- *All Sheet Metal Surfaces Primer Powder Coated*
- *Sheet Metal Surfaces Powder Coated*
- *Standard Frame Paint Color Gray*
- *Standard Hopper/Cab/Fenders Paint Color White*
- *Fender Mounted Tool Box*
- *Front & Rear Tie Downs with Tow Hooks*
- *Buddy Seat*
- *ERGO SWITCH STANDARD*
- *REAR VIEW CAMERA STANDARD*
- *100% STAINLESS STEEL HOPPER CONSTRUCTION*
- *Right Side Hopper Access Door*
- *1 Sweeper Service Manuals in English*
- *1 Sweeper Parts Manuals in English*
- *1 Sweeper Operator Manual in English*
- *2019 Cummins Engine with 5 gal. DEF Tank*

Included Options/Features:

- *GB Speed Control*
- *Dual GB Tilt (ILOS 2-323742)*
- *Hopper Raise/Lower - Rear Fender Upgrade*
- *GB Plate – Bolt on (ILOS 3-301152)*
- *Hopper Wash Out*
- *Sweeping Hood Wash out System*
- *AM/FM Radio w/ CD with Aux & USB Ports*
- *Seat, High Back, Air, Gray (ILOS 317052)*
- *Heated & Remote Controlled Mirrors with Heavy Duty Brackets*
- *ArrowStick (LED)*
- *Cab Strobe (LED)*

Southern California: 205 W. Slover Ave., Bloomington, CA 92316 - Phone No. (909) 879-1438

Northern California: 4 Wyne Court Bldg. 6, Sacramento, CA 95829 - Phone No. (916) 388-2480

Las Vegas: 2522 Abels Lane, Las Vegas, NV 89115

www.terryequipment.com

Attachment: Quote (PW: Purchase of Two Replacement Street Sweepers)



- (2) Rear Flashing (LED) Strobes (mounted in hyd. Towers)
- Limb Guard (Cab Beacon/Strobe)
- Front Flood Lights Dual
- Rear Flood Lights Dual LED
- Fire Extinguisher 2 ½ Pound
- Triangle Flare Kit
- In-Cab Water Tank Gauge
- Remote Grease Block – 5 Positions
- PM-10 Micro Trap System
- Global Supplied Leaf Rake with in Cab Controls
- DMV Licensing and Vin Verifier

Delivery is 150 Days ARO

(2) Global R4AIR Regenerative Sweepers	\$ 577,580.00
California Sales Tax @ 7.25%	\$ 41,874.55
Customer Contract Price FOB Hanford	\$ 619,454.55

Sincerely,
Terry Equipment Inc.

Russell Dysard
Area Sales Manager
909-665-0021

Southern California: 205 W. Slover Ave., Bloomington, CA 92316 - Phone No. (909) 879-1438

Northern California: 4 Wyne Court Bldg. 6, Sacramento, CA 95829 - Phone No. (916) 388-2480

Las Vegas: 2522 Abels Lane, Las Vegas, NV 89115

www.terryequipment.com

PROGRAM SUPPLEMENT NO. F041
to
ADMINISTERING AGENCY-STATE AGREEMENT
FOR FEDERAL-AID PROJECTS NO 06-5091F15

Adv Project ID Date: April 6, 2020
0619000111 Location: 06-KIN-0-HAN
Project Number: CMLNI-5091(063)
E.A. Number:
Locode: 5091

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 11/01/16 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. approved by the Administering Agency on (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

PROJECT LOCATION: Hanford corporation yard

TYPE OF WORK: Purchase 2 PM-10 street sweepers

LENGTH: 0.0(MILES)

Estimated Cost	Federal Funds	Matching Funds		
	Z400 \$536,500.00	LOCAL		OTHER
\$606,008.00		\$69,508.00		\$0.00

CITY OF HANFORD

By [Signature]
Title PW Director
Date 7/31/2021
Attest [Signature]

STATE OF CALIFORNIA
Department of Transportation

By _____
Chief, Office of Project Implementation
Division of Local Assistance

Date _____

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer [Signature]

Date 4/10/20

\$536,500.00

SPECIAL COVENANTS OR REMARKS

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.

D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-

Attachment: CMAQ Authorization (PW: Purchase of Two Replacement Street Sweepers)

SPECIAL COVENANTS OR REMARKS

assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at www.sam.gov.

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of

Attachment: CMAQ Authorization (PW: Purchase of Two Replacement Street Sweepers)

SPECIAL COVENANTS OR REMARKS

Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be

Attachment: CMAQ Authorization (PW: Purchase of Two Replacement Street Sweepers)

SPECIAL COVENANTS OR REMARKS

used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be

Attachment: CMAQ Authorization (PW: Purchase of Two Replacement Street Sweepers)

SPECIAL COVENANTS OR REMARKS

examined under its single audit prepared in accordance with 2 CFR, Part 200.

O. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contracts over \$10,000, or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.

Attachment: CMAQ Authorization (PW: Purchase of Two Replacement Street Sweepers)



AGENDA STAFF REPORT

MEETING DATE: 8/18/2020	AGENDA SECTION: K
--------------------------------	--------------------------

SUBJECT:

Public Works: Approval of the Notice of Completion for the Hanford Airport Runway 14-32 Rehabilitation Project, and authorization for the Mayor to execute and the City Clerk to attest and file said Notice with the Kings County Recorder's Office.

RECOMMENDATION:

That the City Council, by motion, approve a Notice of Completion for the Hanford Airport Runway 14-32 Rehabilitation Project, and authorize the Mayor to execute and the City Clerk to attest and file said Notice with the Kings County Recorder's Office.

BACKGROUND:

On July 16, 2019 the Council awarded the Hanford Airport Runway 14-32 Rehabilitation Project to American Road Maintenance of Tucson, AZ. This project consisted of removal of existing pavement markings, crack repair, application of emulsified asphalt seal coat, and application of new pavement markings for Runway 14-32 at the Hanford Municipal Airport (see attached map).

There was one contract change order for a credit on this project to correct balance final quantity amounts, which reduced the final contract amount by -\$22,355.00.

FISCAL IMPACT:

The FY 19/20 Amended Airport Capital Improvement Program Budget provides \$445,510 for this project. The FAA Grant offer, in the amount of \$370,721, includes funding for project inspections, construction, and administrative costs. Attached is the Budget Page for Council review.

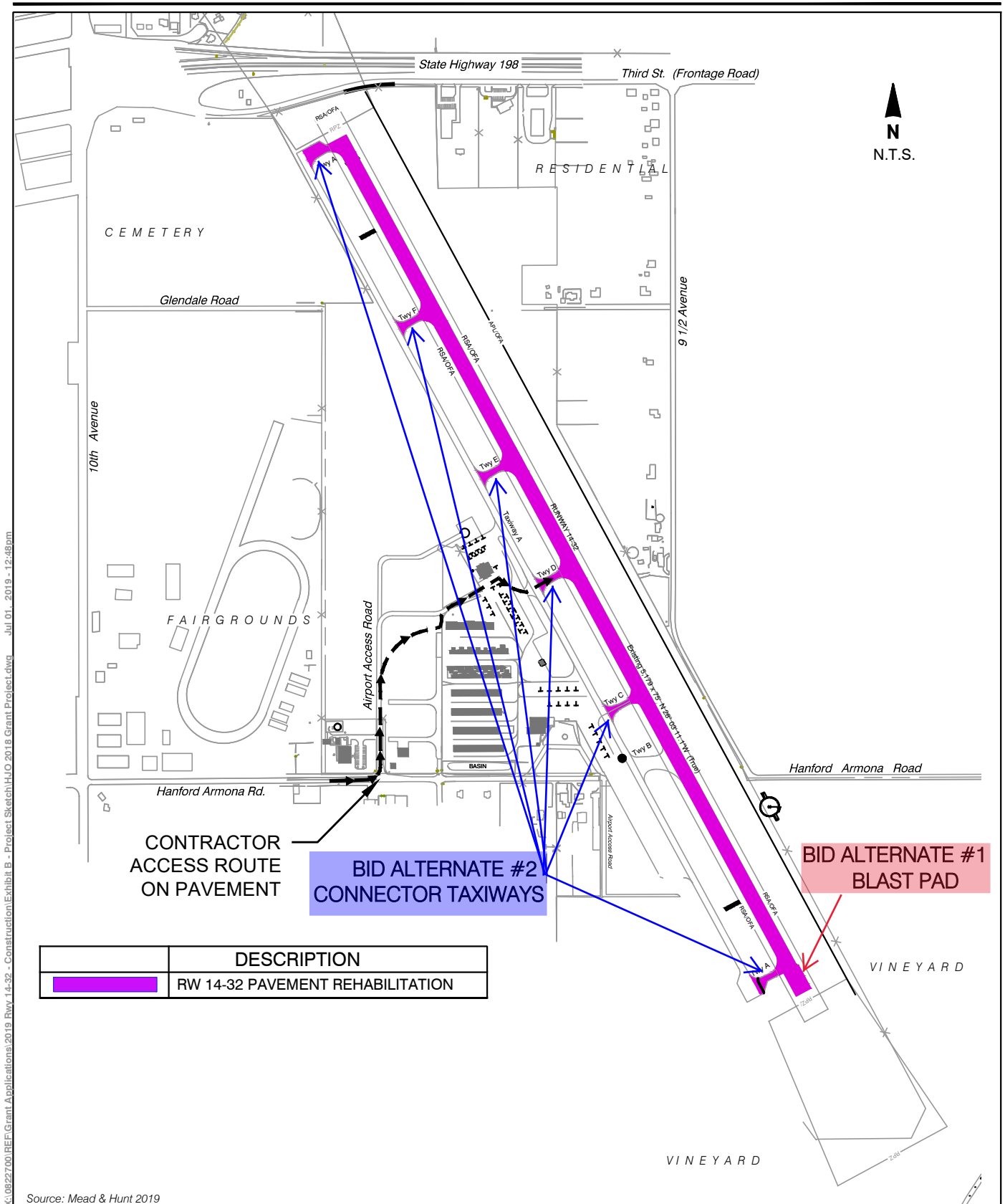
The total cost to complete the project was \$420,449.70. Attached is a Final Project Construction and Finance History Report for Council review.

ATTACHMENTS:

Project Map

NOC - Recording Original

FINAL PROJECT CONSTRUCTION AND FINANCE HISTORY



	DESCRIPTION
	RW 14-32 PAVEMENT REHABILITATION

X:\0822700\BEE\Grant Applications\2019 Rwy 14-32 - Construction\Exhibit B - Project Sketch\HJO 2018 Grant Project.dwg Jul 01, 2019 - 12:48pm

Source: Mead & Hunt 2019

Hanford Municipal Airport 2019 FAA Grant Application

Attachment: Project Map (PW: NOC for the Hanford Airport Runway 14-32 Rehabilitation Project)

RECORDING REQUESTED BY:
CITY OF HANFORD

When recorded return to:

City Clerk
City of Hanford
315 North Douty Street
Hanford, California 93230-3951

G.C. 27361.3 - Fee NIL

NOTICE OF COMPLETION

TO WHOM IT MAY CONCERN:

YOU ARE HEREBY NOTIFIED AS FOLLOWS:

1. The work of Improvement is located: Hanford Airport
APN: 016032022000
2. The Improvement is particularly described as: Hanford Airport Runway 14-32
Rehabilitation Project
3. The date of completion of the work of Improvement: December 17, 2019
4. The Owner of the work of Improvement: City of Hanford.
5. The nature of the owner's interest or estate: Fee Simple Title.
6. The name of the original contractor for the work of Improvement:
American Road Maintenance
7. The surety for the work of Improvement: Travelers Casualty & Surety Company of
America
8. All work for this project has been completed.
9. Accepted by minute action of the City Council of the City of Hanford on:
August 18, 2020

I certify under penalty of perjury that the foregoing is true and correct.
Dated this 18th day of August, 2020.

BY: _____

John Draxler, Mayor
City of Hanford, County of Kings, State of California

Attachment: NOC - Recording Original (PW: NOC for the Hanford Airport Runway 14-32 Rehabilitation Project)

I, the undersigned, say:

I am the person who signed the foregoing notice. I have read the above notice and know its contents, and the facts stated therein are true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Hanford, California, this ____ day of _____, 2020.

BY: _____

John Draxler, Mayor

City of Hanford, County of Kings, State of California

Authority: Section 1181 Civil Code

Attachment: NOC - Recording Original (PW: NOC for the Hanford Airport Runway 14-32 Rehabilitation Project)

FINAL PROJECT CONSTRUCTION AND FINANCE HISTORY

PROJECT: Hanford Airport Runway 14-32 Rehabilitation Project
 CONTRACTOR: American Road Maintenance
 4554 E. Eco Industrial Pl
 Tucson, AZ 85756

CONTRACT DATES:	Bid Date	June 25, 2019
	Council Award	July 16, 2019
	Contractor Started Work	November 4, 2019
	Contract Time of Completion	December 17, 2019
	Contractor Completed Work	December 17, 2019

CONTRACT CHANGE ORDERS:

Contract Change Order No. 1: Balance of final quantities.

For a total Decrease of \$22,355.00

FINANCIAL HISTORY:

<u>SOURCE OF BUDGET FUNDING</u>	<u>AMOUNT</u>
FY 19/20 Amended Airport Capital Improvement Program Budget	
Construction and Contingency	\$ 369,810.00
Project Inspections, Testing, and Administrative Cost	\$ 75,700.00
Total Budget Funding	\$ <u>445,510.00</u>

CONSTRUCTION COST

Original Contract – Total Bid Award	\$ 336,208.70
Contract Change Order No. 1	-\$ 22,355.00
Total Construction Cost	\$ <u>313,853.70</u>

ADMINISTRATIVE AND TESTING COST

Mead and Hunt, Inc.: Work Order 7	\$ 93,697.00
Zumwalt and Hansen: Work Order 26	\$ 12,899.00
Total Construction Cost	\$ <u>106,596.00</u>
Fund Balance	\$ <u>25,060.30</u>



AGENDA STAFF REPORT

MEETING DATE: 8/18/2020	AGENDA SECTION: L
--------------------------------	--------------------------

SUBJECT:

Public Works: Award of Contracts and Authorization for the City Manager to execute, and the City Clerk to attest, the attached On-Call Materials Testing and Geotechnical Services agreements with Kleinfelder, Inc. of Fresno, CA, and Moore Twining Associates, Inc. of Fresno, CA to provide geotechnical services for all capital improvement projects for calendar years 2020-2023.

RECOMMENDATION:

That the City Council, by motion, approve the award of annual contracts and authorize the City Manager to execute, and the City Clerk to attest, the attached On-Call Materials Testing and Geotechnical Services agreements with Kleinfelder, Inc. of Fresno, CA, and Moore Twining Associates, Inc. of Fresno, CA to provide geotechnical services for all capital improvement projects for calendar years 2020-2023.

BACKGROUND:

Capital Improvement projects require testing to determine compliance with plans and specifications, and to assure that quality construction is being performed. The majority of these projects require spot soil density testing (compaction tests) to assure compliance with City Standards. Additionally, some street projects require resistance value determination (R-value tests) and periodic coring of the existing street sections to enable engineers to design the structural section. The City has been using annual or biannual agreements for geotechnical services testing since 1994. With an annual agreement, the cost of testing is substantially reduced and requires only proposal and work order to initiate services.

On October 1, 2019, the Council approved a Resolution adopting Chapter 10 of the Caltrans Local Assistance Procedures Manual for consultant selections to perform work on federal and/or state funded projects. The required procedures for soliciting, evaluating, scoring, and negotiating were followed.

Requests for Qualifications (RFQ's) were solicited, and a total of four (4) proposals were received for evaluation. Staff reviewed and ranked the proposals based on several criteria including qualifications and experience, and has received Caltrans approvals for their Indirect Cost Rates. Staff recommends the approval of two (2) on-call agreements with Kleinfelder, Inc. and Moore Twining and Associates, Inc.

Both firms are licensed in the State of California. Based on their professional qualifications and demonstrated competence, staff feels that Kleinfelder, Inc. and Moore Twining and Associates, Inc. are qualified to provide the necessary geotechnical services for the 2020 thru 2023 calendar years, and have prepared the attached agreements for council approval. In accordance with Section 4525 and 4529 of the Government Code, the geotechnical fees were negotiated with the top two selected firms and the indirect costs rates were approved by Caltrans and made a part of the agreement.

FISCAL IMPACT:

The cost for geotechnical service is included in each capital improvement program budget. Each project will be charged in accordance with the attached fee schedules and invoices will be submitted for performed work.

ATTACHMENTS:

Moore Twining Agreement
Kleinfelder Agreement



Moore Twining Associates, Inc.

