



**CITY COUNCIL AGENDA  
CITY HALL, 291 N. MAIN STREET  
PORTERVILLE, CALIFORNIA  
JANUARY 17, 2023, 5:30 PM**

Pursuant to the provisions of Assembly Bill 361, signed into law by Governor Newsom on September 16, 2021, the City of Porterville is allowing for and encouraging electronic participation at City Council Meetings. Until further notice, Porterville City Council Meetings will be live streamed on YouTube at <https://www.youtube.com/channel/UC5KuhSrNMNL9nwHJVtnJvvA>

Alternatively, this meeting will also be available via Zoom using the following information

**Topic: City of Porterville – City Council Meeting of January 17, 2023**

Please use the following link below to join the webinar:

<https://us06web.zoom.us/j/85249296273?pwd=cDIHSVF0eFo0WHVNQnQybTRBSFdPQT09>

Or via Telephone: **1-669-900-6833** Webinar ID: **852 4929 6273** Passcode: **020968**

Call to Order

Roll Call

**ORAL COMMUNICATIONS**

This is the opportunity to address the City Council on any matter scheduled for Closed Session. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

**CITY COUNCIL CLOSED SESSION:**

A. Closed Session Pursuant to:

- 1** - Government Code Section 54957.6 – Conference with Labor Negotiator. Agency Negotiator: John Lollis and Yuliana Andrade. Employee Organizations: Porterville City Firefighters Association.
- 2** - Government Code Section 54956.95 – Liability Claim: Claimant: Benjamin Bogle and Keri Curtis. Agency claimed against: City of Porterville.
- 3** - Government Code Section 54956.95 – Liability Claim: Claimant: Isabel Hernandez. Agency claimed against: City of Porterville.
- 4** - Government Code Section 54956.9(d)(3) – Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation: Four (4) cases in which facts are not yet known to potential plaintiff.
- 5** - Government Code Section 54956.9(d)(4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation: One (1) case.

**6:30 P.M. RECONVENE OPEN SESSION AND REPORT ON  
REPORTABLE ACTION TAKEN IN CLOSED SESSION**

Pledge of Allegiance Led by Mayor Flores

Invocation

**PRESENTATIONS**

Veterans Homecoming  
Police Department's Citizen Recognition Award  
Employee Service Awards

**ORAL COMMUNICATIONS**

This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. Please address all items not scheduled for public hearing at this time. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

**AB 1234 REPORTS**

This is the time for all AB 1234 reports required pursuant to Government Code § 53232.3.

1. Tulare County Task Force on Homelessness - December 21, 2022 - Canceled
2. Cannabis Ad Hoc Committee - December 26, 2022
3. Tulare Economic Development Corporation (TCEDC) Board - December 25, 2022 - Canceled
4. Police Department Badge Pinning Ceremony - January 3, 2023
4. Local Initiatives Navigation Center (LINC) Committee Meeting - January 4, 2023
6. Eastern Tule Groundwater Sustainability Agency (ETGSA) Board Meeting - January 5, 2023
7. Tule River Tribe Sesquicentennial Celebration - January 9, 2023
8. Tulare County Water Commission - January 9, 2023
9. Transit Forum - January 11, 2023
10. Porterville Homeless Services Meeting - January 11, 2023
11. CalVans Board - January 12, 2023
12. Tulare County Economic Development Corporation (TCEDC) Board - January 13, 2023

**REPORTS**

This is the time for all committee/commission/board reports; subcommittee reports; and staff informational items.

- I. City Commission and Committee Meetings



1. Parks & Leisure Services Commission - January 5, 2023
2. Library & Literacy Commission - January 10, 2023
3. Arts Commission
4. Animal Control Commission - January 12, 2023
5. Youth Commission - January 11, 2023
6. Transactions and Use Tax Oversight Committee (TUTOC)

## II. Staff Informational Reports

1. Water Conservation Phase IV Status Update - December 2022

### **CONSENT CALENDAR**

All 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, in which event the item will be removed from the Consent Calendar. All items removed from the Consent Calendar for further discussion will be heard at the end of Scheduled Matters.

1. **Authorization to Repair Police Vehicles No. 3352 and No. 3389**  
Re: Consideration to authorize vehicle repair by Milinich Body Works at a cost not to exceed \$46,674
2. **Approval of Emergency Expenditure**  
Re: Consideration to authorize payment to Prime Towing & Transport, Inc. in the amount of \$12,562.50.
3. **Purchase of Fire Department/Code Enforcement Body-Worn Camera**  
Re: Considering the purchase and installation of one additional body-worn camera and associated equipment, licenses, and cloud storage from Axon Enterprises, Inc., for the Fire Department's Code Enforcement Division, at a total cost of \$11,452.94.
4. **Authorization to Repair Transit Vehicle No. 8113**  
Re: Consideration to authorize repair of a transit vehicle by E.M. Tharp, Inc. at a cost not to exceed \$24,173.
5. **Authorization to Repair Transit Van No. 8123**  
Re: Consideration of approval for transit van collision repair by E.M. Tharp, Inc. at a cost not to exceed \$9,827.
6. **Authorization to Distribute a Request for Qualifications for Design Services - Parks Master Plan**  
Re: Consideration to authorize staff to distribute a Design Services Request for Qualifications for a Parks Master Plan.
7. **Status Report - Developer Impact Fees**  
Re: Consider acceptance of the Status Report on Developer Impact Fees for the fiscal year ended June 30, 2022.
8. **Acceptance of Police K-9 Safety Equipment Grant**  
Re: Consideration to accept the Spirit of Blue Foundation Grant in the amount of \$3,770.00.
9. **Acceptance of Donation of Little Library by Milt Stowe**

Re: Consideration of the council to accept the donation of the Little Library by Milt Stowe.

**10. Amended Barn Theater Revocable License Agreement**

Re: Consideration of proposed amendments to the current Revocable License Agreement between the City and the Barn Theatre.

**11. Assignment of Airport Lease - Lot No. 34F**

Re: Consideration to approve the Assignment of Lease for Lot No. 34F at the Porterville Municipal Airport from Steven Huth and Michael Quatacker to Michael Quatacker and Debbie Quatacker.

**12. City Council Member Requested Agenda Item - Consider the Formation of a City Council Ad Hoc Committee to Annually Review the Implementation of the City's General Plan.**

Re: Consider Council Member Weyhrauch's request to form a Council Ad Hoc Committee to annually review the implementation of the City's General Plan.

**13. Reaffirm Conditions of State Assembly Bill 361 to Continue Remote Attendance at Public Meetings**

Re: Consider adoption of a draft Resolution consistent with AB 361 to continue to allow remote attendance at public meetings.

**14. Status and Review of Local Emergency Drought**

Re: Considering approval of the continuance of the Declaration of Local Emergency.

*A Council Meeting Recess Will Occur at 8:30 p.m., or as Close to That Time as Possible*

**PUBLIC HEARINGS**

**15. Zone Change from RM-3 (High Density Residential) to CG (General and Service Commercial) for Panaderia La Cosecha located at 23 North F Street**

Re: Consideration of a draft Ordinance approving a Zone Change from RM-3 (High-Density Residential) to CG (General and Service Commercial) for a 0.17± acre parcel located at 23 North "F" Street.

**16. Villas at Sierra Meadows 4 & 5 Development Project**

Re: Consideration to continue the Public Hearing scheduled to consider the entitlements for PRC 2020-48 - Villas at Sierra Meadows 4 & 5 Development Project generally located at the southwest corner of W. Gibbons Avenue and S. Jaye Street, to February 21, 2023.

**SCHEDULED MATTERS**

**17. Consideration of Amendments to the City Council Procedural Handbook**

Re: Consideration of amendments to the City Council Procedural Handbook.

**18. 2023 State Budget and Legislation Interests**

Re: Council consideration of its State budget and legislative interests for the upcoming 2023 California legislative session.

**ORAL COMMUNICATIONS**

**OTHER MATTERS**

**CLOSED SESSION**

Any Closed Session Items not completed prior to 6:30 p.m. will be considered at this time.

**ADJOURNMENT** - to the meeting of February 7, 2023, at 5:30 p.m.

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Office of City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.

Materials related to an item on this Agenda submitted to the City Council after distribution of the Agenda packet are available for public inspection during normal business hours at the Office of City Clerk, 291 North Main Street, Porterville, CA 93257, and on the City's website at [www.ci.porterville.ca.us](http://www.ci.porterville.ca.us).