CITY OF HANFORD

ON-CALL MATERIALS TESTING AND GEOTECHNICAL SERVICES CONSULTANT AGREEMENT

FOR LOCAL PROJECTS AND STATE AND FEDERAL AID ASSISTED PROJECTS

(BASED ON CALTRANS LAPM FORM 10-R)

City of Hanford
900 S. 10th Avenue
Hanford, CA 93230

CITY OF HANFORD

MATERIALS TESTING AND GEOTECHNICAL SERVICES CONSULTANT AGREEMENT

(For Local Projects and State and Federal Aid Assistance Projects, based on Caltrans LAPM Form 10-R)
 This agreement contains fiscal requirements from 2 CFR 200 and may be used for both Federal and State funded contracts as well.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I: INTRODUCTION	1
A. RETENTION OF CONSULTANT	
B. SCOPE OF SERVICES	
C. INDEMNIFICATION	
D. INDEPENDENT CONTRACTOR STATUS	
E. TAX WITHHOLDINGS	
F. THIRD PARTY PERSONS EMPLOYED	
G. AGREEMENT NOT TRANSFERABLE	
H. NEGLIGENT ACTS AND OMISSIONS	
I. ALTERATIONS APPROVED IN WRITING	
J. PAYMENTS	
K. INTEREST OF CONSULTANT	
L. PROFESSIONAL ABILITY OF CONSULTANT	
M. COMPLIANCE WITH LAWS	
N. LICENSES	
ARTICLE II: CONSULTANT'S REPORTS OR MEETINGS	4
A. PROGRESS REPORTS AND BILLINGS	
B. RETESTS	
C. MEETINGS	
ARTICLE III: STATEMENT OF WORK	4
A. CONSULTANT SERVICES	
B. SUBSURFACE INVESTIGATIONS	
C. GEOTECHNICAL SERVICES	
D. QUALITY ASSURANCE	
E. CONFERENCES, SITE VISITS, AND INSPECTION OF WORK	
F. CONSULTANT SERVICES DURING CONSTRUCTION	
G. DOCUMENTATION AND SCHEDULES	
H. CITY OBLIGATIONS	
I. DELIVERABLES AND NUMBER OF COPIES	
ARTICLE IV: PERFORMANCE PERIOD	6
ARTICLE V: ALLOWABLE COSTS AND PAYMENTS	6
A. PAYMENT	
B. DIRECT COSTS	
C. WORK ORDERS	
D. DRAFT WORK ORDERS	
E. NOT TO EXCEED COMPENSATION	
F. STATE RATE REIMBURSEMENTS	
G. CHANGE ORDERS	
H. MONTHLY PAYMENTS	
I. NOTICE TO PROCEED	
J. EXECUTED WORK ORDERS	
K. INVOICES	

L. PERIOD OF PERFORMANCE FOR WORK ORDERS	
M. AMOUNT PAYABLE FOR WORK ORDERS	
N. PAYMENT FOR DELIVERABLES	
O. AMENDMENT TO AGREEMENT	
P. AGREEMENT MAXIMUM PAYMENT	
Q. EXTRA WORK	
ARTICLE VI: TERMINATION	8
ARTICLE VII: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS	9
ARTICLE VIII: RETENTION OF RECORD/AUDITS	10
ARTICLE IX: AUDIT REVIEW PROCEDURES	10
ARTICLE X: SUBCONTRACTING	12
ARTICLE XI: EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES	13
ARTICLE XII: STATE PREVAILING WAGE RATES	13
A. DIR REGISTRATION	
B. WAGE DETERMINATIONS (CALTRANS)	
C. GENERAL PREVAILING WAGE RATES	
D. PAYROLL RECORDS	
E. CERTIFIED PAYROLL	
F. PENALTY	
G. HOURS OF LABOR	
H. EMPLOYMENT OF APPRENTICES	
ARTICLE XIII: CONFLICT OF INTEREST	17
ARTICLE XIV: REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION	18
ARTICLE XV: PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING	18
ARTICLE XVI: NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE	19
ARTICLE XVII: DEBARMENT AND SUSPENSION CERTIFICATION	20
ARTICLE XVIII: DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION	20
ARTICLE XIX: INSURANCE	22
ARTICLE XX: FUNDING REQUIREMENTS	24
ARTICLE XXI: CHANGE IN TERMS	25
ARTICLE XXII: CONTINGENT FEE	25
ARTICLE XXIII: DISPUTES	25
ARTICLE XXIV: INSPECTION OF WORK	26
ARTICLE XXV: SAFETY	26
ARTICLE XXVI: OWNERSHIP OF DATA	26
ARTICLE XXVII: CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR	27
A. CONSULTANT'S PERSONNEL AVAILABILITY	
B. CONSULTANT'S PERSONNEL REIMBURSEMENT	
C. CONSULTANT'S PERSONNEL SERVICES	
D. ATTORNEYS' FEES	
E. SOLE AND ONLY AGREEMENT	
F. INVALIDITY	
G. AMENDMENT	
H. GOVERNING LAW	
I. WAIVER	
ARTICLE XXVIII: CONFIDENTIALITY OF DATA	28

<u>ARTICLE XXIX: NATIONAL LABOR RELATIONS BOARD CERTIFICATION</u>	29
ARTICLE XXX: EVALUATION OF CONSULTANT.....	29
ARTICLE XXXI: RETENTION OF FUNDS	29
ARTICLE XXXII: NOTIFICATION	29
ARTICLE XXXIII: AUTHORITY TO ENTER AGREEMENT.	30
<u>ARTICLE XXXIV: CONTRACT</u>	30
<u>ARTICLE XXXV SIGNATURES</u>	31

EXHIBITS

- A. CONSULTANT'S COST PROPOSAL FOR COST PER UNIT OF WORK (LAPM FORM 10-H3)
- B. QUALITY ASSURANCE PLAN (QAP)
- C. CONSULTANT'S CONTRACT DBE COMMITMENT (10-O2)
- D. DBE INFORMATION – GOOD FAITH EFFORTS (15-H)
- E. FINAL REPORT – UTILITIZATION OF DBE FOR ON-CALL CONTRACTS (17-F A&E ON-CALL)
- F. CONSULTANT PERFORMANCE EVALUATION SHEET FOR PROJECT CLOSEOUT (10-B)
- G. CONSULTANT ANNUAL CERTIFICATION OF INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM (10-K)
- H. DISCLOSURE OF LOBBYING ACTIVITIES (10-Q)

AGREEMENT FOR PROFESSIONAL SERVICES FOR ON-CALL MATERIALS TESTING AND GEOTECHNICAL SERVICES

ARTICLE I: INTRODUCTION

This AGREEMENT for Professional Services (“AGREEMENT”) is made and entered into this 18th day of August, 2020, by and between the City of Hanford, a Municipal Corporation (“CITY”), and Moore Twining Associates, Inc. (“CONSULTANT”), incorporated in the State of California.

The Project Manager for the “CONSULTANT” will be the City Engineer and/or its assignees.

The name of the “CITY” is as follows: City of Hanford.

The Contract Administrator for CITY will be the City Engineer and/or its assignees.

RECITALS

1. CONSULTANT represents to CITY that they are specially trained, experienced, licensed and competent to perform the services which will be required by this AGREEMENT; and
2. CONSULTANT represents to CITY that they possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this AGREEMENT on the terms and conditions described herein.
3. CITY desires to retain CONSULTANT to render Materials Testing and Geotechnical Services as set forth in this AGREEMENT.

NOW THEREFORE, in consideration of the mutual covenants set forth herein for such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

A. **RETENTION OF CONSULTANT.** Subject to the terms and conditions set forth herein, the CITY retains the CONSULTANT to perform the services identified in this AGREEMENT, as an independent contractor and CONSULTANT hereby accepts this independent contractor appointment.

B. **SCOPE OF SERVICES.** The work to be performed under this AGREEMENT is described in Article III, Statement of Work, and the approved CONSULTANT’s Cost Proposal (LAPM Form 10-H3 and 10-H2)

dated August 4, 2020. The approved CONSULTANT’s Cost Proposal (LAPM Form 10-H3 and 10-H2) is attached hereto as EXHIBIT “A” and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.

C. **INDEMNIFICATION.** CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless the CITY, its officers, officials, agents, employees and volunteers from and against any and all actions, injuries, claims, damages, demands, liabilities, costs,

losses, and expenses, direct or indirect, including without limitation, any and all court costs, attorneys' fees, expert witness fees, and other expenses which the CITY may sustain or incur as a consequence of, or are in any way related to or arising out of any failure to the CONSULTANT to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a willful or negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT and services on the part of CONSULTANT, except such loss or damage which was caused by the sole or active negligence, or willful acts or misconduct of CITY, as determined by a Court of competent jurisdiction. If the CONSULTANT maintains additional coverage or higher limits than those required herein, then CITY shall be entitled to additional coverage or higher limits maintained by CONSULTANT. The provisions of this section shall survive termination or suspension of this AGREEMENT.

D. INDEPENDENT CONTRACTOR STATUS. CONSULTANT, in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employee's), in the performance of the Services to be performed pursuant to this AGREEMENT, is an independent contractor, and shall not act as an agent or employee of the CITY, and that no relationship of employer-employee exists between the Parties hereto. The CONSULTANT's assigned personnel shall not be entitled to, or obtain retirement benefits or other benefits which accrue to CITY employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. Nothing in the AGREEMENT shall create or be construed as creating a partnership, joint venture, or any other relationship between the CITY and CONSULTANT.

E. TAX WITHHOLDINGS. CITY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the CITY as to the designation of tasks to be performed and the results to be accomplished.

F. THIRD PARTY PERSONS EMPLOYED. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds CITY harmless from any and all claims that may be made against CITY based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

G. AGREEMENT NOT TRANSFERABLE. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work without the prior written approval of the CITY. However, claims for money due, or which become due to CONSULTANT from CITY under this AGREEMENT, may be assigned to a financial institution or to a trustee in bankruptcy without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the CITY.

H. NEGLIGENT ACTS AND OMISSIONS. CONSULTANT shall be fully responsible to the CITY for the intentional misconduct and negligent acts and omissions of its contractors and subcontractors or sub-consultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.

I. **ALTERATIONS APPROVED IN WRITING.** No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

J. **PAYMENTS.** The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided. Costs for testing services shall be as stated in Fee Schedule (Exhibit "B"). The costs stated shall include all labor, applicable prevailing wages, materials, equipment, water, light, power, transportation and all other services and facilities of any nature whatsoever to execute, complete, and deliver the scope of work within the specified time.

K. **INTEREST OF CONSULTANT.** CONSULTANT and its shareholders and covenants represents that they do not now have any investment or interest in real property, and shall not acquire any interest, direct or indirect in the area covered by this AGREEMENT, or any other source of income, interest in real property, or investment which would be affected in any manner or degree by the performance of CONSULTANT's Services hereunder. CONSULTANT further covenants and represents that, in the performance of the Services hereunder, to the best of its knowledge no person having any such interest shall perform any Services under this AGREEMENT.

CONSULTANT is not a designated employee within the meaning of the Political Reform Act because CONSULTANT:

1. Will conduct, research, and arrive at conclusions with respect to rendition of information, advice, recommendation, or counsel, independent of the control and direction of the CITY or of any CITY official, other than normal agreement monitoring; and
2. Shall possess no authority with respect to any CITY decision beyond rendition of information, advice, recommendation, or counsel. FPPC Reg.18700, et seq.

L. **PROFESSIONAL ABILITY OF CONSULTANT.** CITY has relied upon CONSULTANT's representations regarding its training and professional ability to perform the Services hereunder as a material inducement to enter into this AGREEMENT. CONSULTANT shall therefore provide properly skilled personnel to perform all Services under this AGREEMENT. The primary provider of the Services

called for by this AGREEMENT shall be Mr. Read Andersen, RCE, RGE - Geotechnical Contract Manager
(Consult fill in employee name and title who will represent the agreement to the CITY)
 who shall not be replaced without the written consent of the CITY. All work performed by the CONSULTANT under this AGREEMENT shall be in accordance with the applicable professional standard of care, and shall meet the local professional standard of quality ordinarily to be expected of competent persons in CONSULTANT's field of expertise working in Kings County.

M. **COMPLIANCE WITH LAWS.** CONSULTANT shall use the proper standard of care in performing the Services, and shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations in effect at the time the AGREEMENT is executed. In addition, if the request for proposal to provide professional services which are the subject of this AGREEMENT cited any Federal or State Financial Assistance involved in the project for which the Services are provided, the CONSULTANT shall perform all services in accordance with all applicable federal and state laws, rates and regulations in effect at the time the AGREEMENT is executed.

N. **LICENSES.** CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this AGREEMENT, any licenses, permits, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT shall maintain a CITY of Hanford Business License.

ARTICLE II: CONSULTANT'S REPORTS OR MEETINGS

A. **PROGRESS REPORTS AND BILLINGS.** CONSULTANT shall submit progress reports and billings on EACH specific project in accordance with the Work Order at least once a month. CONSULTANT's bill shall include an itemized description of the Services and Tests performed, the date the Services were performed, the number of tests performed, the number of hours spent, and by whom, and shall include a description of any authorized reimbursable expenditures. The report should be sufficiently detailed for the CITY's Contract Administrator or Project Coordinator: to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; to sufficiently address any difficulties or special problems encountered so remedies can be developed. The CITY shall pay the CONSULTANT no later than 60 days after the date of submittal of a complete invoice for completed tasks and approval of the invoice by CITY staff.

B. **RETESTS.** All retest hourly charges shall be separated on the invoice so the CITY can back charge the Contractor. If the CONSULTANT desires, a separate invoice shall be submitted for the CITY to back charge the Contractor for all retesting charges

C. **MEETINGS.** CONSULTANT's Project Manager shall meet with CITY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III: STATEMENT OF WORK

A. **CONSULTANT SERVICES.** The CONSULTANT shall perform professional geotechnical services, in accordance with all the provisions of this AGREEMENT. The Scope of Work for each project will be determined by the CITY Engineer. The project scope will be incorporated into a streamlined (mini) RFP, and will be sent to the pre-qualified selected consultants under agreement. The CONSULTANT shall submit their proposal to the CITY within the required timeframe, and the CITY shall select the top proposal using Qualifications Based Selection. Upon selection, the CITY will negotiate the cost based on the labor price agreement. A work order will be assigned for each project after CONSULTANT determines an estimated cost for producing all necessary plans and documents to satisfy the Scope of Work. CONSULTANT shall correct any and all errors and/or omissions, which arise out of CONSULTANT's negligence or intentional misconduct, in the performance of the Services and any documents resulting therefrom even though CITY has accepted said Services or documents. CONSULTANT shall make such corrections upon CITY's request and at no cost or expense to CITY.

Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No Significant Impact, or the Caltrans District Director signs the Record of Decision (see LAPM Chapter 6: Environmental Procedures, and the Standard Environmental Reference).

B. **SUBSURFACE INVESTIGATIONS.** This AGREEMENT provides for CONSULTANT Sub-Surface Investigations as directed by the CITY for Environmental testing, topographic mapping, boring,

construction staking, and other specialized sub-surface investigation services, either by the CONSULTANT, or under the supervision of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order.

C. GEOTECHNICAL SERVICES. The AGREEMENT provides for CONSULTANT services including Geotechnical engineering, Hydrogeology services, Environmental engineering, Construction observation, inspection, and materials testing, and other testing services for the CITY projects as determined by the City Engineer or his designee. Tests shall include but are not limited to:

1. Test sampling, test coring, earthwork observation and ASTM D-2922 and/or ASTM D-1556 spot soil density and moisture content tests on an hourly rate basis with a set minimum hours per visit including travel time.
2. Caltest 216 Maximum Density/Optimum Moisture Determination.
3. Caltest 217 San Equivalent Test.
4. Caltest 301 Resistant (R) Value Determination.
5. ASTM C-136 soil and aggregate sieve analysis including wash.
6. ASTM C-136 soil and aggregate sieve analysis including hydrometer.
7. ASTM D-4318 Atterberg Limits, Plasticity Index, Liquid Limit and Plastic Limit.
8. UBC 29-2 Expansion Index.
9. ASTM C-39 Concrete Compressive Strength Tests (1 – 7 day, 2 – 28 day, and 1 – hold).
10. Four inch diameter cores to determine material and thickness.
11. Other tests requested by the City of Hanford will be negotiated.

Reports shall involve the submittal of test results (field data) within 24 hours of date of test and also a written report signed and stamped by a professional engineer within five working days of the tests. The report shall include recommendations based on testing performed.

D. QUALITY ASSURANCE. All tests shall be performed in accordance with applicable City of Hanford Standards, CalTrans testing methods, ASTM testing methods, and/or other applicable standards as determined by the City Engineer or his designee.

E. CONFERENCES, SITE VISITS, AND INSPECTION OF WORK. This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the CITY, County, State, and/or FHWA. Costs incurred by CONSULTANT for meetings subsequent to the initial meeting shall be included in the fee.

F. CONSULTANT SERVICES DURING CONSTRUCTION.

This AGREEMENT provides for CONSULTANT services during the course of construction, including material testing, analysis, and determinations. Payment for services shall be paid at the rates stated in the attached Fee Schedule, and shall not exceed the Work Order fee stated without an approved Change Order.

G. DOCUMENTATION AND SCHEDULES. This AGREEMENT provides for the CONSULTANT to document the results of the work to the satisfaction of CITY, and if applicable, to the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Work Order objectives. All final construction documents shall be stamped and wet signed when completed.

H. **CITY OBLIGATIONS.** Data applicable to the Work Order Scope of Work shall be made available to the CONSULTANT at the time of Work Order Execution. Data may include maps, plans, documents, and records that are in the possession of the CITY. Additional items to be made available to the CONSULTANT shall be noted specifically on the Work Order.

I. **DELIVERABLES AND NUMBER OF COPIES.** The number of copies or documents to be furnished with each submittal, such as reports, brochures, sets of plans, specifications, maps, etc., shall be two (2) copies minimum unless otherwise specified in the work order or as may be required for City Permitting. AutoCAD and Civil 3D (version 2018) files of all projects shall be provided to the CITY upon completion.

1. The CONSULTANT shall, at minimum, utilize the following standards for work performed under this AGREEMENT.
 - City of Hanford Standard Plans
 - City of Hanford Standard Specifications
 - City of Hanford Quality Assurance Plan (QAP)
 - Caltrans Standard Plans and Specifications

ARTICLE IV: PERFORMANCE PERIOD

A. This AGREEMENT shall go into effect on August 1, 2020, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY's Contract Administrator. The AGREEMENT shall be in effect for 3 (three) years, and end on August 1, 2023, unless extended by AGREEMENT amendment.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on CITY until the AGREEMENT is fully executed and approved by CITY.

C. The period of performance for each specific project shall be in accordance with the Work Order for that project. If work on a Work Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the Work Order in progress only. In no case shall the maximum term of this AGREEMENT exceed five (5) years.

ARTICLE V: ALLOWABLE COSTS AND PAYMENTS

A. **PAYMENT.** CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's attached approved Cost Proposal/LAPM Form 10-H2, (Exhibit A), subject to Prevailing Wage Requirements which are available at the office of the City Engineer. An estimate for cost of services for each project shall be submitted to the City Engineer before commencement of work. Payment by CITY under this AGREEMENT shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment. An increase in the fee schedule will be allowed at the beginning of Year 4 (four) of this AGREEMENT, if said AGREEMENT is extended for a period; and when the Prevailing Wage for services included in this AGREEMENT increases by the same amount approved for increase by the Department of Industrial Relations. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within sixty (60) days upon receipt by CITY's Contract Administrator of itemized invoices in duplicate.

B. **DIRECT COSTS.** In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Work Order.

C. **WORK ORDERS.** Specific projects will be assigned to CONSULTANT after approval of the proposal for each specific project through the issuance of Work Orders. Work Orders shall be number consecutively for each specific project.

D. **DRAFT WORK ORDERS.** After a project to be performed under this AGREEMENT is identified by CITY, CITY will prepare a draft Work Order; less the cost estimate. A draft Work Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The draft Work Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Work Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; a finalized Work Order shall be signed by both CITY and CONSULTANT.

E. **NOT TO EXCEED COMPENSATION.** Work Orders may be negotiated for specific rates of compensation or not to exceed amounts, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

F. **STATE RATE REIMBURSEMENTS.** Reimbursement for transportation and subsistence costs shall not exceed State rates. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

G. **CHANGE ORDERS.** When milestone cost estimates, or not to exceed estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment Change Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

H. **MONTHLY PAYMENTS.** Progress payments for each Work Order will be made monthly in arrears based on services provided and actual costs incurred.

I. **NOTICE TO PROCEED.** CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by CITY and notification to proceed has been issued by CITY's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT, or for work done on a project Work Order prior to the CITY's issuance of a Notice to Proceed (NTP).

J. **EXECUTED WORK ORDERS.** A Work Order is of no force or effect until returned to CITY and signed by an authorized representative of CITY. No expenditures are authorized on a project and work shall not commence until a Work Order for that project has been executed by CITY.

K. **INVOICES.** CONSULTANT will be reimbursed within sixty (60) days upon receipt by CITY's Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Work Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Work Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, the project title and the Work Order number. Credits due CITY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to CITY's Contract Administrator at the following address:

City of Hanford
Attn.: Finance Dept., Accounts Payable
315 N. Douty Street
Hanford CA 93230

L. **PERIOD OF PERFORMANCE FOR WORK ORDERS.** The period of performance for Work Orders shall be in accordance with dates specified in each individual Work Order. No Work Order will be written which extends beyond the expiration date of this AGREEMENT.

M. **AMOUNT PAYABLE FOR WORK ORDER.** The total amount payable by CITY for an individual Work Order shall not exceed the amount agreed to in the Work Order, unless authorized by amendment Change Order.

N. **PAYMENT FOR DELIVERABLES.** If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Work Order, no payment will be made until the deliverable has been satisfactorily completed.

O. **AMENDMENT TO AGREEMENT.** Work Orders may not be used to amend the language (or the terms) of this AGREEMENT, nor to exceed the scope of work under this AGREEMENT.

P. **AGREEMENT MAXIMUM PAYMENT.** The total amount payable by CITY for all Work Orders resulting from this AGREEMENT shall not exceed \$ 150,000.00 per year. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Work Orders.

Q. **EXTRA WORK.** At any time during the term of this AGREEMENT, CITY may request that CONSULTANT perform Extra Work. As used herein, "Extra Work" means any work which is determined by CITY to be necessary for the proper completion of the Services, but which the parties did not include in the Scope of Work. Extra work will be performed on an hourly basis under the CONSULTANT's most current hourly fee schedule. CONSULTANT shall not perform, nor be compensated for Extra Work without written authorization from CITY.

ARTICLE VI: TERMINATION

A. This AGREEMENT may be terminated by CITY, provided that CITY gives not less than thirty (30) calendar days' written notice to CONSULTANT (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, CITY shall be entitled to all work, including but not

limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of CITY. Upon termination, CONSULTANT shall be entitled to compensation for Services performed up to the effective date of termination, unless this AGREEMENT is terminated for cause, in which case, CITY may withhold compensation due CONSULTANT in order to reimburse CITY for any losses, damages or expenses caused by CONSULTANT's default under this AGREEMENT

B. CITY may temporarily suspend this AGREEMENT, at no additional cost to CITY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If CITY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section.

C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT by CONSULTANT, and CITY may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due CITY from CONSULTANT is determined.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section 11C. Upon termination, CITY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of CITY.

ARTICLE VII: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

Consulting Geotechnical firms providing geotechnical related services under a contract funded by a federal grant, are required by regulation (as specified in 2 CFR Part 200) to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In efforts to comply with the Federal Cost Principles, Geotechnical consulting firms that provide services on federal-aid highway projects are required to develop indirect cost rates in accordance with the Federal Cost Principles on an annual basis.

A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.

B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to CITY.

D. When a CONSULTANT or sub-consultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

E. CONSULTANT shall provide all documents and files per Work Order to the CITY as required per Ownership of Data requirements in the AGREEMENT.

ARTICLE VIII: RETENTION OF RECORD/AUDITS

A. For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, sub-consultants, and CITY shall maintain any and all books of account, ledgers, invoices, vouchers, canceled checks, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers, and other evidence pertaining to the performance, services, expenditures, and disbursements of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such work papers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. CITY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, sub-consultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, work paper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

B. CONSULTANT shall maintain all documents and records that demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit, at any time during regular business hours, upon written request by the CITY. Copies of such documents shall be provided to the CITY for inspection at the CITY offices.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request, require that custody of the records be given to the CITY and that the records and documents be maintained in the CITY offices. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

ARTICLE IX: AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by CITY's Chief Financial Officer.

B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by CITY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by CITY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.

D. CONSULTANT and sub-consultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, CITY, or local

government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by CITY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by CITY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the CITY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, CITY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA

audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.

4. CONSULTANT may submit to CITY a final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of CITY; and, (3) Caltrans A&I has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO CITY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between CITY and the CONSULTANT, either as a prime or sub-consultant, with the same fiscal period ICR.

ARTICLE X: SUBCONTRACTING

A. The parties recognize that a substantial inducement to CITY for entering into this AGREEMENT is the reputation, experience and competence of CONSULTANT. Assignments of any or all rights, duties or obligations of the CONSULTANT under this AGREEMENT will be permitted only with the express written consent of the CITY, which will not be unreasonably withheld. CONSULTANT shall not subcontract any portion of the Services to be performed under this AGREEMENT without the express written consent of the CITY, which will not be unreasonably withheld.

B. If CITY consents to such subcontract, CONSULTANT shall be fully responsible to CITY for all acts or omissions of the sub-consultant. Nothing in this AGREEMENT shall: (i) create any contractual relationship between CITY and sub-consultant; (ii) create any obligation on the part of the CITY to pay or to see to the payment of any monies due to any such sub-consultant; (iii) or relieve CONSULTANT of any of its obligations and responsibilities under this AGREEMENT.

C. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relationship between the CITY and any sub-consultants, and no sub-agreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the CITY for the acts and omissions of its sub-consultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its sub-consultants is an independent obligation from the CITY's obligation to make payments to the CONSULTANT.

D. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the CITY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

E. Any sub-agreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to sub-consultants unless otherwise noted.

F. CONSULTANT shall pay its sub-consultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the CITY.

G. Any substitution of sub-consultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute sub-consultant.

ARTICLE XI: EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by CITY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by CITY's Contract Administrator, three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:

1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two (2) years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, CITY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit CITY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established CITY procedures; and credit CITY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by CITY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by CITY.

2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XII: STATE PREVAILING WAGE RATES

A. **D.I.R. REGISTRATION.** No CONSULTANT or sub-consultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.

B. **WAGE DETERMINATIONS (CALTRANS).** The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at CITY construction sites, at CITY facilities

and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve CITY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

C. GENERAL PREVAILING WAGE RATES. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.

D. PAYROLL RECORDS.

1. Each CONSULTANT and sub-consultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or sub-consultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

a. The information contained in the payroll record is true and correct.

b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.

2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by CITY representative's at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:

a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished to a representative of CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the CITY Contract Administrator by both email and regular mail on the business day following receipt of the request.

3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by CITY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or sub-consultant performing the work shall not be marked or obliterated.

5. The CONSULTANT shall inform CITY of the location of the records enumerated under paragraph (1) above, including the street address, CITY and county, and shall, within five (5) working days, provide a notice of a change of location and address.

6. The CONSULTANT or sub-consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or sub-consultant fails to comply within the ten (10) day period, he or she shall, as a penalty to CITY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by CITY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a sub-consultant to comply with this section.

E. **CERTIFIED PAYROLL.** When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the CITY Contract Administrator.

F. **PENALTY.**

1. The CONSULTANT and any of its sub-consultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any sub-consultant shall forfeit to the CITY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its sub-consultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or sub-consultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or sub-consultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or sub-consultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or sub-consultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or sub-consultant.

4. If a worker employed by a sub-consultant on a public works project is not paid the general prevailing per diem wages by the sub-consultant, CONSULTANT is not liable for the penalties

described above unless CONSULTANT had knowledge of that failure of the sub-consultant to pay the specified prevailing rate of wages to those workers or unless CONSULTANT fails to comply with all of the following requirements:

- a. The AGREEMENT executed between the CONSULTANT and the sub-consultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the sub-consultant to the employees by periodic review of the certified payroll records of the sub-consultant.
 - c. Upon becoming aware of the sub-consultant's failure to pay the specified prevailing rate of wages to the sub-consultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the sub-consultant for work performed on the public works project.
 - d. Prior to making final payment to the sub-consultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the sub-consultant that the sub-consultant had paid the specified general prevailing rate of per diem wages to the sub-consultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, CITY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a sub-consultant has failed to pay workers the general prevailing rate of per diem wages.
 6. If CITY determines that employees of a sub-consultant were not paid the general prevailing rate of per diem wages and if CITY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the sub-consultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by CITY.

G. HOURS OF LABOR. Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the CITY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its sub-consultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. EMPLOYMENT OF APPRENTICES.

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any sub-consultants under him or her shall comply

with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. CONSULTANTs and sub-consultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and sub-consultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all sub-consultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII: CONFLICT OF INTEREST

A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this AGREEMENT or any ensuing CITY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing CITY construction project which will follow.

B. CONSULTANT certifies that it has disclosed to CITY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either CITY ordinance or State law.

C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.

D. The CONSULTANT hereby certifies that the CONSULTANT or sub-consultant and any firm affiliated with the CONSULTANT or sub-consultant that bids on any construction contract or on any agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

E. CONSULTANT warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this AGREEMENT.

F. Further CONSULTANT warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or result from the award or making of this AGREEMENT.

G. For breach or violation of this warranty, CITY shall have the right to rescind this AGREEMENT without liability.

H. For the term of this AGREEMENT, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this AGREEMENT, or obtain any present or anticipated material benefit arising therefrom.

ARTICLE XIV: REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any CITY employee. For breach or violation of this warranty, CITY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV: PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING (for use when Federal funding will exceed \$150,000)

The annual maximum payment to CONSULTANT from this AGREEMENT does not exceed the minimum \$150,000. This section does not apply.

A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:

1. No State, Federal, or CITY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such sub-recipients shall certify and disclose accordingly.

ARTICLE XVI: NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

B. During the performance of this AGREEMENT, CONSULTANT and its sub-consultants represents that they are an Equal Opportunity Employer, and shall not deny the AGREEMENT's benefits or discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and sub-consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. CONSULTANT shall also comply with all relevant provisions of CITY's programs or guidelines currently in effect as identified and provided to CONSULTANT by CITY.

C. CONSULTANT and sub-consultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by CITY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the CITY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or CITY shall require to ascertain compliance with this clause.

E. CONSULTANT and its sub-consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.

G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of

the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of sub-consultants.

ARTICLE XVII: DEBARMENT AND SUSPENSION CERTIFICATION

A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

B. Any exceptions to this certification must be disclosed to CITY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII: DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

A. This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement, and proposes on a federal funded project RFP, will assist the CITY in a good faith effort to achieve California's statewide overall DBE goal.

B. The goal for DBE participation for this AGREEMENT is 5%. Participation by DBE CONSULTANT or sub-consultants shall be in accordance with information contained in Exhibit "C": Exhibit 10-01: Consultant Proposal DBE Commitment, attached hereto and incorporated as part of the AGREEMENT. It is anticipated that the CONSULTANT will use a sub-consultant for various work items, including traffic control. If a proposed DBE sub-consultant is unable to perform, the CONSULTANT must make a good faith effort to replace him/her with another DBE sub-consultant, if the goal is not otherwise met.

C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the

AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit "D": Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of AGREEMENTs financed in whole or in part with federal funds. The CITY, CONSULTANT or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the CITY deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible

E. A DBE firm may be terminated only with prior written approval from CITY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting CITY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE sub-consultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE sub-consultant, if the goal is not otherwise met.

F. CONSULTANT shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of CONSULTANT) pursuant to prior written authorization of the CITY's Contract Administrator.

G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.

H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work

of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

K. Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, Exhibit "E": Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) for On-call Contracts, certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier sub-consultants" is submitted to the Contract Administrator.

L. If a DBE sub-consultant is decertified during the life of the AGREEMENT, the decertified sub-consultant shall notify CONSULTANT in writing with the date of decertification. If a sub-consultant becomes a certified DBE during the life of the AGREEMENT, the sub-consultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to CITY's Contract Administrator within thirty (30) calendar days.

M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX: INSURANCE

A. CONSULTANT, at CONSULTANT's own cost and expense, shall procure and maintain, for the duration of this AGREEMENT, the following insurance policies.

1. Workers Compensation Coverage. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per accident for bodily injury or disease.
2. General Liability Coverage. Insurance Services Office (ISO) Form CG 0001, including products and completed operations, with limits of no less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be FOUR MILLION AND NO/100 DOLLARS (\$4,000,000), twice the required occurrence limit.
3. Automobile Liability Coverage. ISO Form Number CA 0001 covering any auto (Code 1), with a limit no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per accident for bodily injury and property damage.

4. Professional Liability Coverage. CONSULTANT will maintain Professional Liability coverage with limits no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per occurrence or claim, and TWO MILLION AND NO/100 DOLLARS (\$2,000,000) policy aggregate.

B. If CONSULTANT maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT.

C. Insurance policies shall be "occurrence" policies and not "claims-made" coverage except for Professional Liability Coverage. "Claims-made" policies must satisfy the following requirements: (i) the retroactive date of coverage must be shown and must precede the effective date of the AGREEMENT; (ii) coverage shall be maintained and evidence of coverage must be provided for at least five (5) years after completion of the work performed hereunder; and (iii) if coverage is canceled or non-renewed and not replaced with another claims-made policy form with a retroactive date preceding the AGREEMENT effective date, CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

D. CONSULTANT may maintain an Umbrella policy in conjunction with the insurance policies referenced above. In such case, CONSULTANT shall be deemed to have satisfied the insurance requirements of this contract as long as: (i) the coverage limits of the Umbrella policy and of the underlying liability policy(ies), when combined, satisfy each of the per occurrence and aggregate requirements identified in this subsection a.; and (ii) coverage under the Umbrella policy is as broad as and includes all incidents and events covered by the underlying insurance that it supplements.

E. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require CONSULTANT to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Alternatively, the CITY may require CONSULTANT to provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the retention.

F. The policies are to contain, or be endorsed to contain, the following provisions:

1. "The CITY and its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations; products used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. General liability coverage can be provided in the form of an endorsement to CONSULTANT's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to the CITY and its officers, officials, employees or volunteers.
2. These policies of insurance shall be considered primary insurance as to the CITY and its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the CITY, including any self-insured retention the CITY may have, shall be considered excess insurance only and shall not contribute with the policies of insurance obtained by CONSULTANT.

3. These policies of insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 4. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its elected or appointed officers, officials, employees, agents or volunteers.
 5. The insurance provided by these policies shall not be suspended, voided, canceled, modified or reduced in coverage or in limits except after thirty (30) days written notice has been received by the CITY.
- G. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- and which are authorized to write business in California.
- H. CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- I. CONSULTANT hereby grants to CITY and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of CONSULTANT may acquire against the CITY and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain endorsements necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.
- J. The CITY reserves the right to modify the insurance requirements contained in this AGREEMENT, including, without limitation, coverage limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- K. Sub-consultants. CONSULTANT shall cause each of its sub-consultants to comply with the insurance requirements of this Article XIX. All coverages for sub-consultants will satisfy the requirements stated herein. CONSULTANT will furnish to CITY a sub-consultant's insurance certificates and endorsements before the sub-consultant provides services under this AGREEMENT.

ARTICLE XX: FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.

B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to CITY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or CITY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.