## CITY COUNCIL AGENDA – JANUARY 17, 2023

SUBJECT: 1. Water Conservation Phase IV Status Update - December 2022

SOURCE: Public Works

COMMENT: The City has continued to implement an active water conservation approach, conserving and providing flexibility to the community. The City transitioned from Phase III to Phase IV of the City's Water Conservation Plan as of October 1, 2022. The Water Conservation Plan applies to all municipal water users within or outside the city limits.

The Phase III plan limits outdoor watering to two days per week, with "odd" addresses allowed to water on Tuesday and Saturday and "even" addresses allowed to water on Wednesday and Sunday. Outdoor watering is prohibited between the hours of 5 a.m. to 10 a.m. and 5 p.m. to 10 p.m., with no watering allowed Monday, Thursday, or Friday. Watering outdoor landscaping is prohibited during and within forty-eight (48) hours after measurable rainfall, which is now defined as greater than 0.01 inch.

Effective October 1, 2022, the City transitioned to Phase IV of its Water Conservation Plan. The Phase IV plan limits outdoor watering to one day per week, with "odd" addresses allowed to water on Saturday and "even" addresses allowed to water on Sunday. Outdoor watering is prohibited between the hours of 5 a.m. to 10 a.m. and 5 p.m. to 10 p.m., with no watering allowed Monday through Friday. Watering outdoor landscaping is prohibited during and within forty-eight (48) hours after measurable rainfall, which is now defined as greater than 0.01 inch.

Violations of prohibited activities are considered infractions and are punishable by fines of up to \$500 for each day the violation occurs. Any peace officer or employee of a public agency charged with enforcing laws and authorized to do so by ordinance may issue a citation to the violator. The City will respond to enforcement by issuing a Notice of Violation for all witnessed occurrences, and staff will process all reported issues. Enforcement statistics for December 2022 show that ten (10) notices of violation were issued for water wasting, and fifteen (15) administrative citations were issued.

Water production for December 2022 reflects a six percent (6%) increase to the 5-year average. The monthly production for December was 189 million gallons, which is a three percent (3%) decrease compared to December 2013 at 194 million gallons. Residential consumption for December 2022 was 69 gallons per capita per day (GPCD).

Compliance with individual water supplier conservation requirements is based on cumulative savings. Cumulative tracking means that conservation savings will be added together from one month to the next and compared to the amount

of water used during the same months in 2013. City Staff will evaluate conservation totals in two formats: 1) Calculate the cumulative conservation totals for production as compared to production in 2013, and 2) Calculate cumulative conservation totals in relation to GPCD in efforts to evaluate population growth impacts on production as compared to 2013. The cumulative total production for the City of Porterville's conservation efforts will be reflected from June 2015 through December 2022. Porterville's cumulative total production conservation through December 2022 is twenty (20%). The cumulative total of GPCD for the City of Porterville's conservation efforts will be reflected from June 2015 through December 2022. Porterville's cumulative total GPCD conservation through December 2022 is twenty-five percent (25%).

Under the February 2, 2016, emergency regulation, the City of Porterville received a revised conservation standard of twenty-eight percent (28%) with an additional two percent (2%) reduction for climate adjustment, making the City's conservation standard twenty-six percent (26%). After reviewing the Water Board's Self-Certification criteria for drought impacts on water supplies, the City of Porterville Council approved maintaining a self-imposed standard of twenty-six percent (26%). The continuation of the current conservation goal keeps a standardized message that the City has worked to develop in public outreach, provides resiliency and capacity to ensure three years of supply under drought conditions, and meets the minimum twenty percent (20%) conservation standard defined in the City's Urban Water Management Plan, and assists the City in meeting the requirements of the Sustainable Groundwater Management Act (SGMA).

The State Water Board requires monthly reporting to track what agencies are doing and how they perform throughout the year. Proposed permanent regulations will require agency reporting to continue monitoring the performance of urban water conservation with a preparedness to implement conservation standards as necessary. California Governor Gavin Newsom signed Executive Order N-10-21 on July 8, 2021, urging all Californians to voluntarily reduce their water use by fifteen percent (15%) compared to their prior-year levels due to excessive drought conditions. Water production for the City system shows a three percent (3%) decrease from December 2021 to December 2022. California Governor Gavin Newsom issued another Executive Order N-7-22 on March 28, 2022, to address drought conditions after the driest first three months of a year in recorded history. EO N-7-22 requires that each water supplier implements, at a minimum, the shortage response actions adopted under section 10632 of the Water Code for a shortage level of up to twenty percent (Level 2). The City of Porterville's Water Conservation Plan Phase IV meets the requirements for this shortage (Level 2).

RECOMMENDATION: Information Only

ATTACHMENTS:

1. Monthly Production Status December 2022
2. Monthly Production Status GPCD December 2022
3. Drought Response Phase IV Flyer

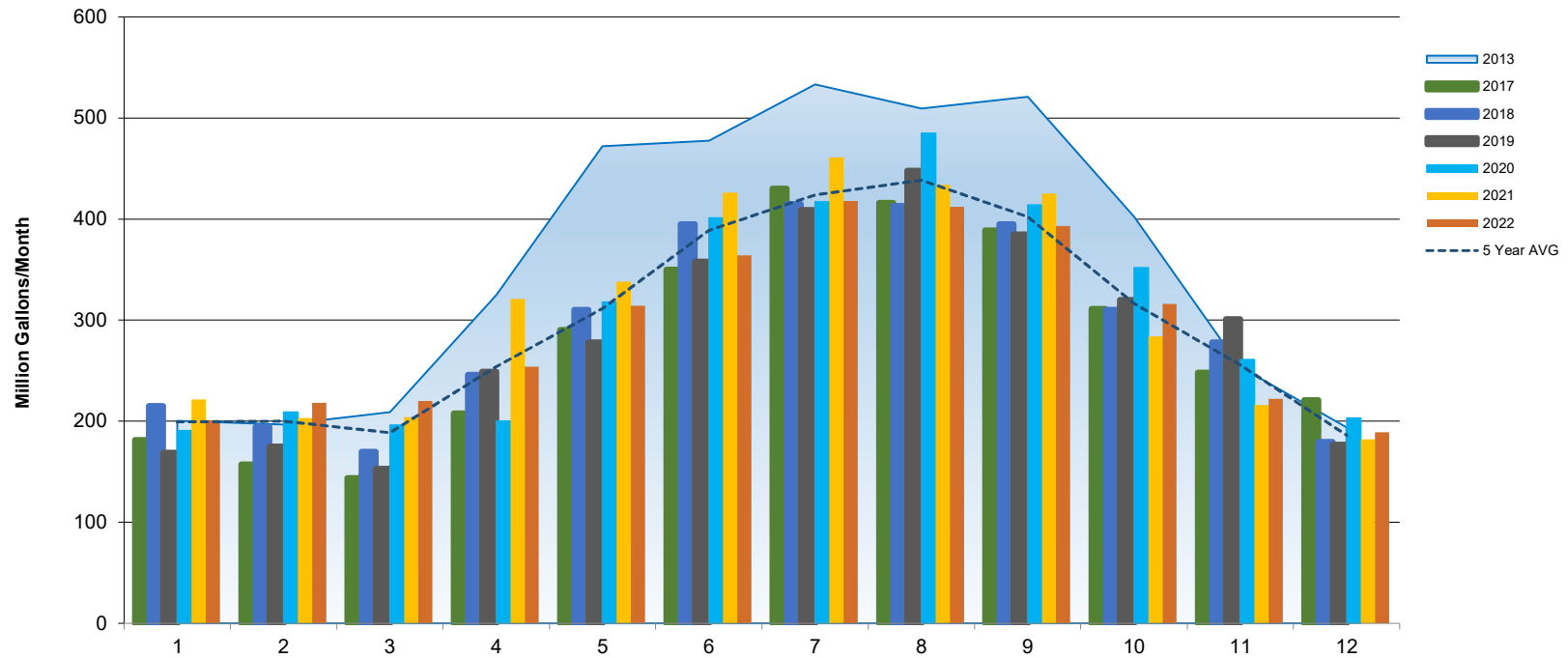
Appropriated/Funded:

Review By:

Department Director:  
Michael Knight, Public Works Director

Final Approver: John Lollis, City Manager

**Monthly Production Status & Cumulative Total June 2015 Through  
December 2022 Production Comparison to 2013 & 5 Year Average**