D. CITY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI: CHANGE IN TERMS

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by CITY's Contract Administrator.

C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by CITY's Contract Administrator.

ARTICLE XXII: CONTINGENT FEE. CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, CITY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII: DISPUTES

A. Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to resolve any dispute amicably between them through mediation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, and has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

B. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of CITY's Contract Administrator and the Department Director, who may consider written or verbal information submitted by CONSULTANT.

C. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by CITY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

D. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXIV: INSPECTION OF WORK. CONSULTANT and any sub-consultant shall permit CITY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV: SAFETY

A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by CITY's Safety Officer and other CITY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Vehicle Code §591, CITY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

C. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

ARTICLE XXVI: OWNERSHIP OF DATA

A. It is mutually agreed that all materials prepared by CONSULTANT, its officers, employees, agents, and sub-consultants under this AGREEMENT, except working notes and internal documents, shall become the sole property of the CITY in its discretion without further compensation to the CONSULTANT or to any other party, and the CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, CITY shall be entitled to, and CONSULTANT shall deliver to CITY, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to CITY which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by CITY.

B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of CITY without restriction or limitation upon its use or dissemination by CITY.

C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this AGREEMENT. The CITY's use of completed documents for other projects and/or the use of uncompleted documents without the written authorization of CONSULTANT will be at the CITY's sole risk.

D. CITY may permit copyrighting reports or other agreement products. If copyrights are permitted, FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.

E. **Licensing of Intellectual Property.** This AGREEMENT creates a non-exclusive and perpetual license for CITY to use, modify, reuse or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data electronic or otherwise recorded on computer diskettes which are prepared or caused to be prepared by CONSULTANT under this AGREEMENT ("Documents & Data"). CONSULTANT shall require all sub-consultants to agree in writing that CITY is granted non-exclusive and perpetual license for any Documents & Data the sub-consultant prepared under this AGREEMENT. CONSULTANT represents and warrants that CONSULTANT has the legal right to license any and all Documents & Data. CITY shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purpose intended by this AGREEMENT shall be at CITY's sole risk.

ARTICLE XXVII: CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR

A. **CONSULTANT'S PERSONNEL AVAILABILITY.** If claims are filed by CITY's construction contractor relating to work performed by CONSULTANT's or a sub-consultant's personnel, and additional information or assistance from CONSULTANT's or a sub-consultant's personnel is required in order to evaluate or defend against such claims, CONSULTANT agrees to make its and the sub-consultant's personnel available for consultation with CITY's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. **CONSULTANT'S PERSONNEL REIMBURSEMENT.** CONSULTANT's and a sub-consultant's personnel that CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from CITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.

C. **CONSULTANT'S PERSONNEL SERVICES.** Services of CONSULTANT's and a sub-consultant's personnel in connection with CITY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

D. **ATTORNEYS' FEES.** If an action at law or in equity is necessary to enforce or interpret the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this AGREEMENT, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California for any proceeding arising hereunder.

E. **SOLE AND ONLY AGREEMENT.** This AGREEMENT supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this AGREEMENT acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this AGREEMENT and no other agreement, statement or promise shall be valid or binding.

F. **INVALIDITY.** If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

G. **AMENDMENT.** No change, amendment or modification of this AGREEMENT shall be valid unless the same be in writing and signed by the parties hereto.

H. **GOVERNING LAW.** This AGREEMENT shall be construed and governed pursuant to the laws of the State of California.

I. **WAIVER.** Waiver of a breach or default under this AGREEMENT shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this AGREEMENT.

ARTICLE XXVIII: CONFIDENTIALITY OF DATA

A. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information including financial, statistical, personal, technical, or other data, and other documents and data either created by or provided to CONSULTANT in connection with and relative to CITY's operations and CONSULTANT's performance of this AGREEMENT, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected and held confidential by CONSULTANT and sub-consultants from unauthorized use and disclosure.

B. Such materials shall not, without the prior written consent of CITY, be used by CONSULTANT or a sub-consultant for any purposes other than the performance of the Services under this AGREEMENT, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services under this AGREEMENT. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is generally known, or has become known, to the related industry shall be deemed confidential. CONSULTANT and sub-consultants shall not use CITY's name, insignia, photographs, or the project for which CONSULTANT's Services are rendered, or any publicity pertaining to the CONSULTANT's Services under this AGREEMENT in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent by CITY. Notwithstanding the foregoing, the CITY acknowledges that the CONSULTANT may want/need to include projects performed under this AGREEMENT on proposals for similar work in the future. The CITY hereby grants permission to list any projects performed under this AGREEMENT for marketing purposes; provided however, CONSULTANT will not make any representations regarding CITY's satisfaction with CONSULTANT's work product unless CONSULTANT receives a written statement or evaluation from CITY.

C. Permission to disclose information on one (1) occasion, or public hearing held by CITY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

D. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.

E. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.

F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than CITY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of CITY or except by court order. If CONSULTANT or any of its officers, employees, or sub-consultants voluntarily provide information in violation of this AGREEMENT, CITY has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, CITY's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

ARTICLE XXIX: NATIONAL LABOR RELATIONS BOARD CERTIFICATION. In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX: EVALUATION OF CONSULTANT. CONSULTANT's performance will be evaluated by CITY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT records. The Consultant Performance Evaluation Sheet, LAPM 10-B, is attached as Exhibit "F".

ARTICLE XXXI: RETENTION OF FUNDS. No retainage will be withheld by CITY from progress payments due the CONSULTANT. Retainage by the CONSULTANT or sub-consultants is prohibited, and no retainage will be held by the CONSULTANT from progress due sub-consultants. Any violation of this provision shall subject the CONSULTANT or sub-consultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or sub-consultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT or deficient sub-consultant performance, or noncompliance by a sub-consultant. This provision applies to both DBE and non-DBE CONSULTANT and sub-consultants.

ARTICLE XXXII: NOTIFICATION. Except as otherwise expressly provided herein, any notice, consent, authorization or other communication to be given hereunder shall be in writing and shall be deemed duly given and received when delivered personally, when transmitted by facsimile or e-mail if receipt is acknowledged by the addressee, one business day after being deposited for next-day delivery

ARTICLE XXXV: SIGNATURES. IN WITNESS WHEREOF, the parties have executed this AGREEMENT effective on the day and in the year first set forth above.

Consultant:

By: 
 Harry Moore, RCE, RGE

 Print name

CITY OF HANFORD,
 a Municipal Corporation

By: _____
 City Manager, Mario Cifuentez

APPROVED AS TO CONTENT:

 Johnathan L. Doyel, PE.PLS
 Public Works Director/ City Engineer

ATTEST:

 City Clerk



Kleinfelder, Inc.

CITY OF HANFORD

**ON-CALL MATERIALS TESTING AND GEOTECHNICAL
SERVICES CONSULTANT AGREEMENT**

FOR LOCAL PROJECTS AND STATE AND FEDERAL AID ASSISTED PROJECTS

(BASED ON CALTRANS LAPM FORM 10-R)

City of Hanford
900 S. 10th Avenue
Hanford, CA 93230

CITY OF HANFORD

MATERIALS TESTING AND GEOTECHNICAL SERVICES CONSULTANT AGREEMENT

(For Local Projects and State and Federal Aid Assistance Projects, based on Caltrans LAPM Form 10-R)

This agreement contains fiscal requirements from 2 CFR 200 and may be used for both Federal and State funded contracts as well.

TABLE OF CONTENTS

Page

ARTICLE I: INTRODUCTION	1
A. RETENTION OF CONSULTANT	
B. SCOPE OF SERVICES	
C. INDEMNIFICATION	
D. INDEPENDENT CONTRACTOR STATUS	
E. TAX WITHHOLDINGS	
F. THIRD PARTY PERSONS EMPLOYED	
G. AGREEMENT NOT TRANSFERABLE	
H. NEGLIGENCE ACTS AND OMISSIONS	
I. ALTERATIONS APPROVED IN WRITING	
J. PAYMENTS	
K. INTEREST OF CONSULTANT	
L. PROFESSIONAL ABILITY OF CONSULTANT	
M. COMPLIANCE WITH LAWS	
N. LICENSES	
ARTICLE II: CONSULTANT'S REPORTS OR MEETINGS	4
A. PROGRESS REPORTS AND BILLINGS	
B. RETESTS	
C. MEETINGS	
ARTICLE III: STATEMENT OF WORK	4
A. CONSULTANT SERVICES	
B. SUBSURFACE INVESTIGATIONS	
C. GEOTECHNICAL SERVICES	
D. QUALITY ASSURANCE	
E. CONFERENCES, SITE VISITS, AND INSPECTION OF WORK	
F. CONSULTANT SERVICES DURING CONSTRUCTION	
G. DOCUMENTATION AND SCHEDULES	
H. CITY OBLIGATIONS	
I. DELIVERABLES AND NUMBER OF COPIES	
ARTICLE IV: PERFORMANCE PERIOD	6
ARTICLE V: ALLOWABLE COSTS AND PAYMENTS	6
A. PAYMENT	
B. DIRECT COSTS	
C. WORK ORDERS	
D. DRAFT WORK ORDERS	
E. NOT TO EXCEED COMPENSATION	
F. STATE RATE REIMBURSEMENTS	
G. CHANGE ORDERS	
H. MONTHLY PAYMENTS	
I. NOTICE TO PROCEED	
J. EXECUTED WORK ORDERS	
K. INVOICES	

- L. PERIOD OF PERFORMANCE FOR WORK ORDERS
- M. AMOUNT PAYABLE FOR WORK ORDERS
- N. PAYMENT FOR DELIVERABLES
- O. AMENDMENT TO AGREEMENT
- P. AGREEMENT MAXIMUM PAYMENT
- Q. EXTRA WORK

ARTICLE VI: TERMINATION	8
ARTICLE VII: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS	9
ARTICLE VIII: RETENTION OF RECORD/AUDITS	10
ARTICLE IX: AUDIT REVIEW PROCEDURES	10
ARTICLE X: SUBCONTRACTING	12
ARTICLE XI: EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES	13
ARTICLE XII: STATE PREVAILING WAGE RATES	13
A. DIR REGISTRATION	
B. WAGE DETERMINATIONS (CALTRANS)	
C. GENERAL PREVAILING WAGE RATES	
D. PAYROLL RECORDS	
E. CERTIFIED PAYROLL	
F. PENALTY	
G. HOURS OF LABOR	
H. EMPLOYMENT OF APPRENTICES	
ARTICLE XIII: CONFLICT OF INTEREST	17
ARTICLE XIV: REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION	18
ARTICLE XV: PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING	18
ARTICLE XVI: NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE	19
ARTICLE XVII: DEBARMENT AND SUSPENSION CERTIFICATION	20
ARTICLE XVIII: DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION	20
ARTICLE XIX: INSURANCE	22
ARTICLE XX: FUNDING REQUIREMENTS	24
ARTICLE XXI: CHANGE IN TERMS	25
ARTICLE XXII: CONTINGENT FEE	25
ARTICLE XXIII: DISPUTES	25
ARTICLE XXIV: INSPECTION OF WORK	26
ARTICLE XXV: SAFETY	26
ARTICLE XXVI: OWNERSHIP OF DATA	26
ARTICLE XXVII: CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR	27
A. CONSULTANT'S PERSONNEL AVAILABILITY	
B. CONSULTANT'S PERSONNEL REIMBURSEMENT	
C. CONSULTANT'S PERSONNEL SERVICES	
D. ATTORNEYS' FEES	
E. SOLE AND ONLY AGREEMENT	
F. INVALIDITY	
G. AMENDMENT	
H. GOVERNING LAW	
I. WAIVER	
ARTICLE XXVIII: CONFIDENTIALITY OF DATA	28

<u>ARTICLE XXIX: NATIONAL LABOR RELATIONS BOARD CERTIFICATION</u>	29
ARTICLE XXX: EVALUATION OF CONSULTANT	29
ARTICLE XXXI: RETENTION OF FUNDS	29
ARTICLE XXXII: NOTIFICATION	29
ARTICLE XXXIII: AUTHORITY TO ENTER AGREEMENT.	30
<u>ARTICLE XXXIV: CONTRACT</u>	30
<u>ARTICLE XXXV SIGNATURES</u>	31

EXHIBITS

- A. CONSULTANT'S COST PROPOSAL FOR COST PER UNIT OF WORK (LAPM FORM 10-H3)
- B. QUALITY ASSURANCE PLAN (QAP)
- C. CONSULTANT'S CONTRACT DBE COMMITMENT (10-O2)
- D. DBE INFORMATION – GOOD FAITH EFFORTS (15-H)
- E. FINAL REPORT – UTILITIZATION OF DBE FOR ON-CALL CONTRACTS (17-F A&E ON-CALL)
- F. CONSULTANT PERFORMANCE EVALUATION SHEET FOR PROJECT CLOSEOUT (10-B)
- G. CONSULTANT ANNUAL CERTIFICATION OF INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM (10-K)
- H. DISCLOSURE OF LOBBYING ACTIVITIES (10-Q)

AGREEMENT FOR PROFESSIONAL SERVICES FOR ON-CALL MATERIALS TESTING AND GEOTECHNICAL SERVICES

ARTICLE I: INTRODUCTION

This AGREEMENT for Professional Services (“AGREEMENT”) is made and entered into this 18th day of August, 2020, by and between the City of Hanford, a Municipal Corporation (“CITY”), and Kleinfelder, Inc (“CONSULTANT”), incorporated in the State of California.

The Project Manager for the “CONSULTANT” will be the City Engineer and/or its assignees.

The name of the “CITY” is as follows: City of Hanford.

The Contract Administrator for CITY will be the City Engineer and/or its assignees.

RECITALS

1. CONSULTANT represents to CITY that they are specially trained, experienced, licensed and competent to perform the services which will be required by this AGREEMENT; and
2. CONSULTANT represents to CITY that they possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this AGREEMENT on the terms and conditions described herein.
3. CITY desires to retain CONSULTANT to render Materials Testing and Geotechnical Services as set forth in this AGREEMENT.

NOW THEREFORE, in consideration of the mutual covenants set forth herein for such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

A. **RETENTION OF CONSULTANT.** Subject to the terms and conditions set forth herein, the CITY retains the CONSULTANT to perform the services identified in this AGREEMENT, as an independent contractor and CONSULTANT hereby accepts this independent contractor appointment.

B. **SCOPE OF SERVICES.** The work to be performed under this AGREEMENT is described in Article III, Statement of Work, and the approved CONSULTANT’s Cost Proposal (LAPM Form 10-H3 and 10-H2)

dated August 4, 2020. The approved CONSULTANT’s Cost Proposal (LAPM Form 10-H3 and 10-H2) is attached hereto as EXHIBIT “A” and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.

C. **INDEMNIFICATION.** CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless the CITY, its officers, officials, agents, employees and volunteers from and against any and all actions, injuries, claims, damages, demands, liabilities, costs,

losses, and expenses, direct or indirect, including without limitation, any and all court costs, attorneys' fees, expert witness fees, and other expenses which the CITY may sustain or incur as a consequence of, or are in any way related to or arising out of any failure to the CONSULTANT to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a willful or negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT and services on the part of CONSULTANT, except such loss or damage which was caused by the sole or active negligence, or willful acts or misconduct of CITY, as determined by a Court of competent jurisdiction. If the CONSULTANT maintains additional coverage or higher limits than those required herein, then CITY shall be entitled to additional coverage or higher limits maintained by CONSULTANT. The provisions of this section shall survive termination or suspension of this AGREEMENT.

D. INDEPENDENT CONTRACTOR STATUS. CONSULTANT, in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employee's), in the performance of the Services to be performed pursuant to this AGREEMENT, is an independent contractor, and shall not act as an agent or employee of the CITY, and that no relationship of employer-employee exists between the Parties hereto. The CONSULTANT's assigned personnel shall not be entitled to, or obtain retirement benefits or other benefits which accrue to CITY employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. Nothing in the AGREEMENT shall create or be construed as creating a partnership, joint venture, or any other relationship between the CITY and CONSULTANT.

E. TAX WITHHOLDINGS. CITY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the CITY as to the designation of tasks to be performed and the results to be accomplished.

F. THIRD PARTY PERSONS EMPLOYED. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds CITY harmless from any and all claims that may be made against CITY based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

G. AGREEMENT NOT TRANSFERABLE. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work without the prior written approval of the CITY. However, claims for money due, or which become due to CONSULTANT from CITY under this AGREEMENT, may be assigned to a financial institution or to a trustee in bankruptcy without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the CITY.

H. NEGLIGENCE ACTS AND OMISSIONS. CONSULTANT shall be fully responsible to the CITY for the intentional misconduct and negligent acts and omissions of its contractors and subcontractors or sub-consultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.

I. ALTERATIONS APPROVED IN WRITING. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

J. PAYMENTS. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided. Costs for testing services shall be as stated in Fee Schedule (Exhibit "B"). The costs stated shall include all labor, applicable prevailing wages, materials, equipment, water, light, power, transportation and all other services and facilities of any nature whatsoever to execute, complete, and deliver the scope of work within the specified time.

K. INTEREST OF CONSULTANT. CONSULTANT and its shareholders and covenants represents that they do not now have any investment or interest in real property, and shall not acquire any interest, direct or indirect in the area covered by this AGREEMENT, or any other source of income, interest in real property, or investment which would be affected in any manner or degree by the performance of CONSULTANT's Services hereunder. CONSULTANT further covenants and represents that, in the performance of the Services hereunder, to the best of its knowledge no person having any such interest shall perform any Services under this AGREEMENT.