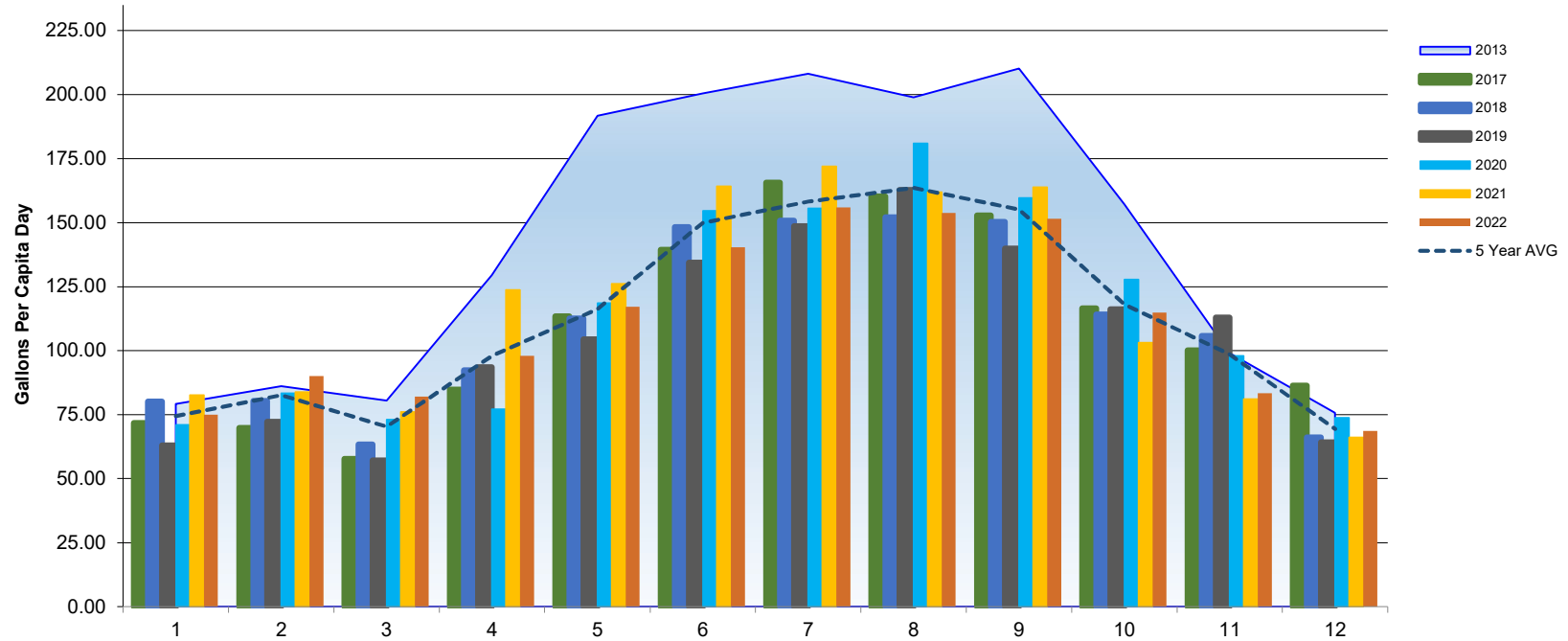


**Production Cumulative Total 20%**

2017	-9%	-20%	-31%	-36%	-38%	-27%	-19%	-18%	-25%	-23%	-2%	14%
2018	1%	-7%	-13%	-29%	-39%	-26%	-25%	-24%	-29%	-27%	7%	-13%
2019	16%	-11%	-27%	-23%	-41%	-25%	-23%	-12%	-26%	-20%	19%	-9%
2020	-5%	6%	-6%	-38%	-33%	-16%	-22%	-5%	-21%	-13%	3%	5%
2021	11%	3%	-2%	-1%	-28%	-11%	-14%	-15%	-18%	-29%	-15%	-6%
2022	0%	11%	5%	-22%	-33%	-24%	-22%	-19%	-25%	-21%	-13%	-3%

*Percent Comparison to 2013 Production*

**Monthly Production Status & Cumulative Total June 2015 Through  
December 2022 Gallon Per Capita Day Comparison to 2013 & 5 Year Average**



**GPCD**

**Cumulative Total 25%**

	2017	-9%	-19%	-28%	-34%	-41%	-30%	-20%	-19%	-27%	-26%	1%	14%
	2018	1%	-7%	-21%	-29%	-41%	-26%	-28%	-24%	-29%	-27%	7%	-13%
	2019	-20%	-16%	-29%	-28%	-46%	-33%	-29%	-18%	-33%	-26%	14%	-15%
	2020	-10%	-3%	-9%	-40%	-38%	-23%	-25%	-9%	-24%	-19%	-1%	-3%
	2021	4%	-3%	-5%	-4.4%	-34%	-18%	-17%	-19%	-22%	-34%	-18%	-13%
	2022	-5%	4%	2%	-24.3%	-39%	-30%	-25%	-19%	-28%	-27%	-16%	-9%

*Percent Comparison to 2013 Production*





**DROUGHT RESPONSE Phase IV**

**Mandatory Odd/Even Watering Schedule, based on address. Residents will be allowed ONE day a week to water lawns and landscapes. No watering allowed Monday through Fridays.**

**Watering is prohibited between the hours of 5:00 AM to 10:00 AM and 5:00 PM to 10:00 PM.**

**No watering outdoor landscapes during and within 48 hours after measurable rainfall (>0.01 inches).**

**Excessive water runoff is prohibited.**

**The washing of sidewalks and driveways is prohibited.**

**Vehicles shall only be washed on designated watering days and with a hose equipped with a shut-off nozzle.**

**The operation of ornamental water features is prohibited unless the fountain uses a recycling system.**

**Non-compliance with Phase IV water conservation regulations could result in citations with fines up to \$500.**

# DROUGHT RESPONSE PHASE IV

The City of Porterville has adopted Phase IV of its Drought Response Plan. As part of the Phase IV plan, the City has restricted watering days to one day per week, based on address.

## Mandatory Odd/Even Watering Schedule

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
DO NOT WATER	DO NOT WATER	DO NOT WATER	DO NOT WATER	DO NOT WATER	OK TO WATER	OK TO WATER
---	---	---	---	---	ODD	EVEN

- Odd Address
- Even Address
- Outdoor Watering is Prohibited

### ODD NUMBER ADDRESSES

If your address ends with an “odd” number, 1, 3, 5, 7, or 9, your watering day is Saturday *only*.

OR

### EVEN NUMBER ADDRESSES

If your address ends with an “even” number, 0, 2, 4, 6, or 8, your watering day is Sunday *only*.

Violation Level	Citation Amount
First Violation	Warning Only
Second Violation	\$100 Fine
Third Violation	\$200 Fine
Fourth Violation	\$500 Fine

**Mandatory  
Odd/Even Watering  
Schedule**

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**Excessive water  
runoff prohibited**

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**The washing of  
sidewalks and driveways  
is prohibited**

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**Vehicles shall only be  
washed on designated  
watering days and with  
hoses equipped with a  
shut-off nozzle**

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**Ornamental water  
features are prohibited  
unless the fountain uses  
a recycling system**

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**WATERING PROHIBITED  
BETWEEN THE HOURS OF  
5:00 – 10:00 AM  
5:00 – 10:00 PM**

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**NO WATERING  
MONDAY THROUGH  
FRIDAY.**



## CITY COUNCIL AGENDA – JANUARY 17, 2023

**SUBJECT:** Authorization to Repair Police Vehicles No. 3352 and No. 3389

**SOURCE:** Public Works

**COMMENT:** Police Patrol Vehicle No. 3352 was involved in a traffic collision where the other party was at fault, and Police Patrol Vehicle No. 3389 was involved in a traffic collision where the Officer was at fault. The staff attempted to obtain three estimates by having the estimators visit the Corporation Yard as the vehicles were not driveable. Only Milinich Body Works responded to the request for either vehicle. The other two repair shops were non-responsive.

The estimates for Vehicle No. 3352 are as follows:

Milinich Body Works	\$13,685
Porterville Collision	Non-Respondent
Golden State Body Shop	Non-Respondent

The estimates for Vehicle No. 3389 are as follows:

Milinich Body Works	\$28,747
Porterville Collision	Non-Respondent
Golden State Body Shop	Non-Respondent

Staff is requesting authorization to utilize Milinich Body Works to perform the repairs at an estimated cost not to exceed \$46,675 (inclusive of all parts, taxes, and labor, including a 10% contingency). Funding for the repair of Vehicle No. 3352 will come from the Police Equipment Replacement Account. The City is seeking reimbursement from the at-fault party for this repair. Funding for Vehicle No. 3389 will come from the Police Vehicle Maintenance Account.

**RECOMMENDATION:** That the City Council:

1. Authorize the repair of Police vehicles No. 3352 and No. 3389 by Milinich Body Works at a cost not to exceed \$46,675 (inclusive of all parts, taxes, labor, and a 10% contingency); and
2. Authorize payment of said repairs upon satisfactory completion.

**ATTACHMENTS:**

1. Milinich Body Works Estimate - Unit No. 3389
2. Milinich Body Works Estimate - Unit No. 3352

Appropriated/Funded:

Review By:

Department Director:

Michael Knight, Public Works Director

Final Approver: John Lollis, City Manager

## MILINICH BODY WORKS

631 N SUNNYSIDE ST, milinich@sbcglobal.net,  
PORTERVILLE, CA 93257  
Phone: (559) 784-8827  
FAX: (559) 784-2972

Workfile ID: 689ade45  
PartsShare: 6YnPS9  
Federal ID: 90-0787680  
State EPA: S412  
BAR: ARD00279737

### Preliminary Estimate

#### Customer: PORTERVILLE UNIT 3389, CITY OF

#### Job Number:

Insured: PORTERVILLE UNIT 3389, CITY OF Policy #: Claim #:  
Type of Loss: Date of Loss: Days to Repair: 0  
Point of Impact: 12 Front

**Owner:** PORTERVILLE UNIT 3389, CITY OF  
**Inspection Location:** MILINICH BODY WORKS  
631 N SUNNYSIDE ST  
milinich@sbcglobal.net  
PORTERVILLE, CA 93257  
Repair Facility  
(559) 784-8827 Business  
**Insurance Company:**

### VEHICLE

2019 DODG Charger Police AWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

VIN: 2C3CDXKT7KH733120 Interior Color: Mileage In: Vehicle Out:  
License: Exterior Color: BLACK Mileage Out:  
State: Production Date: Condition: Good Job #:

#### TRANSMISSION

Automatic Transmission  
4 Wheel Drive

#### POWER

Power Steering  
Power Brakes  
Power Windows  
Power Locks  
Power Mirrors  
Power Driver Seat

#### DECOR

Dual Mirrors  
Tinted Glass  
Overhead Console

#### CONVENIENCE

Air Conditioning  
Intermittent Wipers  
Tilt Wheel  
Cruise Control  
Rear Defogger  
Keyless Entry  
Message Center  
Steering Wheel Touch Controls  
Telescopic Wheel  
Climate Control  
Backup Camera  
Parking Sensors

#### RADIO

AM Radio

FM Radio

Stereo

Search/Seek

Auxiliary Audio Connection

#### SAFETY

Drivers Side Air Bag  
Passenger Air Bag  
Anti-Lock Brakes (4)  
4 Wheel Disc Brakes  
Front Side Impact Air Bags  
Head/Curtain Air Bags  
Hands Free Device

#### SEATS

Cloth Seats

Bucket Seats

Reclining/Lounge Seats

#### WHEELS

Styled Steel Wheels

#### PAINT

Clear Coat Paint

#### OTHER

Traction Control  
Stability Control  
California Emissions  
Power Trunk/Liftgate

# Preliminary Estimate

**Customer: PORTERVILLE UNIT 3389, CITY OF**

**Job Number:**

2019 DODG Charger Police AWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
1	<b>RESTRAINT SYSTEMS</b>						
2	Repl	Psngr air bag	68282914AD	1	666.00 m	0.5	0.0
3	Repl	Driver air bag w/SRT logo	6RS501VXAB	1	1,135.00 m	0.4	0.0
4	Repl	Knee air bag	5057792AH	1	334.00 m	0.6	0.0
5	Repl	RT Ft impact sensor	56054085AA	1	209.00 m	0.3	0.0
6	Repl	LT Ft impact sensor	56054085AA	1	209.00 m	0.3	0.0
7	Repl	RT Position sensor	56054036AB	1	22.25 m	0.4	0.0
8		Air bag system diagnosis		0	0.00 m	0.5	0.0
9	Repl	LT Position sensor	56054036AB	1	22.25 m	0.4	0.0
10	Repl	Control module w/police	68371749AA	1	355.00 m	0.6	0.0
11	Repl	RT Retractor assy black	1HZ06DX9AI	1	313.00	0.7	0.0
12	Repl	RT Adjuster	68080745AD	1	53.20	0.2	0.0
13	Repl	RT Buckle end black	6MS001X9AA	1	224.00	0.2	0.0
14	Repl	LT Retractor assy black	1HZ05DX9AI	1	306.00	0.7	0.0
15	Repl	LT Adjuster	68080745AD	1	53.20	0.2	0.0
16	Repl	LT Buckle end black	6MS011X9AA	1	211.00	0.2	0.0
17	<b>FRONT BUMPER &amp; GRILLE</b>						
18		O/H front bumper		0	0.00	3.4	0.0
19	Repl	Bumper cover	68267765AC	1	780.00	Incl.	3.4
20		Add for Clear Coat		0	0.00	0.0	1.4
21	Repl	Bumper cover screw	6507610AA	6	25.20	0.0	0.0
22	Repl	Closure panel	68226530AF	1	189.00	Incl.	0.0
23	Repl	RT Support inner	68226532AA	1	33.20	Incl.	0.0
24	Repl	LT Support inner	68226533AA	1	33.20	Incl.	0.0
25	Repl	RT Support outer	68213539AC	1	9.45	Incl.	0.0
26	Repl	LT Support outer	68213538AC	1	9.45	Incl.	0.0
27	Repl	RT Bumper bracket	68226544AB	1	33.20	0.1	0.0
28	Repl	LT Bumper bracket	68226545AB	1	33.20	0.1	0.0
29	Repl	Energy absorber	68214783AA	1	108.00	Incl.	0.0
30	Repl	Impact bar (UHS)	68100209AF	1	366.00	0.7	0.0
31	Repl	Lower grille w/o adaptive cruise	68214782AB	1	117.00	Incl.	0.0
32	Repl	Bezel	68238710AA	1	38.75	Incl.	0.0
33	Repl	RT Air duct	68214812AA	1	53.20	0.0	0.0
34	Repl	LT Air duct	68214813AA	1	53.20	0.0	0.0
35	Repl	License bracket type 1	68202631AB	1	55.00	0.1	0.0
36	Repl	Upper grille black crossbars	5PP33DX8AB	1	388.00	Incl.	0.0
37	Repl	Nameplate "DODGE" black	68227437AA	1	76.90	0.1	0.0
38	<b>FRONT LAMPS</b>						
39	Repl	RT Headlamp assy halogen	68541680AA	1	789.00	0.4	0.0
40		Aim headlamps		0	0.00	0.5	0.0
41	Repl	LT Headlamp assy halogen	68541681AA	1	998.00	0.4	0.0
42	Repl	RT Side marker lamp	68214404AA	1	42.25	0.2	0.0