CONSULTANT is not a designated employee within the meaning of the Political Reform Act because CONSULTANT:

1. Will conduct, research, and arrive at conclusions with respect to rendition of information, advice, recommendation, or counsel, independent of the control and direction of the CITY or of any CITY official, other than normal agreement monitoring; and
2. Shall possess no authority with respect to any CITY decision beyond rendition of information, advice, recommendation, or counsel. FPPC Reg.18700, et seq.

L. PROFESSIONAL ABILITY OF CONSULTANT. CITY has relied upon CONSULTANT's representations regarding its training and professional ability to perform the Services hereunder as a material inducement to enter into this AGREEMENT. CONSULTANT shall therefore provide properly skilled personnel to perform all Services under this AGREEMENT. The primary provider of the Services

called for by this AGREEMENT shall be Stephen P. Plauson, PE, GE

(Consult fill in employee name and title who will represent the agreement to the CITY)

who shall not be replaced without the written consent of the CITY. All work performed by the CONSULTANT under this AGREEMENT shall be in accordance with the applicable professional standard of care, and shall meet the local professional standard of quality ordinarily to be expected of competent persons in CONSULTANT's field of expertise working in Kings County.

M. COMPLIANCE WITH LAWS. CONSULTANT shall use the proper standard of care in performing the Services, and shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations in effect at the time the AGREEMENT is executed. In addition, if the request for proposal to provide professional services which are the subject of this AGREEMENT cited any Federal or State Financial Assistance involved in the project for which the Services are provided, the CONSULTANT shall perform all services in accordance with all applicable federal and state laws, rates and regulations in effect at the time the AGREEMENT is executed.

N. **LICENSES.** CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this AGREEMENT, any licenses, permits, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT shall maintain a CITY of Hanford Business License.

ARTICLE II: CONSULTANT'S REPORTS OR MEETINGS

A. **PROGRESS REPORTS AND BILLINGS.** CONSULTANT shall submit progress reports and billings on EACH specific project in accordance with the Work Order at least once a month. CONSULTANT's bill shall include an itemized description of the Services and Tests performed, the date the Services were performed, the number of tests performed, the number of hours spent, and by whom, and shall include a description of any authorized reimbursable expenditures. The report should be sufficiently detailed for the CITY's Contract Administrator or Project Coordinator: to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; to sufficiently address any difficulties or special problems encountered so remedies can be developed. The CITY shall pay the CONSULTANT no later than 60 days after the date of submittal of a complete invoice for completed tasks and approval of the invoice by CITY staff.

B. **RETESTS.** All retest hourly charges shall be separated on the invoice so the CITY can back charge the Contractor. If the CONSULTANT desires, a separate invoice shall be submitted for the CITY to back charge the Contractor for all retesting charges

C. **MEETINGS.** CONSULTANT's Project Manager shall meet with CITY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III: STATEMENT OF WORK

A. **CONSULTANT SERVICES.** The CONSULTANT shall perform professional geotechnical services, in accordance with all the provisions of this AGREEMENT. The Scope of Work for each project will be determined by the CITY Engineer. The project scope will be incorporated into a streamlined (mini) RFP, and will be sent to the pre-qualified selected consultants under agreement. The CONSULTANT shall submit their proposal to the CITY within the required timeframe, and the CITY shall select the top proposal using Qualifications Based Selection. Upon selection, the CITY will negotiate the cost based on the labor price agreement. A work order will be assigned for each project after CONSULTANT determines an estimated cost for producing all necessary plans and documents to satisfy the Scope of Work. CONSULTANT shall correct any and all errors and/or omissions, which arise out of CONSULTANT's negligence or intentional misconduct, in the performance of the Services and any documents resulting therefrom even though CITY has accepted said Services or documents. CONSULTANT shall make such corrections upon CITY's request and at no cost or expense to CITY.

Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No Significant Impact, or the Caltrans District Director signs the Record of Decision (see LAPM Chapter 6: Environmental Procedures, and the Standard Environmental Reference).

B. **SUBSURFACE INVESTIGATIONS.** This AGREEMENT provides for CONSULTANT Sub-Surface Investigations as directed by the CITY for Environmental testing, topographic mapping, boring,

construction staking, and other specialized sub-surface investigation services, either by the CONSULTANT, or under the supervision of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order.

C. GEOTECHNICAL SERVICES. The AGREEMENT provides for CONSULTANT services including Geotechnical engineering, Hydrogeology services, Environmental engineering, Construction observation, inspection, and materials testing, and other testing services for the CITY projects as determined by the City Engineer or his designee. Tests shall include but are not limited to:

1. Test sampling, test coring, earthwork observation and ASTM D-2922 and/or ASTM D-1556 spot soil density and moisture content tests on an hourly rate basis with a set minimum hours per visit including travel time.
2. Caltest 216 Maximum Density/Optimum Moisture Determination.
3. Caltest 217 San Equivalent Test.
4. Caltest 301 Resistant (R) Value Determination.
5. ASTM C-136 soil and aggregate sieve analysis including wash.
6. ASTM C-136 soil and aggregate sieve analysis including hydrometer.
7. ASTM D-4318 Atterberg Limits, Plasticity Index, Liquid Limit and Plastic Limit.
8. UBC 29-2 Expansion Index.
9. ASTM C-39 Concrete Compressive Strength Tests (1 – 7 day, 2 – 28 day, and 1 – hold).
10. Four inch diameter cores to determine material and thickness.
11. Other tests requested by the City of Hanford will be negotiated.

Reports shall involve the submittal of test results (field data) within 24 hours of date of test and also a written report signed and stamped by a professional engineer within five working days of the tests. The report shall include recommendations based on testing performed.

D. QUALITY ASSURANCE. All tests shall be performed in accordance with applicable City of Hanford Standards, CalTrans testing methods, ASTM testing methods, and/or other applicable standards as determined by the City Engineer or his designee.

E. CONFERENCES, SITE VISITS, AND INSPECTION OF WORK. This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the CITY, County, State, and/or FHWA. Costs incurred by CONSULTANT for meetings subsequent to the initial meeting shall be included in the fee.

F. CONSULTANT SERVICES DURING CONSTRUCTION.

This AGREEMENT provides for CONSULTANT services during the course of construction, including material testing, analysis, and determinations. Payment for services shall be paid at the rates stated in the attached Fee Schedule, and shall not exceed the Work Order fee stated without an approved Change Order.

G. DOCUMENTATION AND SCHEDULES. This AGREEMENT provides for the CONSULTANT to document the results of the work to the satisfaction of CITY, and if applicable, to the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Work Order objectives. All final construction documents shall be stamped and wet signed when completed.

H. **CITY OBLIGATIONS.** Data applicable to the Work Order Scope of Work shall be made available to the CONSULTANT at the time of Work Order Execution. Data may include maps, plans, documents, and records that are in the possession of the CITY. Additional items to be made available to the CONSULTANT shall be noted specifically on the Work Order.

I. **DELIVERABLES AND NUMBER OF COPIES.** The number of copies or documents to be furnished with each submittal, such as reports, brochures, sets of plans, specifications, maps, etc., shall be two (2) copies minimum unless otherwise specified in the work order or as may be required for City Permitting. AutoCAD and Civil 3D (version 2018) files of all projects shall be provided to the CITY upon completion.

1. The CONSULTANT shall, at minimum, utilize the following standards for work performed under this AGREEMENT.
 - City of Hanford Standard Plans
 - City of Hanford Standard Specifications
 - City of Hanford Quality Assurance Plan (QAP)
 - Caltrans Standard Plans and Specifications

ARTICLE IV: PERFORMANCE PERIOD

A. This AGREEMENT shall go into effect on August 1, 2020, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY's Contract Administrator. The AGREEMENT shall be in effect for 3 (three) years, and end on August 1, 2023, unless extended by AGREEMENT amendment.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on CITY until the AGREEMENT is fully executed and approved by CITY.

C. The period of performance for each specific project shall be in accordance with the Work Order for that project. If work on a Work Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the Work Order in progress only. In no case shall the maximum term of this AGREEMENT exceed five (5) years.

ARTICLE V: ALLOWABLE COSTS AND PAYMENTS

A. **PAYMENT.** CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's attached approved Cost Proposal/LAPM Form 10-H2, (Exhibit A), subject to Prevailing Wage Requirements which are available at the office of the City Engineer. An estimate for cost of services for each project shall be submitted to the City Engineer before commencement of work. Payment by CITY under this AGREEMENT shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment. An increase in the fee schedule will be allowed at the beginning of Year 4 (four) of this AGREEMENT, if said AGREEMENT is extended for a period; and when the Prevailing Wage for services included in this AGREEMENT increases by the same amount approved for increase by the Department of Industrial Relations. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within sixty (60) days upon receipt by CITY's Contract Administrator of itemized invoices in duplicate.

B. **DIRECT COSTS.** In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Work Order.

C. **WORK ORDERS.** Specific projects will be assigned to CONSULTANT after approval of the proposal for each specific project through the issuance of Work Orders. Work Orders shall be number consecutively for each specific project.

D. **DRAFT WORK ORDERS.** After a project to be performed under this AGREEMENT is identified by CITY, CITY will prepare a draft Work Order; less the cost estimate. A draft Work Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The draft Work Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Work Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; a finalized Work Order shall be signed by both CITY and CONSULTANT.

E. **NOT TO EXCEED COMPENSATION.** Work Orders may be negotiated for specific rates of compensation or not to exceed amounts, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

F. **STATE RATE REIMBURSEMENTS.** Reimbursement for transportation and subsistence costs shall not exceed State rates. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

G. **CHANGE ORDERS.** When milestone cost estimates, or not to exceed estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment Change Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

H. **MONTHLY PAYMENTS.** Progress payments for each Work Order will be made monthly in arrears based on services provided and actual costs incurred.

I. **NOTICE TO PROCEED.** CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by CITY and notification to proceed has been issued by CITY's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT, or for work done on a project Work Order prior to the CITY's issuance of a Notice to Proceed (NTP).

J. **EXECUTED WORK ORDERS.** A Work Order is of no force or effect until returned to CITY and signed by an authorized representative of CITY. No expenditures are authorized on a project and work shall not commence until a Work Order for that project has been executed by CITY.

K. **INVOICES.** CONSULTANT will be reimbursed within sixty (60) days upon receipt by CITY's Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Work Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Work Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, the project title and the Work Order number. Credits due CITY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to CITY's Contract Administrator at the following address:

City of Hanford
Attn.: Finance Dept., Accounts Payable
315 N. Douty Street
Hanford CA 93230

L. **PERIOD OF PERFORMANCE FOR WORK ORDERS.** The period of performance for Work Orders shall be in accordance with dates specified in each individual Work Order. No Work Order will be written which extends beyond the expiration date of this AGREEMENT.

M. **AMOUNT PAYABLE FOR WORK ORDER.** The total amount payable by CITY for an individual Work Order shall not exceed the amount agreed to in the Work Order, unless authorized by amendment Change Order.

N. **PAYMENT FOR DELIVERABLES.** If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Work Order, no payment will be made until the deliverable has been satisfactorily completed.

O. **AMENDMENT TO AGREEMENT.** Work Orders may not be used to amend the language (or the terms) of this AGREEMENT, nor to exceed the scope of work under this AGREEMENT.

P. **AGREEMENT MAXIMUM PAYMENT.** The total amount payable by CITY for all Work Orders resulting from this AGREEMENT shall not exceed \$ 150,000.00 per year. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Work Orders.

Q. **EXTRA WORK.** At any time during the term of this AGREEMENT, CITY may request that CONSULTANT perform Extra Work. As used herein, "Extra Work" means any work which is determined by CITY to be necessary for the proper completion of the Services, but which the parties did not include in the Scope of Work. Extra work will be performed on an hourly basis under the CONSULTANT's most current hourly fee schedule. CONSULTANT shall not perform, nor be compensated for Extra Work without written authorization from CITY.

ARTICLE VI: TERMINATION

A. This AGREEMENT may be terminated by CITY, provided that CITY gives not less than thirty (30) calendar days' written notice to CONSULTANT (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, CITY shall be entitled to all work, including but not

limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of CITY. Upon termination, CONSULTANT shall be entitled to compensation for Services performed up to the effective date of termination, unless this AGREEMENT is terminated for cause, in which case, CITY may withhold compensation due CONSULTANT in order to reimburse CITY for any losses, damages or expenses caused by CONSULTANT's default under this AGREEMENT

B. CITY may temporarily suspend this AGREEMENT, at no additional cost to CITY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If CITY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section.

C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT by CONSULTANT, and CITY may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due CITY from CONSULTANT is determined.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section 11C. Upon termination, CITY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of CITY.

ARTICLE VII: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

Consulting Geotechnical firms providing geotechnical related services under a contract funded by a federal grant, are required by regulation (as specified in 2 CFR Part 200) to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In efforts to comply with the Federal Cost Principles, Geotechnical consulting firms that provide services on federal-aid highway projects are required to develop indirect cost rates in accordance with the Federal Cost Principles on an annual basis.

A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.

B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to CITY.

D. When a CONSULTANT or sub-consultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

E. CONSULTANT shall provide all documents and files per Work Order to the CITY as required per Ownership of Data requirements in the AGREEMENT.

ARTICLE VIII: RETENTION OF RECORD/AUDITS

A. For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, sub-consultants, and CITY shall maintain any and all books of account, ledgers, invoices, vouchers, canceled checks, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers, and other evidence pertaining to the performance, services, expenditures, and disbursements of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such work papers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. CITY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, sub-consultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, work paper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

B. CONSULTANT shall maintain all documents and records that demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit, at any time during regular business hours, upon written request by the CITY. Copies of such documents shall be provided to the CITY for inspection at the CITY offices.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request, require that custody of the records be given to the CITY and that the records and documents be maintained in the CITY offices. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

ARTICLE IX: AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by CITY's Chief Financial Officer.

B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by CITY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by CITY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.

D. CONSULTANT and sub-consultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, CITY, or local

government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by CITY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by CITY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the CITY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, CITY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA

audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.

4. CONSULTANT may submit to CITY a final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of CITY; and, (3) Caltrans A&I has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO CITY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between CITY and the CONSULTANT, either as a prime or sub-consultant, with the same fiscal period ICR.

ARTICLE X: SUBCONTRACTING

A. The parties recognize that a substantial inducement to CITY for entering into this AGREEMENT is the reputation, experience and competence of CONSULTANT. Assignments of any or all rights, duties or obligations of the CONSULTANT under this AGREEMENT will be permitted only with the express written consent of the CITY, which will not be unreasonably withheld. CONSULTANT shall not subcontract any portion of the Services to be performed under this AGREEMENT without the express written consent of the CITY, which will not be unreasonably withheld.

B. If CITY consents to such subcontract, CONSULTANT shall be fully responsible to CITY for all acts or omissions of the sub-consultant. Nothing in this AGREEMENT shall: (i) create any contractual relationship between CITY and sub-consultant; (ii) create any obligation on the part of the CITY to pay or to see to the payment of any monies due to any such sub-consultant; (iii) or relieve CONSULTANT of any of its obligations and responsibilities under this AGREEMENT.

C. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relationship between the CITY and any sub-consultants, and no sub-agreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the CITY for the acts and omissions of its sub-consultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its sub-consultants is an independent obligation from the CITY's obligation to make payments to the CONSULTANT.

D. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the CITY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

E. Any sub-agreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to sub-consultants unless otherwise noted.

F. CONSULTANT shall pay its sub-consultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the CITY.

G. Any substitution of sub-consultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute sub-consultant.

ARTICLE XI: EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by CITY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by CITY's Contract Administrator, three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:

1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two (2) years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, CITY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit CITY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established CITY procedures; and credit CITY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by CITY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by CITY.

2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XII: STATE PREVAILING WAGE RATES

A. **D.I.R. REGISTRATION.** No CONSULTANT or sub-consultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.

B. **WAGE DETERMINATIONS (CALTRANS).** The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at CITY construction sites, at CITY facilities

and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve CITY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

C. GENERAL PREVAILING WAGE RATES. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.

D. PAYROLL RECORDS.

1. Each CONSULTANT and sub-consultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or sub-consultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

a. The information contained in the payroll record is true and correct.

b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.

2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by CITY representative's at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:

a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished to a representative of CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the CITY Contract Administrator by both email and regular mail on the business day following receipt of the request.

3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by CITY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or sub-consultant performing the work shall not be marked or obliterated.

5. The CONSULTANT shall inform CITY of the location of the records enumerated under paragraph (1) above, including the street address, CITY and county, and shall, within five (5) working days, provide a notice of a change of location and address.

6. The CONSULTANT or sub-consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or sub-consultant fails to comply within the ten (10) day period, he or she shall, as a penalty to CITY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by CITY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a sub-consultant to comply with this section.

E. **CERTIFIED PAYROLL.** When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the CITY Contract Administrator.

F. **PENALTY.**

1. The CONSULTANT and any of its sub-consultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any sub-consultant shall forfeit to the CITY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its sub-consultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or sub-consultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or sub-consultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or sub-consultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or sub-consultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or sub-consultant.