# Preliminary Estimate

**Customer: PORTERVILLE UNIT 3389, CITY OF**

**Job Number:**

2019 DODG Charger Police AWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

43	Repl	LT Side marker lamp	68214405AA	1	42.25	0.2	0.0	
44	RADIATOR SUPPORT							
45	Repl	Radiator support	68200478AC	1	331.00	1.0	1.0	
46	Repl	RT Support bracket	68249076AA	1	9.45	0.1	0.0	
47	Repl	LT Support bracket	68249077AA	1	9.45	0.1	0.0	
48	Repl	RT Air guide 1-piece guide all	68212036AB	1	25.75	0.1	0.0	
49	Repl	LT Air guide 1-piece guide all	68212037AB	1	25.75	0.1	0.0	
open	Repl	RT Air guide 2-piece guide, upper 5.7, 6.4 liter	68085804AA	1	64.25	0.1	0.0	
open	Repl	LT Air guide 2-piece guide, upper 5.7, 6.4 liter	68085805AA	1	64.25	0.1	0.0	
52	Repl	RT Air guide 2-piece guide, lower 5.7, 6.4 liter	68202656AB	1	22.20	0.1	0.0	
53	Repl	LT Air guide 2-piece guide, lower 5.7, 6.4 liter	68202657AB	1	22.20	0.1	0.0	
54	Repl	RT Air guide clip	6512752AA	3	3.75	0.0	0.0	
55	Repl	LT Air guide clip	6512752AA	3	3.75	0.0	0.0	
56	Repl	Crossmember	5065240AH	1	301.00	0.5	0.0	
open	Repl	RT Sight shield	NOT LISTED	1	0.00	0.1	0.0	
open	Repl	LT Sight shield	NOT LISTED	1	0.00	0.1	0.0	
59	Repl	RT Mount bracket	5065532AC	1	14.90	0.5	0.3	
60		Add for Clear Coat		0	0.00	0.0	0.1	
61	Repl	LT Mount bracket	5065533AC	1	14.90	0.5	0.3	
62		Add for Clear Coat		0	0.00	0.0	0.1	
63	Repl	Access cover	68240582AB	1	33.20	0.0	0.0	
64	Repl	Front shield w/police	68231862AA	1	263.00	0.4	0.0	
65	Repl	Front shield pin	68331806AA	6	34.80	0.0	0.0	
66	Repl	Splash shield AWD w/police	4806075AB	1	109.00	0.2	0.0	
67	COOLING							
68	Repl	Radiator	68050126AB	1	572.00 m	2.3	0.0	
69		Deduct for Overlap		0	0.00	-0.5	0.0	
70	Repl	RT Upper insulator	4596474AD	1	25.75	0.0	0.0	
71	Repl	LT Upper insulator	4596474AD	1	25.75	0.0	0.0	
72	Repl	RT Lower insulator	68017994AA	1	22.20	0.0	0.0	
73	Repl	LT Lower insulator	68017994AA	1	22.20	0.0	0.0	
74	Repl	RT Side seal	68026556AA	1	54.95	0.0	0.0	
75	Repl	LT Side seal	68026556AA	1	54.95	0.0	0.0	
76	Repl	Upper seal	68050130AB	1	76.95	0.0	0.0	
77	Repl	Lower seal	68050130AB	1	76.95	0.0	0.0	
78	Repl	Reservoir	55111260AF	1	123.00 m	0.4	0.0	
79	**	Repl	A/M RT Fan blade	5137713AA	1	554.00 m	0.1	0.0
80	AIR CONDITIONER & HEATER							
81	**	Repl	A/M Condenser assy	68085784AA	1	259.05 m	1.5	0.0
82		Deduct for Overlap		0	0.00	-1.0	0.0	
83	HOOD							
84	Repl	Hood (ALU)	68265445AB	1	1,225.00	1.5	3.0	

# Preliminary Estimate

**Customer: PORTERVILLE UNIT 3389, CITY OF**

**Job Number:**

2019 DODG Charger Police AWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

85		Add for Clear Coat		0	0.00	0.0	1.2
86		Add for Underside(Complete)		0	0.00	0.0	1.5
87		Add for Clear Coat		0	0.00	0.0	0.3
88	Repl	RT Hinge	55113550AG	1	86.20	0.3	0.5
89		Overlap Minor Panel		0	0.00	0.0	-0.2
90	Repl	LT Hinge	55113551AG	1	86.20	0.3	0.5
91		Overlap Minor Panel		0	0.00	0.0	-0.2
92	Repl	Latch w/o remote start	55113787AB	1	93.55	0.4	0.0
93	Repl	Front w'strip	68040220AC	1	42.25	Incl.	0.0
94	<b>FENDER</b>						
95	Repl	LT Fender	68213061AC	1	354.00	1.6	2.0
96		Overlap Major Adj. Panel		0	0.00	0.0	-0.4
97		Add for Clear Coat		0	0.00	0.0	0.3
98		Add for Edging		0	0.00	0.0	0.5
99		Add for Clear Coat		0	0.00	0.0	0.1
100	Repl	RT Fender liner 3.6, 5.7 liter	68205936AH	1	134.00	Incl.	0.0
101	Repl	LT Fender liner 3.6, 5.7 liter	68205937AH	1	134.00	Incl.	0.0
102	Repl	RT Fender	68213060AC	1	354.00	1.6	2.0
103		Overlap Major Adj. Panel		0	0.00	0.0	-0.4
104		Add for Clear Coat		0	0.00	0.0	0.3
105		Add for Edging		0	0.00	0.0	0.5
106		Add for Clear Coat		0	0.00	0.0	0.1
107	Repl	RT Upper rail (HSS)	68043926AD	1	308.00 s	3.5	0.8
108		Overlap Minor Panel		0	0.00	0.0	-0.2
109	Repl	LT Upper rail (HSS)	68043927AD	1	336.00 s	3.5	0.8
110		Overlap Minor Panel		0	0.00	0.0	-0.2
111	Repl	RT Upper inner rail (HSS)	68037592AA	1	336.00 s	3.0	0.8
112		Overlap Minor Panel		0	0.00	0.0	-0.2
113	Repl	LT Upper inner rail (HSS)	68037593AA	1	336.00 s	3.0	0.8
114		Overlap Minor Panel		0	0.00	0.0	-0.2
115	Repl	RT Rail assy (HSS)	68504488AA	1	797.00 s	10.4	1.5
116		Overlap Major Non-Adj. Panel		0	0.00	0.0	-0.2
117	*	Rpr LT Rail assy (HSS)		0	0.00 s	<u>5.0</u>	1.5
118		Overlap Major Non-Adj. Panel		0	0.00	0.0	-0.2
119	Repl	LT Bumper bracket	5065269AC	1	69.70 s	0.8	0.3
120		Add for Clear Coat		0	0.00	0.0	0.1
121	#	FRAME SET-UP		1	0.00	2.0 F	0.0
122	#	FRAME PULL		1	0.00	2.0 F	0.0
123	#	FRONT WHEEL ALIGNMENT		1	65.00 X	0.0	0.0
124	#	COVER CAR		1	5.00 X	0.3	0.0
125	#	CORROSION PROTECTION		1	6.00	0.2	0.0
126	#	SEAM SEALER		1	10.00	0.0	0.0
127	#	ADD FOR FLEX ADDITIVE		1	6.00	0.0	0.0
128	<b>INSTRUMENT PANEL</b>						
129	Repl	Instrument panel w/o column	6DE36DX9AF	1	2,360.00	6.8	0.0

## Preliminary Estimate

**Customer: PORTERVILLE UNIT 3389, CITY OF**

**Job Number:**

2019 DODG Charger Police AWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

shift

130	<b>WINDSHIELD</b>						
131	Repl	Windshield Dodge w/o rain sensor, w/humidity sensor	68269875AA	1	772.00	3.5	0.0
<b>SUBTOTALS</b>					<b>19,522.60</b>	<b>69.0</b>	<b>23.6</b>

### ESTIMATE TOTALS

Category	Basis			Rate	Cost \$
Parts					19,452.60
Body Labor	65.0 hrs	@		\$ 70.00 /hr	4,550.00
Paint Labor	23.6 hrs	@		\$ 70.00 /hr	1,652.00
Frame Labor	4.0 hrs	@		\$ 80.00 /hr	320.00
Paint Supplies	23.6 hrs	@		\$ 35.00 /hr	826.00
Miscellaneous					70.00
Subtotal					26,870.60
Sales Tax	\$ 20,278.60	@		9.2500 %	1,875.77
<b>Grand Total</b>					<b>28,746.37</b>
Deductible					0.00
<b>CUSTOMER PAY</b>					<b>0.00</b>
<b>INSURANCE PAY</b>					<b>28,746.37</b>

THIS DAMAGE IS BASED ON OUR INSPECTION AND DOES NOT COVER ANY ADDITIONAL PARTS OR LABOR WHICH MAY BE REQUIRED AFTER THE WORK IS OPENED UP. OCCASIONALLY AFTER THE WORK HAS STARTED, WORN OR DAMAGED PARTS ARE DISCOVERED WHICH ARE NOT EVIDENT ON FIRST INSPECTION.



## Preliminary Estimate

**Customer: PORTERVILLE UNIT 3389, CITY OF**

**Job Number:**

2019 DODG Charger Police AWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

Estimate based on MOTOR CRASH ESTIMATING GUIDE and potentially other third party sources of data. Unless otherwise noted, (a) all items are derived from the Guide DR3PB11, CCC Data Date 09/16/2022, and potentially other third party sources of data; and (b) the parts presented are OEM-parts. OEM parts are manufactured by or for the vehicle's Original Equipment Manufacturer (OEM) according to OEM's specifications for U.S. distribution. OEM parts are available at OE/Vehicle dealerships or the specified supplier. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships with discounted pricing. Asterisk (\*) or Double Asterisk (\*\*) indicates that the parts and/or labor data provided by third party sources of data may have been modified or may have come from an alternate data source. Tilde sign (~) items indicate MOTOR Not-Included Labor operations. The symbol (<>) indicates the refinish operation WILL NOT be performed as a separate procedure from the other panels in the estimate. Non-Original Equipment Manufacturer aftermarket parts are described as Non OEM, A/M or NAGS. Used parts are described as LKQ, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries.

Some 2023 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The CCC ONE estimator has a list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

The following is a list of additional abbreviations or symbols that may be used to describe work to be done or parts to be repaired or replaced:

### SYMBOLS FOLLOWING PART PRICE:

m=MOTOR Mechanical component. s=MOTOR Structural component. T=Miscellaneous Taxed charge category. X=Miscellaneous Non-Taxed charge category.

### SYMBOLS FOLLOWING LABOR:

D=Diagnostic labor category. E=Electrical labor category. F=Frame labor category. G=Glass labor category. M=Mechanical labor category. S=Structural labor category. (numbers) 1 through 4=User Defined Labor Categories.

### OTHER SYMBOLS AND ABBREVIATIONS:

Adj.=Adjacent. Algn.=Align. ALU=Aluminum. A/M=Aftermarket part. Blnd=Blend. BOR=Boron steel. CAPA=Certified Automotive Parts Association. D&R=Disconnect and Reconnect. HSS=High Strength Steel. HYD=Hydroformed Steel. Incl.=Included. LKQ=Like Kind and Quality. LT=Left. MAG=Magnesium. Non-Adj.=Non Adjacent. NSF=NSF International Certified Part. O/H=Overhaul. Qty=Quantity. Refn=Refinish. Repl=Replace. R&I=Remove and Install. R&R=Remove and Replace. Rpr=Repair. RT=Right. SAS=Sandwiched Steel. Sect=Section. Subl=Sublet. UHS=Ultra High Strength Steel. N=Note(s) associated with the estimate line.

CCC ONE Estimating - A product of CCC Intelligent Services Inc.

The following is a list of abbreviations that may be used in CCC ONE Estimating that are not part of the MOTOR CRASH ESTIMATING GUIDE:

BAR=Bureau of Automotive Repair. EPA=Environmental Protection Agency. NHTSA= National Highway Transportation and Safety Administration. PDR=Paintless Dent Repair. VIN=Vehicle Identification Number.

## Preliminary Estimate

**Customer: PORTERVILLE UNIT 3389, CITY OF**

**Job Number:**

2019 DODG Charger Police AWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

### PARTS SUPPLIER LIST

Line	Supplier	Description	Price
79	1-800-Radiator 1036 N. MARCIN STREET VISALIA CA 93291 (559) 734-4004	#1700150UA A/M RT Fan blade Quote: 31108362 Expires: 10/11/22	\$ 554.00
81	Keystone 3131 SOUTH NORTH POINT DRIVE, #103 FRESNO CA 93725 (559) 268-8146	#CND3948 A/M Condenser assy Quote: 1428902051 Expires: 11/11/22	\$ 259.05



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## MILINICH BODY WORKS

631 N SUNNYSIDE ST, milinich@sbcglobal.net,  
PORTERVILLE, CA 93257  
Phone: (559) 784-8827  
FAX: (559) 784-2972

Workfile ID: 36c1eaff  
PartsShare: 6YqS7L  
Federal ID: 90-0787680  
State EPA: S412  
BAR: ARD00279737

### Preliminary Estimate

**Customer: PORTERVILLE UNIT 3352, CITY OF**

**Job Number:**

Insured: PORTERVILLE UNIT 3352,  
CITY OF

Policy #:

Claim #:

Type of Loss:

Date of Loss:

Days to Repair: 0

Point of Impact: 01 Right Front

**Owner:**

PORTERVILLE UNIT 3352, CITY OF

**Inspection Location:**

MILINICH BODY WORKS  
631 N SUNNYSIDE ST  
milinich@sbcglobal.net  
PORTERVILLE, CA 93257  
Repair Facility  
(559) 784-8827 Business

**Insurance Company:**

### VEHICLE

2016 DODG Charger Police RWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

VIN: 2C3CDXAT2GH356284

Interior Color:

Mileage In:

Vehicle Out:

License:

Exterior Color: BLACK

Mileage Out:

State:

Production Date:

Condition: Good

Job #:

#### TRANSMISSION

Automatic Transmission

#### POWER

Power Steering

Power Brakes

Power Windows

Power Locks

Power Mirrors

Power Driver Seat

#### DECOR

Dual Mirrors

Tinted Glass

Overhead Console

#### CONVENIENCE

Air Conditioning

Intermittent Wipers

Tilt Wheel

Cruise Control

Rear Defogger

Keyless Entry

Message Center

Steering Wheel Touch Controls

Telescopic Wheel

Climate Control

#### RADIO

AM Radio

FM Radio

Stereo

Search/Seek

Auxiliary Audio Connection

#### SAFETY

Drivers Side Air Bag

Passenger Air Bag

Anti-Lock Brakes (4)

4 Wheel Disc Brakes

Front Side Impact Air Bags

Head/Curtain Air Bags

Hands Free Device

#### SEATS

Cloth Seats

Bucket Seats

Reclining/Lounge Seats

#### WHEELS

Styled Steel Wheels

#### PAINT

Clear Coat Paint

#### OTHER

Traction Control

Stability Control

California Emissions

Power Trunk/Liftgate

# Preliminary Estimate

**Customer: PORTERVILLE UNIT 3352, CITY OF**

**Job Number:**

2016 DODG Charger Police RWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
1		<b>WINDSHIELD</b>					
2	Repl	Washer reservoir	68125524AA	1	124.00	0.4	0.0
3	Repl	Reservoir cap	5189351AA	1	20.50	0.0	0.0
4	Repl	Washer pump	5139113AA	1	135.00	Incl.	0.0
5	Repl	Washer pump grommet	5102254AA	1	13.05	0.0	0.0
6	Repl	Level sensor	5152029AB	1	5.35	0.2	0.0
7	Repl	Level sensor grommet	5152031AA	1	12.30	0.0	0.0
8		<b>FRONT BUMPER &amp; GRILLE</b>					
9		O/H front bumper		0	0.00	3.4	0.0
10	Repl	Bumper cover	68267765AC	1	780.00	Incl.	3.4
11		Add for Clear Coat		0	0.00	0.0	1.4
12	Repl	Closure panel	68226530AF	1	189.00	Incl.	0.0
13	Repl	RT Support inner	68226532AA	1	33.20	Incl.	0.0
14	Repl	RT Support outer	68213539AC	1	9.45	Incl.	0.0
15	Repl	RT Bumper bracket	68226544AB	1	33.20	0.1	0.0
16	Repl	RT Air duct	68214812AA	1	53.20	0.0	0.0
17		<b>FRONT LAMPS</b>					
18	Repl	RT Headlamp assy halogen	68294430AH	1	1,150.00	0.4	0.0
19		Aim headlamps		0	0.00	0.5	0.0
20	Repl	RT Side marker lamp	68214404AA	1	42.25	0.2	0.0
21		<b>RADIATOR SUPPORT</b>					
22	Repl	RT Support bracket	68249076AA	1	9.45	0.1	0.0
23	Repl	RT Mount bracket	5065532AC	1	14.90	0.5	0.3
24		Add for Clear Coat		0	0.00	0.0	0.1
25		<b>FENDER</b>					
26	Repl	RT Fender	68213060AC	1	354.00	Incl.	2.0
27		Add for Clear Coat		0	0.00	0.0	0.8
28		Add for Edging		0	0.00	0.0	0.5
29		Add for Clear Coat		0	0.00	0.0	0.1
30	Repl	RT Seal	68213648AA	1	14.90	Incl.	0.0
31	Repl	RT Insulator	68043210AD	1	13.05	Incl.	0.0
32	Repl	RT Fender liner 3.6, 5.7 liter	68205936AH	1	134.00	Incl.	0.0
33	Repl	RT Apron assy from 03/2014 (HSS)	68444164AA	1	176.00 s	7.0	1.5
34	Repl	RT Upper rail (HSS)	68043926AD	1	308.00 s	Incl.	0.8
35		Overlap Minor Panel		0	0.00	0.0	-0.2
36	Repl	RT Upper inner rail (HSS)	68037592AA	1	336.00 s	Incl.	0.8
37		Overlap Minor Panel		0	0.00	0.0	-0.2
38	Repl	RT Torque box (HSS)	68250516AA	1	46.05 s	1.0	0.3
39		Add for Clear Coat		0	0.00	0.0	0.1
40	Repl	RT Rail assy (HSS)	68504488AA	1	797.00 s	10.4	1.5
41		Overlap Major Non-Adj. Panel		0	0.00	0.0	-0.2
42		Deduct for Overlap		0	0.00	-2.5	0.0