4. If a worker employed by a sub-consultant on a public works project is not paid the general prevailing per diem wages by the sub-consultant, CONSULTANT is not liable for the penalties

described above unless CONSULTANT had knowledge of that failure of the sub-consultant to pay the specified prevailing rate of wages to those workers or unless CONSULTANT fails to comply with all of the following requirements:

- a. The AGREEMENT executed between the CONSULTANT and the sub-consultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the sub-consultant to the employees by periodic review of the certified payroll records of the sub-consultant.
 - c. Upon becoming aware of the sub-consultant's failure to pay the specified prevailing rate of wages to the sub-consultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the sub-consultant for work performed on the public works project.
 - d. Prior to making final payment to the sub-consultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the sub-consultant that the sub-consultant had paid the specified general prevailing rate of per diem wages to the sub-consultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, CITY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a sub-consultant has failed to pay workers the general prevailing rate of per diem wages.
 6. If CITY determines that employees of a sub-consultant were not paid the general prevailing rate of per diem wages and if CITY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the sub-consultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by CITY.

G. HOURS OF LABOR. Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the CITY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its sub-consultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. EMPLOYMENT OF APPRENTICES.

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any sub-consultants under him or her shall comply

with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. CONSULTANTs and sub-consultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and sub-consultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all sub-consultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII: CONFLICT OF INTEREST

A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this AGREEMENT or any ensuing CITY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing CITY construction project which will follow.

B. CONSULTANT certifies that it has disclosed to CITY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either CITY ordinance or State law.

C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.

D. The CONSULTANT hereby certifies that the CONSULTANT or sub-consultant and any firm affiliated with the CONSULTANT or sub-consultant that bids on any construction contract or on any agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

E. CONSULTANT warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this AGREEMENT.

F. Further CONSULTANT warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or result from the award or making of this AGREEMENT.

G. For breach or violation of this warranty, CITY shall have the right to rescind this AGREEMENT without liability.

H. For the term of this AGREEMENT, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this AGREEMENT, or obtain any present or anticipated material benefit arising therefrom.

ARTICLE XIV: REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any CITY employee. For breach or violation of this warranty, CITY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV: PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING

(for use when Federal funding will exceed \$150,000)

The annual maximum payment to CONSULTANT from this AGREEMENT does not exceed the minimum \$150,000. This section does not apply.

A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:

1. No State, Federal, or CITY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such sub-recipients shall certify and disclose accordingly.

ARTICLE XVI: NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its sub-consultants represents that they are an Equal Opportunity Employer, and shall not deny the AGREEMENT's benefits or discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and sub-consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. CONSULTANT shall also comply with all relevant provisions of CITY's programs or guidelines currently in effect as identified and provided to CONSULTANT by CITY.
- C. CONSULTANT and sub-consultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by CITY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the CITY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or CITY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its sub-consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of

the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of sub-consultants.

ARTICLE XVII: DEBARMENT AND SUSPENSION CERTIFICATION

A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

B. Any exceptions to this certification must be disclosed to CITY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII: DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

A. This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement, and proposes on a federal funded project RFP, will assist the CITY in a good faith effort to achieve California's statewide overall DBE goal.

B. The goal for DBE participation for this AGREEMENT is 5%. Participation by DBE CONSULTANT or sub-consultants shall be in accordance with information contained in Exhibit "C": Exhibit 10-01: Consultant Proposal DBE Commitment, attached hereto and incorporated as part of the AGREEMENT. It is anticipated that the CONSULTANT will use a sub-consultant for various work items, including traffic control. If a proposed DBE sub-consultant is unable to perform, the CONSULTANT must make a good faith effort to replace him/her with another DBE sub-consultant, if the goal is not otherwise met.

C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the

AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit "D": Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of AGREEMENTs financed in whole or in part with federal funds. The CITY, CONSULTANT or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the CITY deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible

E. A DBE firm may be terminated only with prior written approval from CITY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting CITY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE sub-consultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE sub-consultant, if the goal is not otherwise met.

F. CONSULTANT shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of CONSULTANT) pursuant to prior written authorization of the CITY's Contract Administrator.

G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.

H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work

of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

K. Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, Exhibit "E": Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) for On-call Contracts, certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier sub-consultants" is submitted to the Contract Administrator.

L. If a DBE sub-consultant is decertified during the life of the AGREEMENT, the decertified sub-consultant shall notify CONSULTANT in writing with the date of decertification. If a sub-consultant becomes a certified DBE during the life of the AGREEMENT, the sub-consultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to CITY's Contract Administrator within thirty (30) calendar days.

M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX: INSURANCE

A. CONSULTANT, at CONSULTANT's own cost and expense, shall procure and maintain, for the duration of this AGREEMENT, the following insurance policies.

1. Workers Compensation Coverage. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per accident for bodily injury or disease.
2. General Liability Coverage. Insurance Services Office (ISO) Form CG 0001, including products and completed operations, with limits of no less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be FOUR MILLION AND NO/100 DOLLARS (\$4,000,000), twice the required occurrence limit.
3. Automobile Liability Coverage. ISO Form Number CA 0001 covering any auto (Code 1), with a limit no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per accident for bodily injury and property damage.

4. Professional Liability Coverage. CONSULTANT will maintain Professional Liability coverage with limits no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per occurrence or claim, and TWO MILLION AND NO/100 DOLLARS (\$2,000,000) policy aggregate.

B. If CONSULTANT maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT.

C. Insurance policies shall be "occurrence" policies and not "claims-made" coverage except for Professional Liability Coverage. "Claims-made" policies must satisfy the following requirements: (i) the retroactive date of coverage must be shown and must precede the effective date of the AGREEMENT; (ii) coverage shall be maintained and evidence of coverage must be provided for at least five (5) years after completion of the work performed hereunder; and (iii) if coverage is canceled or non-renewed and not replaced with another claims-made policy form with a retroactive date preceding the AGREEMENT effective date, CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

D. CONSULTANT may maintain an Umbrella policy in conjunction with the insurance policies referenced above. In such case, CONSULTANT shall be deemed to have satisfied the insurance requirements of this contract as long as: (i) the coverage limits of the Umbrella policy and of the underlying liability policy(ies), when combined, satisfy each of the per occurrence and aggregate requirements identified in this subsection a.; and (ii) coverage under the Umbrella policy is as broad as and includes all incidents and events covered by the underlying insurance that it supplements.

E. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require CONSULTANT to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Alternatively, the CITY may require CONSULTANT to provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the retention.

F. The policies are to contain, or be endorsed to contain, the following provisions:

1. "The CITY and its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations; products used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. General liability coverage can be provided in the form of an endorsement to CONSULTANT's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to the CITY and its officers, officials, employees or volunteers.
2. These policies of insurance shall be considered primary insurance as to the CITY and its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the CITY, including any self-insured retention the CITY may have, shall be considered excess insurance only and shall not contribute with the policies of insurance obtained by CONSULTANT.

3. These policies of insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 4. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its elected or appointed officers, officials, employees, agents or volunteers.
 5. The insurance provided by these policies shall not be suspended, voided, canceled, modified or reduced in coverage or in limits except after thirty (30) days written notice has been received by the CITY.
- G. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- and which are authorized to write business in California.
- H. CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- I. CONSULTANT hereby grants to CITY and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of CONSULTANT may acquire against the CITY and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain endorsements necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.
- J. The CITY reserves the right to modify the insurance requirements contained in this AGREEMENT, including, without limitation, coverage limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- K. Sub-consultants. CONSULTANT shall cause each of its sub-consultants to comply with the insurance requirements of this Article XIX. All coverages for sub-consultants will satisfy the requirements stated herein. CONSULTANT will furnish to CITY a sub-consultant's insurance certificates and endorsements before the sub-consultant provides services under this AGREEMENT.

ARTICLE XX: FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.

B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to CITY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or CITY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.

D. CITY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI: CHANGE IN TERMS

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by CITY's Contract Administrator.

C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by CITY's Contract Administrator.

ARTICLE XXII: CONTINGENT FEE. CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, CITY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII: DISPUTES

A. Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to resolve any dispute amicably between them through mediation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, and has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

B. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of CITY's Contract Administrator and the Department Director, who may consider written or verbal information submitted by CONSULTANT.

C. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by CITY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

D. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXIV: INSPECTION OF WORK. CONSULTANT and any sub-consultant shall permit CITY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV: SAFETY

A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by CITY's Safety Officer and other CITY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Vehicle Code §591, CITY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

C. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

ARTICLE XXVI: OWNERSHIP OF DATA

A. It is mutually agreed that all materials prepared by CONSULTANT, its officers, employees, agents, and sub-consultants under this AGREEMENT, except working notes and internal documents, shall become the sole property of the CITY in its discretion without further compensation to the CONSULTANT or to any other party, and the CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, CITY shall be entitled to, and CONSULTANT shall deliver to CITY, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to CITY which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by CITY.

B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of CITY without restriction or limitation upon its use or dissemination by CITY.

C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this AGREEMENT. The CITY's use of completed documents for other projects and/or the use of uncompleted documents without the written authorization of CONSULTANT will be at the CITY's sole risk.

D. CITY may permit copyrighting reports or other agreement products. If copyrights are permitted, FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.

E. **Licensing of Intellectual Property.** This AGREEMENT creates a non-exclusive and perpetual license for CITY to use, modify, reuse or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data electronic or otherwise recorded on computer diskettes which are prepared or caused to be prepared by CONSULTANT under this AGREEMENT ("Documents & Data"). CONSULTANT shall require all sub-consultants to agree in writing that CITY is granted non-exclusive and perpetual license for any Documents & Data the sub-consultant prepared under this AGREEMENT. CONSULTANT represents and warrants that CONSULTANT has the legal right to license any and all Documents & Data. CITY shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purpose intended by this AGREEMENT shall be at CITY's sole risk.

ARTICLE XXVII: CLAIMS FILED BY CITY's CONSTRUCTION CONTRACTOR

A. **CONSULTANT'S PERSONNEL AVAILABILITY.** If claims are filed by CITY's construction contractor relating to work performed by CONSULTANT's or a sub-consultant's personnel, and additional information or assistance from CONSULTANT's or a sub-consultant's personnel is required in order to evaluate or defend against such claims, CONSULTANT agrees to make its and the sub-consultant's personnel available for consultation with CITY's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. **CONSULTANT'S PERSONNEL REIMBURSEMENT.** CONSULTANT's and a sub-consultant's personnel that CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from CITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.

C. **CONSULTANT'S PERSONNEL SERVICES.** Services of CONSULTANT's and a sub-consultant's personnel in connection with CITY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

D. **ATTORNEYS' FEES.** If an action at law or in equity is necessary to enforce or interpret the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this AGREEMENT, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California for any proceeding arising hereunder.

E. **SOLE AND ONLY AGREEMENT.** This AGREEMENT supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this AGREEMENT acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this AGREEMENT and no other agreement, statement or promise shall be valid or binding.

F. **INVALIDITY.** If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

G. **AMENDMENT.** No change, amendment or modification of this AGREEMENT shall be valid unless the same be in writing and signed by the parties hereto.

H. **GOVERNING LAW.** This AGREEMENT shall be construed and governed pursuant to the laws of the State of California.

I. **WAIVER.** Waiver of a breach or default under this AGREEMENT shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this AGREEMENT.

ARTICLE XXVIII: CONFIDENTIALITY OF DATA

A. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information including financial, statistical, personal, technical, or other data, and other documents and data either created by or provided to CONSULTANT in connection with and relative to CITY's operations and CONSULTANT's performance of this AGREEMENT, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected and held confidential by CONSULTANT and sub-consultants from unauthorized use and disclosure.

B. Such materials shall not, without the prior written consent of CITY, be used by CONSULTANT or a sub-consultant for any purposes other than the performance of the Services under this AGREEMENT, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services under this AGREEMENT. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is generally known, or has become known, to the related industry shall be deemed confidential. CONSULTANT and sub-consultants shall not use CITY's name, insignia, photographs, or the project for which CONSULTANT's Services are rendered, or any publicity pertaining to the CONSULTANT's Services under this AGREEMENT in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent by CITY. Notwithstanding the foregoing, the CITY acknowledges that the CONSULTANT may want/need to include projects performed under this AGREEMENT on proposals for similar work in the future. The CITY hereby grants permission to list any projects performed under this AGREEMENT for marketing purposes; provided however, CONSULTANT will not make any representations regarding CITY's satisfaction with CONSULTANT's work product unless CONSULTANT receives a written statement or evaluation from CITY

C. Permission to disclose information on one (1) occasion, or public hearing held by CITY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

D. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.

E. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.

F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than CITY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of CITY or except by court order. If CONSULTANT or any of its officers, employees, or sub-consultants voluntarily provide information in violation of this AGREEMENT, CITY has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, CITY's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

ARTICLE XXIX: NATIONAL LABOR RELATIONS BOARD CERTIFICATION. In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX: EVALUATION OF CONSULTANT. CONSULTANT's performance will be evaluated by CITY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT records. The Consultant Performance Evaluation Sheet, LAPM 10-B, is attached as Exhibit "F".

ARTICLE XXXI: RETENTION OF FUNDS. No retainage will be withheld by CITY from progress payments due the CONSULTANT. Retainage by the CONSULTANT or sub-consultants is prohibited, and no retainage will be held by the CONSULTANT from progress due sub-consultants. Any violation of this provision shall subject the CONSULTANT or sub-consultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or sub-consultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT or deficient sub-consultant performance, or noncompliance by a sub-consultant. This provision applies to both DBE and non-DBE CONSULTANT and sub-consultants.

ARTICLE XXXII: NOTIFICATION. Except as otherwise expressly provided herein, any notice, consent, authorization or other communication to be given hereunder shall be in writing and shall be deemed duly given and received when delivered personally, when transmitted by facsimile or e-mail if receipt is acknowledged by the addressee, one business day after being deposited for next-day delivery

with a nationally recognized overnight delivery service, or three business days after being mailed by first class mail, charges and postage prepaid, property addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed and addressed as follows:

CONSULTANT: Kleinfelder, Inc.
(CONSULTANT)
Stephen Plauson, Project Manager
(NAME)
3731 W. Ashcroft
(ADDRESS)
Fresno, CA 93722
(ADDRESS)

CITY: CITY OF HANFORD
ATTN: CITY ENGINEER, Contract Administrator
900 S. 10TH AVENUE
HANFORD, CA 93230

ARTICLE XXXIII: AUTHORITY TO ENTER AGREEMENT. CONSULTANT has all requisite power and authority to conduct its business and to execute, deliver and perform the AGREEMENT. Each party warrants that the individuals who have signed this AGREEMENT have the legal power, right, and authority to make this AGREEMENT and to bind each respective party.

ARTICLE XXXIV: CONTRACT. The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named CITY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXV: SIGNATURES. IN WITNESS WHEREOF, the parties have executed this AGREEMENT effective on the day and in the year first set forth above.

Consultant:

By: Mark W. Connelly
Mark W. Connelly
 Print name

CITY OF HANFORD,
 a Municipal Corporation

By: _____
 City Manager, Mario Cifuentez

APPROVED AS TO CONTENT:

 Johnathan L. Doyel, PE.PLS
 Public Works Director / City Engineer

ATTEST:

 City Clerk



AGENDA STAFF REPORT

MEETING DATE: 8/18/2020	AGENDA SECTION: A
--------------------------------	--------------------------

SUBJECT:

Administration: Discussion of the 2020 National Night Out event and Council direction regarding the regularly scheduled Council Meeting for that date.

RECOMMENDATION:

That Council review the format and details for the 2020 National Night Out event and provide direction to staff regarding the regularly scheduled City Council meeting for September 1, 2020 and possible scheduling of a Special City Council meeting.

BACKGROUND:

Historically, National Night Out has culminated annually on the first Tuesday in August. Due to the COVID-19 pandemic, the National Night Out organization had recommended that communities hold the event later in the year. While the organization is not recommending that all National Night Out 2020 areas celebrate on October 6th, the first Tuesday in October, the City of Hanford Public Safety departments had already postponed the event and scheduled it for Tuesday, September 1, 2020, from 5:30 pm to 8:00 pm.

National Night Out enhances the relationship between neighbors and law enforcement while bringing back a true sense of community. Furthermore, it provides a great opportunity to bring police and neighbors together under positive circumstances.

Due to holidays or City events, there are occasionally conflicts with the City Council meetings. As a result of that, in December of each year, Council typically has staff bring forth a calendar for the next year's meetings to determine if any should be cancelled or rescheduled. Staff was unable to anticipate the change to this year's NNO event so staff is now asking Council to provide direction on whether to cancel the September 1, 2020 Council meeting and if that is the direction, does Council wish to schedule a special meeting prior to the next regularly scheduled meeting.

FISCAL IMPACT:

None

ATTACHMENTS:

NNO2020 Flyer



***** POLICE ~ COMMUNITY PARTNERSHIPS *****

SEPTEMBER 1, 2020

5:30 PM - 8:00 PM / HANFORD CIVIC PARK

FREE FOOD (Food will be To-Go) ☆ FIRST RESPONDER DISPLAY/DEMO ☆ RESOURCE BOOTHS

FIRE HOSE PULL RACE ☆ WATER CANNON BATTLES (Bring your own Water Gun) ☆ MUSIC

In accordance with CDC guidelines, we are practicing social distancing to help prevent the spread of COVID-19. For your safety & ours masks are required.





AGENDA STAFF REPORT

MEETING DATE: 8/18/2020	AGENDA SECTION: B
--------------------------------	--------------------------

SUBJECT:

Administration: Discussion regarding the upcoming visit by the State Unified Support Team and direction from Council regarding topics of importance to be covered with the Team.

RECOMMENDATION:

That the City Council discuss the upcoming visit by the State Unified Support Team and provide direction to Staff and the assigned Council member regarding topics of importance to be covered with the Support Team.