# Preliminary Estimate

**Customer: PORTERVILLE UNIT 3352, CITY OF**

**Job Number:**

2016 DODG Charger Police RWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

43	Repl	RT Rail extrn (HSS)	68043924AA	1	42.25 s	2.1	0.3
44		Add for Clear Coat		0	0.00	0.0	0.1
45	Repl	RT Rail reinf (HSS)	5112076AB	1	126.00 s	1.8	0.3
46		Add for Clear Coat		0	0.00	0.0	0.1
47	Repl	RT Inner rail (HSS)	68230360AC	1	293.00 s	Incl.	0.5
48		Overlap Minor Panel		0	0.00	0.0	-0.2
49	<b>HOOD</b>						
50	*	Rpr Hood (ALU)		0	0.00	<u>1.0</u>	3.0
51		Overlap Major Adj. Panel		0	0.00	0.0	-0.4
52		Add for Clear Coat		0	0.00	0.0	0.5
53	<b>PILLARS, ROCKER &amp; FLOOR</b>						
54	Sect	RT Aperture panel lower hinge pillar	68265440AG	1	730.00 s	5.0	1.2
55		Overlap Major Adj. Panel		0	0.00	0.0	-0.4
56		Add for Clear Coat		0	0.00	0.0	0.2
57	<b>FRONT DOOR</b>						
58	*	Repl USED RT door assy +25%	68268054AC	1	1,093.75	2.1	3.1
59		Overlap Major Adj. Panel		0	0.00	0.0	-0.4
60		Add for Clear Coat		0	0.00	0.0	0.5
61		RT Clean, lube & adjust window & latch		0	0.00	0.2	0.0
62		Refn exterior surface		0	0.00	0.0	2.1
63	Repl	RT Door w'strip	68040044AJ	1	145.00	0.4	0.0
64	Repl	RT Front w'strip	68040048AC	1	42.25	0.2	0.0
65	Repl	RT Lower w'strip	68040042AB	1	16.80	0.2	0.0
66	Repl	RT Applique	57010426AE	1	114.00	0.2	0.0
67	Repl	RT Frame molding	57010504AM	1	117.00	0.3	0.0
68	R&I	RT Power mirror w/o heat, w/o memory, w/o blind spot blue		0	0.00	0.5	0.0
69	R&I	RT Door glass Dodge		0	0.00	0.6	0.0
70	R&I	RT Handle, outside black		0	0.00	0.4	0.0
71	R&I	RT R&I trim panel		0	0.00	0.5	0.0
72	R&I	RT Window regulator		0	0.00	0.0	0.0
73	*	R&I RT Run channel		0	0.00	<u>0.3</u>	0.0
74	#	COVER CAR		1	5.00 X	0.3	0.0
75	#	HAZARDOUS WASTE REMOVAL		1	3.00 X	0.0	0.0
76	#	FRAME SET-UP		1	0.00	2.0 F	0.0
77	#	FRAME PULL		1	0.00	1.5 F	0.0
78	#	CORROSION PROTECTION		1	6.00	0.2	0.0
79	#	SEAM SEALER		1	10.00	0.0	0.0
80	#	ADD FOR FLEX ADDITIVE		1	6.00	0.0	0.0
<b>SUBTOTALS</b>					<b>7,553.90</b>	<b>41.5</b>	<b>23.5</b>

## Preliminary Estimate

**Customer: PORTERVILLE UNIT 3352, CITY OF**

**Job Number:**

2016 DODG Charger Police RWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

### ESTIMATE TOTALS

Category	Basis			Rate	Cost \$
Parts					7,545.90
Body Labor	38.0 hrs	@		\$ 70.00 /hr	2,660.00
Paint Labor	23.5 hrs	@		\$ 70.00 /hr	1,645.00
Frame Labor	3.5 hrs	@		\$ 80.00 /hr	280.00
Paint Supplies	23.5 hrs	@		\$ 33.00 /hr	775.50
Miscellaneous					8.00
Subtotal					12,914.40
Sales Tax	\$ 8,321.40	@		9.2500 %	769.73
<b>Grand Total</b>					<b>13,684.13</b>
Deductible					0.00
<b>CUSTOMER PAY</b>					<b>0.00</b>
<b>INSURANCE PAY</b>					<b>13,684.13</b>

THIS DAMAGE IS BASED ON OUR INSPECTION AND DOES NOT COVER ANY ADDITIONAL PARTS OR LABOR WHICH MAY BE REQUIRED AFTER THE WORK IS OPENED UP. OCCASIONALLY AFTER THE WORK HAS STARTED, WORN OR DAMAGED PARTS ARE DISCOVERED WHICH ARE NOT EVIDENT ON FIRST INSPECTION.

## Preliminary Estimate

**Customer: PORTERVILLE UNIT 3352, CITY OF**

**Job Number:**

2016 DODG Charger Police RWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

Estimate based on MOTOR CRASH ESTIMATING GUIDE and potentially other third party sources of data. Unless otherwise noted, (a) all items are derived from the Guide DR3PB11, CCC Data Date 09/16/2022, and potentially other third party sources of data; and (b) the parts presented are OEM-parts. OEM parts are manufactured by or for the vehicle's Original Equipment Manufacturer (OEM) according to OEM's specifications for U.S. distribution. OEM parts are available at OE/Vehicle dealerships or the specified supplier. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships with discounted pricing. Asterisk (\*) or Double Asterisk (\*\*) indicates that the parts and/or labor data provided by third party sources of data may have been modified or may have come from an alternate data source. Tilde sign (~) items indicate MOTOR Not-Included Labor operations. The symbol (<>) indicates the refinish operation WILL NOT be performed as a separate procedure from the other panels in the estimate. Non-Original Equipment Manufacturer aftermarket parts are described as Non OEM, A/M or NAGS. Used parts are described as LKQ, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries.

Some 2023 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The CCC ONE estimator has a list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

The following is a list of additional abbreviations or symbols that may be used to describe work to be done or parts to be repaired or replaced:

### SYMBOLS FOLLOWING PART PRICE:

m=MOTOR Mechanical component. s=MOTOR Structural component. T=Miscellaneous Taxed charge category. X=Miscellaneous Non-Taxed charge category.

### SYMBOLS FOLLOWING LABOR:

D=Diagnostic labor category. E=Electrical labor category. F=Frame labor category. G=Glass labor category. M=Mechanical labor category. S=Structural labor category. (numbers) 1 through 4=User Defined Labor Categories.

### OTHER SYMBOLS AND ABBREVIATIONS:

Adj.=Adjacent. Algn.=Align. ALU=Aluminum. A/M=Aftermarket part. Blnd=Blend. BOR=Boron steel. CAPA=Certified Automotive Parts Association. D&R=Disconnect and Reconnect. HSS=High Strength Steel. HYD=Hydroformed Steel. Incl.=Included. LKQ=Like Kind and Quality. LT=Left. MAG=Magnesium. Non-Adj.=Non Adjacent. NSF=NSF International Certified Part. O/H=Overhaul. Qty=Quantity. Refn=Refinish. Repl=Replace. R&I=Remove and Install. R&R=Remove and Replace. Rpr=Repair. RT=Right. SAS=Sandwiched Steel. Sect=Section. Subl=Sublet. UHS=Ultra High Strength Steel. N=Note(s) associated with the estimate line.