BACKGROUND:

On July 27, 2020, the Governor issued the attached press release, which announced the allocation of \$52 million for Central Valley counties - San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern - to help expand disease investigation, contact tracing and quarantine efforts. In addition, the state announced that it would deploy three (3) Unified Support Teams to these counties, which are experiencing increased cases and hospitalizations.

On August 10, 2020, the County was notified that the State had reached out to schedule this meeting for August 20th and 21st to assist the county in their response to COVID-19. This team will, at a minimum, include representatives from the California Department of Public Health, California Office of Emergency Services, CalOSHA, California Department of Food and Agriculture, California Department of Social Services and others if requested. The goal of the team is to better understand the issues we are facing, but more importantly, what strategies and resources they can bring to assist our unique issues and needs.

Due to social distancing requirements, only two (2) representatives from each agency will be allowed to attend the meetings. The City Manager and one Councilmember, appointed by the Mayor, will represent the City and therefore staff is asking Council to provide a list of current critical issues that the City want to highlight in order to help with strategies and possible resources. The purpose of the Unified Support Teams are to, in collaboration with local partners, support and boost on-the ground efforts to reduce transmission rates.. The teams are tasked with

working side by side with local public health, emergency, medical, community and business organizations to evaluate on-the-ground needs and develop strategies and interventions to address them. These assessments could include an evaluation and improvement in testing, contact tracing, disease investigation, data management, public education and surge planning for local health care systems.

FISCAL IMPACT:

No direct impact to the City from this visit.

ATTACHMENTS:

Support Teams Release

In Stockton, Governor Newsom Announces Actions to Slow the Spread of COVID-19 in the Central Valley

Published: Jul 27, 2020

Eight Central Valley counties – Stanislaus, San Joaquin, Merced, Madera, Fresno, Kings, Tulare and Kern – to receive \$52 million for testing, contact tracing, isolation and quarantine efforts

State will deploy three Unified Support Teams to the Central Valley to provide hands-on technical assistance

SACRAMENTO – Building on the state’s Friday announcement focusing new efforts to support California’s essential workforce, Governor Gavin Newsom today announced additional targeted actions to support the Central Valley – a region seeing concerning virus spread that is disproportionately impacting Latinos. The Governor announced \$52 million for Central Valley counties – San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern – to help expand disease investigation, contact tracing and quarantine efforts. In addition, the state will deploy three Unified Support Teams to these counties, which are experiencing increased cases and hospitalizations.

Statewide, Latinos make up 38.9 percent of the population but comprise a disproportionate number of COVID-19 cases (56 percent) and deaths (45.7 percent). In the Central Valley, where between 41-65 percent of any given county is Latino, there are a disproportionate number of Latino deaths compared to population – for example, in Fresno County, Latinos comprise 52.6 percent of the population and 65 percent of COVID-19 deaths. We also know that of the cases where we have no race or ethnicity data, based on surnames, local public health officials estimate that roughly 70 percent appear Latino, thus the current case numbers likely underestimate the total number of Latinos who are impacted by the virus.

“The data is clear that COVID-19 is disproportionately impacting Latinos in California,” said Governor Newsom. “The rising community transmission rates we are seeing, particularly among Latinos in the Central Valley, are concerning. This is alarming and we are taking action. That’s why today we are making \$52 million available to counties in the Central Valley to support local public health departments with additional resources to stop the spread of the virus and reduce the number of hospitalizations related to COVID-19.”

In collaboration with local partners, the state will deploy Unified Support Teams into the eight Central Valley counties to support and boost on-the-ground efforts to reduce transmission rates. The teams will work side by side with local public health, emergency, medical, community and business organizations to evaluate on-the-ground needs and develop strategies and interventions to address them. These assessments could include an evaluation and improvement in testing, contact tracing, disease investigation, data management, public education and surge planning for local health care systems.

The teams will review data and look at outbreaks in factories and congregate setting such as long-term care facilities, high-density housing developments and agricultural workplaces where individuals may be exposed to COVID-19. The mission will be supported by various state agencies and departments including the California Governor’s Office of Emergency Services, Department of Public Health, Department of Food and Agriculture, Business, Consumer Services and Housing Agency, Cal/OSHA and the Department of Social Services.

This mission is similar to the one carried out recently in Imperial County, which included the deployment of state and federal personnel to reduce transmission rates, augment surge capacity at local hospitals and operate an 80-bed alternate care site. That effort boosted public health support for disease investigation and contact tracing and helped manage outbreaks at workplaces and other congregate settings. Those efforts also dramatically reduced the number of COVID-19 patients being transferred out of the county for care. For context, in Imperial County the 14-day case rate dropped 63 percent, from 836 cases per 100,000 to 308 cases per 100,000 people.

The state’s targeted efforts are funded in part with a grant from the Centers for Disease Control and Prevention (CDC), which has provided California \$499 million to support the state’s response to COVID-19, of which \$286 million is being made available to local governments in their efforts to fight COVID-19. Nearly \$52 million of these funds will go to eight counties in the Central Valley – Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare.

California is grateful to our federal partners for their continued support. Recently, and in coordination with the state, a federal COVID-19 Response Assistance Field Team was deployed to California to help us further assess local need and leverage all federal resources to stop the spread of the COVID-19 in Kern, Stanislaus and San Joaquin counties.

###

Attachment: Support Teams Release (Admin: Unified Support Team Discussion)



AGENDA STAFF REPORT

MEETING DATE: 8/18/2020	AGENDA SECTION: C
--------------------------------	--------------------------

SUBJECT:

Public Works: Introduction and waiver of the first reading of Ordinance 20-09 adding Section 12.20 to the Hanford Municipal Code pertaining to the duty of Property Owners to maintain and repair sidewalks and confirming the liability of property owners, under existing state law, for failing to satisfy such duty.

RECOMMENDATION:

That the City Council, by motion, waive the first reading and pass to the second reading of Ordinance 20-9, thereby adding Section 12.20 to the City of Hanford Municipal Code to establish the Duty of Property Owners to Maintain and Repair Sidewalks and the Liability of Property Owners for Failing to Satisfy Such Duty.

BACKGROUND:

The discussion surrounding the responsibility of sidewalk maintenance along property owners frontages has been going on for a number of years. At Council direction, Staff has worked with the City Attorney's office to prepare an ordinance that will clearly outline responsibility for repair and maintenance of sidewalks within the City.

At the July 21, 2020 Council Meeting, staff presented this ordinance and received direction from Council to develop an ordinance that clarifies responsibilities identified below:

1. If the damaged sidewalk can be repaired by grinding, the City shall, at City's expense, grind the hazard.
2. If grinding the sidewalk will not eliminate the hazard, the City shall, at City's expense, demolish and remove the damaged sidewalk and the property owner shall, at their expense, replace the sidewalk to remove the hazard.
3. If the damaged sidewalk is caused by the intentional misconduct or negligence of the property owner, the property owner shall, at their expense, demolish, remove, and replace, the damaged sidewalk and remove the hazard. (ex. driving a large truck over sidewalk and damaging the sidewalk)

If the property owner fails to repair the sidewalk, the City may undertake the repairs necessary to remove the hazard and the property owner will pay for the City's costs. If the property owner does not pay for the repairs, the City would utilize the public hearing under Section 12.20.080 of the proposed ordinance to lien the property under Chapter 22 of Division 7, Part 3 of the California Streets and Highways Code to collect the costs for repairs.

The Council also directed staff to identify timeframes for completion of the repairs so that the inconvenience to the public is minimized. This ordinance identifies that the property owner has 30 days to complete repairs once notice is received and 7 days to replace the sidewalk once the City has demolished and removed the damaged sidewalk.

FISCAL IMPACT:

The passage of this ordinance would result in a saving to the City's streets department, which would allow those funds to be reallocated to street maintenance..

ATTACHMENTS:

Ordinance 20-09 (clean)

Ordinance 20-09 (with markup)

ORDINANCE NO. __
**AN ORDINANCE OF THE CITY OF HANFORD PERTAINING TO THE DUTY OF
PROPERTY OWNERS TO MAINTAIN AND REPAIR SIDEWALKS AND THE
LIABILITY OF PROPERTY OWNERS FOR FAILING TO SATISFY SUCH DUTY**

The City Council of Hanford does ordain as follows:

Section 1: Findings.

A. Pursuant to California Streets and Highways Code Section 5610, landowners adjacent to public sidewalk areas are responsible for maintaining “any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas. . . .”

B. Pursuant to California Streets and Highways Code Section 5610, *et seq.*, the “superintendent of streets” (in Hanford, the Director of Public Works or his/her authorized designee) may repair and maintain a sidewalk area if the adjacent landowner fails to do so, and may assess and charge the adjacent landowner for the cost of such repairs and maintenance.

C. Legal authority, including, without limitation, *Gonzales v. City of San Jose* (2004) 125 Cal.App. 4th 1127, 23 Cal.Rptr.3d 178, recognizes the City of Hanford’s ability to affirm a landowner’s obligation to maintain, repair, and replace a sidewalk adjacent to the owner’s property and the landowner’s corresponding liability for failure to do so.

D. The purpose of this Ordinance is to confirm: (i) each landowner’s responsibility to maintain and repair the sidewalk adjacent to or on an owner’s property; and (ii) a landowner’s liability to the general public for personal injury and/or property damage that results from a landowner’s failure to maintain, repair, or replace a sidewalk adjacent to or on the owner’s property.

Section 2: Adoption

Chapter 12.20 of the Hanford Municipal Code is hereby added to read as follows:

Chapter 12.20

MAINTENANCE AND REPAIR OF SIDEWALKS

Sections:

12.20.010	Purpose and Applicability
12.20.020	Definitions
12.20.030	Maintenance and repair of sidewalks
12.20.040	Liability for injury to the public
12.20.050	Property owner’s failure to maintain and repair – Director’s authority
12.20.060	Notice of cost and hearing by Council

- 12.20.070** **Conference with Director**
- 12.20.080** **Hearing by City Council**
- 12.20.090** **Collection of city's costs**

12.20.010 Purpose and Applicability

It is the purpose of this chapter to provide sidewalk area maintenance, repair, and replacement procedures which are alternative and supplementary to the procedures set forth in Streets and Highways Code, Division 7, Part 3, Chapter 22, Section 5600, *et seq.*, as those sections now exist or may hereafter be amended or renumbered. The City of Hanford (city), in each instance, may follow the procedures set forth in the Streets and Highways Code or those set forth in this chapter, or some combination thereof. In the event of any conflict between the provisions of the Streets and Highways Code and this chapter, the provisions of this chapter shall control.

12.20.020 Definitions

For purposes of this chapter, the following definitions apply:

A. “Defective sidewalk” means a sidewalk area where, in the judgment of the Director, the vertical or horizontal line or grade is altered or displaced to the extent that a safety hazard exists, or the sidewalk area is in such a condition as to endanger property or persons using the sidewalk area in a reasonable manner, or is in such a condition as to interfere with the public convenience in the use thereof.

B. “Director” means the city’s Public Works Director or his/her designee; “Director” shall have the same meaning as the term “Superintendent of Streets” as utilized in the Streets and Highways Code Section 5600, *et seq.*

C. “Lot,” “lots” and “portions of a lot” mean a parcel of real property located within the city on which a sidewalk is located or that is adjacent to or fronting on any portion of a sidewalk, and when used in connection with the phrase “adjacent to or fronting on the defective sidewalk,” or variation thereof, shall refer to the property in front of or along the side of the defective sidewalk.

D. “Maintain and repair” and “maintenance and repair” shall mean maintenance so that the sidewalk area remains in a condition that is not dangerous to property or persons using the sidewalk area in a reasonable manner and in a condition that will not interfere with the public convenience in use of the sidewalk area, and shall include, but not be limited to: maintenance, repair, and improvement of sidewalks, including, without limitation, grinding, removal and replacement of sidewalks; removal and filling or replacement of parking strips; supervision and maintenance of permissible signs and removal of impermissible signs; and/or tree root pruning and installing root barriers. Any root pruning, trimming or removal of trees or shrubs as a part of sidewalk maintenance and repair is subject to the provisions of Chapter 12.12 of this Code.

E. “Owner,” “landowner,” or “property owner” means any person owning a lot, lots, or portions of a lot within the city, adjacent to or fronting on any portion of a sidewalk area.

F. “Person” shall include a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

G. “Sidewalk” and “sidewalk area” mean that portion of the public street right-of-way between the curb or curb line and the adjacent sidewalk or property line, including, without limitation, sidewalks, park strips, bulkheads, retaining walls, or other works for the protection of any sidewalk area. The term “park strip” is defined in Section 12.12.020 of this Code, which is incorporated herein by reference. A sidewalk may be located on private property or may be located on public property that abuts private property.

12.20.030 Maintenance and repair of sidewalks.

A. Except as otherwise provided in this chapter, an owner of a lot or portion of a lot adjacent to or fronting any portion of a sidewalk area or on which a sidewalk area is located shall maintain and repair the sidewalk so that it remains a safe and non-dangerous condition at his/her/its sole cost and expense.

B. It shall be the responsibility of a landowner to promptly notify the City of a defective sidewalk located on or adjacent to the owner’s property.

C. The city will assess the extent of damage upon learning of an alleged defective sidewalk. The city will, at its own cost, grind the defective sidewalk to eliminate the hazard if grinding is feasible. If grinding will not eliminate the hazard, the city shall, at the city’s expense, demolish and remove the defective portion of sidewalk, and the owner will, at the owner’s sole cost, replace the portion of sidewalk removed by the city. The city shall, however, provide the services described in this subsection C. only if the city determines that: (i) a defective sidewalk exists; and (ii) the sidewalk’s defective condition was not caused by the intentional misconduct or negligence of the owner or the owner’s employee, agent, invitee, or contractor. For purposes of this chapter, damage to a sidewalk by tree roots shall not be deemed to have been caused by the intentional misconduct or negligence of a landowner. If the city reasonably determines that the defective sidewalk was caused by the intentional misconduct or negligence of the owner or the owner’s employee, agent, invitee, or contractor, the owner shall be solely responsible for all repair work required to address the hazard.

D. In the event a property owner fails to maintain and repair a sidewalk in accordance with this chapter, the owner will be responsible for costs incurred by the city in undertaking maintenance and repair work on the owner’s behalf, including without limitation, any charge for the city’s costs of inspection and administration whenever the city awards a contract for such work, the costs of collecting the city’s expenses for the maintenance and repair work, and the handling of any lien placed on the property due to the failure of the property owner to promptly pay the city’s costs. An owner will not, however, be liable for the costs for which the city is responsible pursuant to subsection C. above.

E. An owner's responsibility for trees, shrubs, and other items located in a park strip is set forth in Chapter 12.12 of this Code.

F. If a section of defective sidewalk will be replaced to eliminate a hazard, the process to remove the defective sidewalk and install new sidewalk shall be completed within thirty (30) calendar days of the date of the notice given by the city pursuant to Section 12.20.050 below. Notwithstanding the preceding sentence, if the city is responsible for the demolition and removal of defective sidewalk pursuant to this chapter, the landowner must complete the installation of the replacement sidewalk within seven (7) calendar days of the completion of the city's demolition and removal the defective sidewalk.

G. The maintenance and repair work occurring under this Chapter, including material utilized for such work, shall be in strict conformance with the applicable portions of the city's standard specifications as they now exist, or as they may hereafter be amended.

H. Prior to commencing any maintenance and repair work, an owner must apply for and obtain an encroachment permit from the city's Public Works Department.

I. An owner may request that, on the owner's behalf, the city perform sidewalk replacement work for which the owner is responsible. If the city, in its sole discretion, agrees to such a request, the city may perform the work with city forces or may contract with a vendor of the city's choosing to perform the work. In either case, the property owner will remain responsible for all costs of sidewalk replacement incurred by the city on the owner's behalf unless the City Council establishes a policy or program through which the city assists property owners.

12.20.040 Liability for injury to the public.

Each property owner that is responsible for the maintenance and repair of a sidewalk pursuant to this Chapter shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition. An owner shall promptly notify the city of a defective sidewalk located on or adjacent to the owner's property. If, as a result of the failure of a property owner to satisfy the requirements of this chapter, including, without limitation, the duty to repair and to maintain a sidewalk area in a safe and non-dangerous condition, any person suffers injury or damage to person or property, the property owner shall be liable to such person for the resulting damages, losses, and/or injuries and shall indemnify, defend, and hold the city harmless from such damages, losses, and injuries.

12.20.050 Property owner's failure to maintain and repair – Director's authority.

Where the Director has actual notice of the existence of a defective sidewalk, the Director may give written notice to the owner of the lot, lots, or portions thereof adjacent to or fronting on the defective sidewalk or on which the sidewalk is located. Service of the notice to repair shall be by either regular U.S. mail or by personal service. The notice to repair shall particularly specify: (i) what work is required to be done and how the same is to be done and what materials shall be used in the repair; (ii) that, if the owner proceeds to undertake the repair by

private contract, his/her/its activities will be governed by the provisions of this chapter; (iii) the time period within which the repair must be completed by the owner; (iv) and that if the repairs are not completed within such time period, the city may, but shall not be required to, perform the sidewalk replacement work on the owner's behalf, and the cost shall be subject to reimbursement in accordance with this chapter. At the Director's discretion, the city may undertake sidewalk replacement work for a property owner who fails to comply with a notice to repair.

12.20.060 Notice of cost and hearing by Council.

A. If the city performs work on a property owner's behalf in accordance with Section 12.20.050 above, the Director shall cause notice of the cost of the maintenance and repair work to be given upon completion in the manner specified in Chapter 22 of Division 7, Part 3, of the California Streets and Highways Code, as may be amended. The notice shall specify the day, hour, and place when the City Council will consider the report of the costs, together with any written objections or protests which may be raised by the property owner and any other interested persons. The notice shall also describe the procedure to be followed for written objections and protests. In no such case shall the hearing occur sooner than fifteen (15) days and not more than sixty (60) days after giving of notice.

B. No such hearing will be required if the property owner waives his/her/its right to a hearing and voluntarily pays or agrees to pay the costs identified in the Director's cost report.

12.20.070 Conference with Director.

The Director shall attempt to meet and confer with an affected property owner if the property owner files a written objection or protest to the Director's report of costs. Upon the conclusion of such a conference, the Director shall record his/her conclusions in the report of costs to the City Council, together with any recommendations for adjustment of the costs of repair, if any.

12.20.080 Hearing by City Council.

The City Council, on the day and hour fixed for hearing, shall hear and pass upon the report of the Director, together with any written protests or objections, which have not been withdrawn prior to the hearing, from the property owner liable for the work of maintenance and repair, in accordance with the procedure provided in Chapter 22 of Division 7, Part 3, of the California Streets and Highways Code, as may be amended.

12.20.090 Collection of city's costs.

The city shall have the remedies available under Chapter 22 of Division 7, Part 3 of the California Streets and Highways Code, as may be amended, to collect the costs confirmed by the City Council as a result of the hearing conducted in accordance with Section 12.20.080 above. Such remedies include the recording of a lien against an owner's property or adding the amount owed to the city to the tax roll for the subject property.

Section 3: This Ordinance shall take effect thirty (30) days after its adoption, and shall be published once in the Hanford Sentinel within fifteen (15) days after its passage or a summary of this ordinance shall be published in the Hanford Sentinel in a manner consistent with the requirements of the California Government Code.

THEREFORE, BE IT FURTHER RESOLVED, that based on the above and incorporated findings, the City Council approves Ordinance 20-__.

PASSED, ADOPTED AND APPROVED this ____ day of _____, 2020 by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

JOHN DRAXLER
MAYOR of the City of Hanford

Attest:

NATALIE ORTEGA
ACTING CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF KINGS) ss
CITY OF HANFORD)

I, Natalie Ortega, Acting City Clerk of the City of Hanford, do hereby certify the foregoing Ordinance was duly passed and adopted at a regular meeting of the City Council of the City of Hanford held on the ____ day of _____, 2020.

Date: _____

Acting City Clerk

Attachment: Ordinance 20-09 (clean) (PW: Creation of Sidewalk Ordinance)

ORDINANCE NO. __
**AN ORDINANCE OF THE CITY OF HANFORD PERTAINING TO THE DUTY OF
PROPERTY OWNERS TO MAINTAIN AND REPAIR SIDEWALKS AND THE
LIABILITY OF PROPERTY OWNERS FOR FAILING TO SATISFY SUCH DUTY**

The City Council of Hanford does ordain as follows:

Section 1: Findings.

A. Pursuant to California Streets and Highways Code Section 5610, landowners adjacent to public sidewalk areas are responsible for maintaining “any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas. . . .”

B. Pursuant to California Streets and Highways Code Section 5610, *et seq.*, the “superintendent of streets” (in Hanford, the Director of Public Works or his/her authorized designee) may repair and maintain a sidewalk area if the adjacent landowner fails to do so, and may assess and charge the adjacent landowner for the cost of such repairs and maintenance.

C. Legal authority, including, without limitation, *Gonzales v. City of San Jose* (2004) 125 Cal.App. 4th 1127, 23 Cal.Rptr.3d 178, recognizes the City of Hanford’s ability to affirm a landowner’s obligation to maintain, repair, and replace a sidewalk adjacent to the owner’s property and the landowner’s corresponding liability for failure to do so.

D. The purpose of this Ordinance is to confirm: (i) each landowner’s responsibility to maintain and repair the sidewalk adjacent to or on an owner’s property; and (ii) a landowner’s liability to the general public for personal injury and/or property damage that results from a landowner’s failure to maintain, repair, or replace a sidewalk adjacent to or on the owner’s property.

Section 2: Adoption

Chapter 12.20 of the Hanford Municipal Code is hereby added to read as follows:

Chapter 12.20

MAINTENANCE AND REPAIR OF SIDEWALKS

Sections:

12.20.010	Purpose and Applicability
12.20.020	Definitions
12.20.030	Maintenance and repair of sidewalks
12.20.040	Liability for injury to the public
12.20.050	Property owner’s failure to maintain and repair – Director’s authority
12.20.060	Notice of cost and hearing by Council

- 12.20.070 Conference with Director
- 12.20.080 Hearing by City Council
- 12.20.090 Collection of city's costs

12.20.010 Purpose and Applicability

It is the purpose of this chapter to provide sidewalk area maintenance, repair, and replacement procedures which are alternative and supplementary to the procedures set forth in Streets and Highways Code, Division 7, Part 3, Chapter 22, Section 5600, *et seq.*, as those sections now exist or may hereafter be amended or renumbered. The City of Hanford (city), in each instance, may follow the procedures set forth in the Streets and Highways Code or those set forth in this chapter, or some combination thereof. In the event of any conflict between the provisions of the Streets and Highways Code and this chapter, the provisions of this chapter shall control.

12.20.020 Definitions

For purposes of this chapter, the following definitions apply:

A. "Defective sidewalk" means a sidewalk area where, in the judgment of the Director, the vertical or horizontal line or grade is altered or displaced to the extent that a safety hazard exists, or the sidewalk area is in such a condition as to endanger property or persons using the sidewalk area in a reasonable manner, or is in such a condition as to interfere with the public convenience in the use thereof.

B. "Director" means the city's Public Works Director or his/her designee; "Director" shall have the same meaning as the term "Superintendent of Streets" as utilized in the Streets and Highways Code Section 5600, *et seq.*

C. "Lot," "lots" and "portions of a lot" mean a parcel of real property located within the city on which a sidewalk is located or that is adjacent to or fronting on any portion of a sidewalk, and when used in connection with the phrase "adjacent to or fronting on the defective sidewalk," or variation thereof, shall refer to the property in front of or along the side of the defective sidewalk.

D. "Maintain and repair" and "maintenance and repair" shall mean maintenance so that the sidewalk area remains in a condition that is not dangerous to property or persons using the sidewalk area in a reasonable manner and in a condition that will not interfere with the public convenience in use of the sidewalk area, and shall include, but not be limited to: maintenance, repair, and improvement of sidewalks, including, without limitation, grinding, removal and replacement of sidewalks; removal and filling or replacement of parking strips; supervision and maintenance of permissible signs and removal of impermissible signs; and/or tree root pruning and installing root barriers. Any root pruning, trimming or removal of trees or shrubs as a part of sidewalk maintenance and repair is subject to the provisions of Chapter 12.12 of this Code.

E. “Owner,” “landowner,” or “property owner” means any person owning a lot, lots, or portions of a lot within the city, adjacent to or fronting on any portion of a sidewalk area.

F. “Person” shall include a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

G. “Sidewalk” and “sidewalk area” mean that portion of the public street right-of-way between the curb or curb line and the adjacent sidewalk or property line, including, without limitation, sidewalks, park strips, bulkheads, retaining walls, or other works for the protection of any sidewalk area. The term “park strip” is defined in Section 12.12.020 of this Code, which is incorporated herein by reference. A sidewalk may be located on private property or may be located on public property that abuts private property.

12.20.030 Maintenance and repair of sidewalks.

~~_____ A. _____~~ ~~A. Except as otherwise provided in this chapter, an~~ owner of a lot or portion of a lot adjacent to or fronting any portion of a sidewalk area or on which a sidewalk area is located shall maintain and repair the sidewalk so that it remains a safe and non-dangerous condition at his/her/its sole cost and expense.

~~_____ B. It shall be the responsibility of a landowner to promptly notify the City of a defective sidewalk located on or adjacent to the owner’s property.~~

~~_____ C. The city will assess the extent of damage upon learning of an alleged defective sidewalk. The city will, at its own cost, grind the defective sidewalk to eliminate the hazard if grinding is feasible. If grinding will not eliminate the hazard, the city shall, at the city’s expense, demolish and remove the defective portion of sidewalk, and the owner will, at the owner’s sole cost, replace the portion of sidewalk removed by the city. The city shall, however, provide the services described in this subsection C. only if the city determines that: (i) a defective sidewalk exists; and (ii) the sidewalk’s defective condition was not caused by the intentional misconduct or negligence of the owner or the owner’s employee, agent, invitee, or contractor. For purposes of this chapter, damage to a sidewalk by tree roots shall not be deemed to have been caused by the intentional misconduct or negligence of a landowner. If the city reasonably determines that the defective sidewalk was caused by the intentional misconduct or negligence of the owner or the owner’s employee, agent, invitee, or contractor, the owner shall be solely responsible for all repair work required to address the hazard.~~

~~_____ D. In the event a property owner fails to maintain and repair a sidewalk in accordance with this Chapterchapter, the owner will be responsible for costs incurred by the city in undertaking maintenance and repair work on the owner’s behalf, including without limitation, any charge for the city’s costs of inspection and administration whenever the city awards a contract for such work, the costs of collecting the city’s expenses for the maintenance and repair work, and the handling of any lien placed on the property due to the failure of the property owner to promptly pay the city’s costs. An owner will not, however, be liable for the costs for which the city is responsible pursuant to subsection C. above.~~

BE. An owner's responsibility for trees, shrubs, and other items located in a park strip is set forth in Chapter 12.12 of this Code.

~~C. Notwithstanding the provisions of Streets and Highways Code Section 5614, as may be amended, the Director may, in his/her discretion and for sufficient cause, extend the period within which required maintenance and repair of sidewalk areas must commence by a period of not exceeding ninety (90) calendar days from the time the notice referred to in said Section 5614 is given. For the purposes of this Chapter, an owner will be deemed to have commenced the maintenance and repair of a sidewalk when physical work begins.~~ F. If a section of defective sidewalk will be replaced to eliminate a hazard, the process to remove the defective sidewalk and install new sidewalk shall be completed within thirty (30) calendar days of the date of the notice given by the city pursuant to Section 12.20.050 below. Notwithstanding the preceding sentence, if the city is responsible for the demolition and removal of defective sidewalk pursuant to this chapter, the landowner must complete the installation of the replacement sidewalk within seven (7) calendar days of the completion of the city's demolition and removal the defective sidewalk.

G. The maintenance and repair work occurring under this Chapter, including material utilized for such work, shall be in strict conformance with the applicable portions of the city's standard specifications as they now exist, or as they may hereafter be amended.

EH. Prior to commencing any maintenance and repair work, an owner must apply for and obtain an encroachment permit from the city's Public Works Department.

FI. An owner may request that, on the owner's behalf, the city perform sidewalk ~~maintenance and repair~~replacement work ~~on for which the owner's behalf~~owner is responsible. If the city, in its sole discretion, agrees to such a request, the city may perform the work with city forces or may contract with a vendor of the city's choosing to perform the work. In either case, the property owner will remain responsible for all costs of ~~maintenance and repair~~sidewalk replacement incurred by the city on the owner's behalf unless the City Council establishes a policy or program through which the city assists property owners ~~with maintenance and repair work or the costs associated with such work.~~

12.20.040 Liability for injury to the public.

Each property owner that is responsible for the maintenance and repair of a sidewalk pursuant to this Chapter shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition. An owner shall promptly notify the city of a defective sidewalk located on or adjacent to the owner's property. If, as a result of the failure of a property owner to satisfy the requirements of this chapter, including, without limitation, the duty to repair and to maintain a sidewalk area in a safe and non-dangerous condition, any person ~~who~~ suffers injury or damage to person or property, the property owner shall be liable to such person for the resulting damages, losses, and/or injuries and shall indemnify, defend, and hold the city harmless from such damages, losses, and injuries.

12.20.050 Property owner's failure to maintain and repair – Director's authority.

Where the Director has actual notice of the existence of a defective sidewalk, the Director may give written notice to ~~maintain and repair the defective sidewalk to~~ the owner of the lot, lots, or portions thereof adjacent to or fronting on the defective sidewalk or on which the sidewalk is located. Service of the notice to repair shall be by either regular U.S. mail or by personal service. The notice to repair shall particularly specify: (i) what work is required to be done and how the same is to be done and what materials shall be used in the repair; (ii) that, if the owner proceeds to undertake the repair by private contract, his/her/its activities will be governed by the provisions of this ~~Chapter~~chapter; (iii) the time period within which the repair must be ~~commenced/completed~~ by the owner; (iv) and that if the ~~repair—isrepairs are~~ not ~~commenced/completed~~ within such time period ~~and prosecuted diligently without interruption to completion~~, the city may, but shall not be required to, ~~proceed withperform~~ the ~~repairsidewalk replacement work on the owner's behalf~~, and the cost shall be subject to reimbursement in accordance with this ~~Chapter~~chapter. At the Director's discretion, the city may undertake sidewalk replacement work for a property owner who fails to comply with a notice to repair.

12.20.060 Notice of cost and hearing by Council.

A. If the city ~~undertakesperforms~~ work on a property owner's behalf in accordance with Section 12.20.050 above, the Director shall cause notice of the cost of the maintenance and repair work to be given upon completion in the manner specified in Chapter 22 of Division 7, Part 3, of the California Streets and Highways Code, as may be amended. The notice shall specify the day, hour, and place when the City Council will consider the report of the costs, together with any written objections or protests which may be raised by the property owner and any other interested persons. The notice shall also describe the procedure to be followed for written objections and protests. In no such case shall the hearing occur sooner than fifteen (15) days and not more than sixty (60) days after giving of notice.

B. No such hearing will be required if the property owner waives his/her/its right to a hearing and voluntarily pays or agrees to pay the costs identified in the Director's cost report.

12.20.070 Conference with Director.

The Director shall attempt to meet and confer with an affected property owner if the property owner files a written objection or protest to the Director's report of costs. Upon the conclusion of such a conference, the Director shall record his/her conclusions in the report of costs to the City Council, together with any recommendations for adjustment of the costs of repair, if any.

12.20.080 Hearing by City Council.

The City Council, on the day and hour fixed for hearing, shall hear and pass upon the report of the Director, together with any written protests or objections, which have not been withdrawn prior to the hearing, from the property owner liable for the work of maintenance and repair, in

accordance with the procedure provided in Chapter 22 of Division 7, Part 3, of the California Streets and Highways Code, as may be amended.

12.20.090 Collection of city’s costs.

The city shall have the remedies available under Chapter 22 of Division 7, Part 3 of the California Streets and Highways Code, as may be amended, to collect the costs confirmed by the City Council as a result of the hearing conducted in accordance with Section 12.20.080 above. Such remedies include the recording of a lien against an owner’s property or adding the amount owed to the city to the tax roll for the subject property.

Section 3: This Ordinance shall take effect thirty (30) days after its adoption, and shall be published once in the Hanford Sentinel within fifteen (15) days after its passage or a summary of this ordinance shall be published in the Hanford Sentinel in a manner consistent with the requirements of the California Government Code.

##

THEREFORE, BE IT FURTHER RESOLVED, that based on the above and incorporated findings, the City Council approves Ordinance ~~1720~~____.

PASSED, ADOPTED AND APPROVED this ____ day of _____, ~~2017~~2020 by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____

Attachment: Ordinance 20-09 (with markup) (PW: Creation of Sidewalk Ordinance)

ABSENT: _____

~~DAVID AYERS~~ JOHN DRAXLER
MAYOR of the City of Hanford

Attest:

~~JENNIFER GOMEZ~~
NATALIE ORTEGA
ACTING CITY CLERK

STATE OF CALIFORNIA __)
COUNTY OF KINGS __) ss
CITY OF HANFORD __)

I, ~~Jennifer Gomez~~, Natalie Ortega, Acting City Clerk of the City of Hanford, do hereby certify the foregoing Ordinance was duly passed and adopted at a regular meeting of the City Council of the City of Hanford held on the ____ day of _____, ~~2017~~2020.

Date: _____

Acting City Clerk

Attachment: Ordinance 20-09 (with markup) (PW: Creation of Sidewalk Ordinance)



**AGENDA
STAFF REPORT**

MEETING DATE: 8/18/2020	AGENDA SECTION: A
--------------------------------	--------------------------

SUBJECT:

Council Future Agenda Items

FISCAL IMPACT:

ATTACHMENTS:

Council Future Agenda Items

Council Future Agenda Items

Originated Date	Item	Originator	Staff Lead	Date Estimate
6/5/18	Comprehensive Study of downtown businesses, including crosswalks. Study to change 7 th Street one-way going WEST and 6 th Street going EAST to increase angled parking.	Council Consensus	John Doyel	10/6/20 Public Outreach Meetings to occur via Zoom
6/17/18	Develop a naming policy for facilities/parks/structures	Council Consensus	Brad Albert	P&R Comm - 9/7/20 Council 9/15/20
1/24/19	Develop a food truck ordinance	Council Consensus	Darlene Mata	Plan Comm - 8/25/20 Council 9/15/20
5/22/19	Abandoned shopping cart ordinance	Brieno	Parker Sever, Karl Anderson	10/6/20 Delayed for Public Outreach Meetings
5/22/19	Parks/Camping Ordinance	Council Consensus	Parker Sever	9/15/20
6/18/20	Review and adjustment of Local Preference for Vendors	Council Consensus	Mario Cifuentez	9/1/20
6/18/20	Discussion of Courthouse improvements, funding sources, and potential revenue	Council Consensus	Various Staff	9/1/20

Attachment: Council Future Agenda Items (Council: Future Agenda Items)