CCC ONE Estimating - A product of CCC Intelligent Services Inc.

The following is a list of abbreviations that may be used in CCC ONE Estimating that are not part of the MOTOR CRASH ESTIMATING GUIDE:

BAR=Bureau of Automotive Repair. EPA=Environmental Protection Agency. NHTSA= National Highway Transportation and Safety Administration. PDR=Paintless Dent Repair. VIN=Vehicle Identification Number.



## Preliminary Estimate

**Customer: PORTERVILLE UNIT 3352, CITY OF**

**Job Number:**

2016 DODG Charger Police RWD (Fleet) 4D SED 8-5.7L Gasoline Sequential MPI BLACK

### PARTS SUPPLIER LIST

Line	Supplier	Description	Price
58	LKQ Corp 4646 S. Chestnut #105 Fresno CA 93725 (559) 268-5500	#~327269277 USED RT door assy +25% Door Assembly, Front R.,S#\$K1101 Quote: 1429601175 Expires: 11/11/22	\$ 875.00



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## CITY COUNCIL AGENDA – JANUARY 17, 2023

SUBJECT: Approval of Emergency Expenditure

SOURCE: Police

COMMENT: On October 24, 2022, a City refuse truck was involved in a traffic collision at East Orange Avenue and South "A" Street. The Porterville Police Department responded to the scene to conduct the investigation. As part of the investigation, the refuse truck was towed by Prime Towing & Transport, Inc. to the city of Tulare to have a mechanical inspection conducted by the California Highway Patrol. The vehicle inspection was conducted and the vehicle was released back to the City on October 28, 2022.

The use of Prime Towing & Transport, Inc. specialized equipment was necessary due to the ability to accommodate large vehicles such as the refuse truck. Prime Towing & Transport, Inc. impound invoice is attached. Funds are available in the Risk Management fund for payment.

RECOMMENDATION: That the City Council authorize payment to Prime Towing & Transport, Inc. in the amount of \$12,562.50.

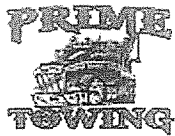
ATTACHMENTS: 1. Prime Towing & Transport, Inc. Invoice

Appropriated/Funded:

Review By:

Department Director:  
Jake Castellow, Chief of Police

Final Approver: John Lollis, City Manager



# Prime Towing & Transport, Inc.

1250 South O Street, Tulare CA 93274

Phone: 559-684-7796/559-686-1578 ofc | Fax : (559) 684-8583

Payments can be made online by visiting [twbk.co/dsnNtk](http://twbk.co/dsnNtk)

## Impound Invoice

Printed 12/8/2022

1094

### Released To

Call # 63063  
 Stock # 12524944  
 Account City of Porterville  
 Date/Time Impounded: 10/24/2022 10:50 PM  
 Driver Macario Perez  
 Driver Wayne Bogert  
 Driver Chris Bartlett  
 Driver Pedro Miranda  
 Truck 425 40 ton Rotator  
 Truck 1185 35 Ton Rotator  
 Truck 102 Flatbed  
 Truck 805 Flatbed  
 Date/Time Released: 10/28/2022 3:55 PM  
 Days Held in Impound 5 days

Reason for Impound Tow  
 VIN Number 3BPZX50X6AF719981  
 Model 2010 Peterbilt 320  
 License Plate 1275574 (CA)  
 Drivable No  
 Keys No  
 Towed from (Orange ave & a street porterville ca )  
 Stored at Prime Towing  
 1250 South O Street , Tulare CA 93274

### Notes Garbage truck on its side

On upon arrival trash truck on the side per unit 425 in the back and unit 1185 in the front ran a lift and a catch line unit 1185 ran a lift and catch with a low on drag winch rotated truck waiting for TF tires to arrive to fix the tires from accident , then unit 214 showed up with the skid steer and a pallet of absorbent and then unit 805 showed up for 3 55 gallon barrels use skid, stir to clean the road. Got trash truck ready for tow The city of Porterville wanted us to stop at flying J to weigh the trash truck to see if it was over weight got the weight ticket now we're back at the yard cleaning our chains and offloading skid steer.

10/26/22: Corporal Silva from Porterville Police Dept released truck from evidence. City of Porterville will be in contact MB

Storage charges	Quantity	Price	Line Total
(Storage - Storage Fees) Impounds/Storage: Daily Impound Rate	5	\$85.00	\$425.00
Towing charges	Quantity	Price	Line Total
(Towing) unit 425 mac	7	\$600.00	\$4,200.00
(Towing) unit 1185 wayne	7	\$600.00	\$4,200.00
(Towing) unit 805 peter	5.5	\$175.00	\$962.50
(Towing) unit 214 chris	6.5	\$175.00	\$1,137.50
(Towing) skid steer	6.5	\$175.00	\$1,137.50
(Towing) other	1	\$500.00	\$500.00
Towing Subtotal			\$12,137.50
Storage - Storage Fees Subtotal			\$425.00
Subtotal			\$12,562.50
Taxes			\$0.00
Grand Total			\$12,562.50
Amount Due:			\$12,562.50

INSURED'S AUTHORIZATION TO PAY ACCOUNT I have authorized to make payment to prime towing on my behalf when towing and emergency roadside service have been completed..... We cannot be responsible for damaged caused by faulty tires, bumpers, etc.. This company assumes no responsibility for loss or damage by theft, fire, or any other cause beyond our control, to any other cause beyond our control, to any vehicle placed with them for storage or repair. In the event Prime Towing & Transport Inc. is forced to retain the services of a third party to collect the amount owed on this invoice, all parties who hold a financial interest in the property listed on the invoice will be required to indemnify Prime Towing & Transport Inc. against all costs incurred in the process of collecting the amount owed. This is to include but is not limited to; collection costs, attorney fees, court costs, pre-judgment interest and post-judgment interest. Tax ID: 82-4583168

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

CA# 0529086 USDOT: 31425254

Upon request, you are entitled to receive a copy of the Towing and Storage Fees and Access Notice



## CITY COUNCIL AGENDA – JANUARY 17, 2023

SUBJECT: Purchase of Fire Department/Code Enforcement Body-Worn Camera

SOURCE: Fire

COMMENT: At its meeting on November 17, 2020, the City Council approved the Fire Department's request for the acquisition of body-worn cameras for the City's Code Enforcement Officers and the Fire Marshal for their daily interactions with residents and for use in Fire Investigation activities. The expectation was that the cameras would provide more detailed documentation of the sites visited and the interactions of these personnel with the public. This equipment is an invaluable tool for Officers' interaction with residents and documenting violations.

In 2016, the Porterville Police Department staff conducted extensive research and determined that while several companies offered comparable body-worn cameras, Taser, Inc., which is now Axon Enterprises Inc., was the only vendor which offered a complete system that provided the required options needed by the Department.

At its meeting on May 8, 2021, the Council approved the Police Department's request for the renewal of the contract with Axon Enterprises Inc. (Taser Inc.) for a ten (10) year period. Additionally, the Police Department has an "Axon Certified Specialist" on staff that may assist with training and troubleshooting if issues arise.

Axon Enterprises Inc., (Taser, Inc.) includes unlimited storage of body-worn camera video through a proven "cloud-based" storage system known as Evidence.com. Through its Evidence.com website, Axon Enterprises, Inc. offers a fully integrated cloud storage and retrieval system. This system offers significant benefits to the Department from video management, storage redundancy, security, and ease of use standpoints. The Evidence.com integrated system is well known for its ease of use with regard to uploading, storage, and upkeep of important digital evidence collection. This also includes an application for smartphones and tablets to assist in collection of evidence by allowing a link to be sent directly, which allows for direct upload of photos and videos to the cloud-based storage by both victims and witnesses. For the aforementioned reasons, the Axon body-worn camera coupled with their Evidence.com cloud-based storage, Axon Enterprises Inc. fully meets the Fire Department's needs.

With the addition of new full-time positions, the Code Enforcement Division has realized the need to add an additional camera for daily use by staff. A quote

Item No. 3.

was received from Axon Enterprises Inc. for the purchase of one body-worn camera at a total cost over the remaining life of the contract of \$11,452.94. The quote includes necessary infrastructure equipment required to recharge the body-worn camera batteries, as well as upload video data from the body-worn cameras to cloud storage, and also includes the necessary Administration licenses, and technical support (see attached Axon Enterprises Inc. Quotation # Q-439444-44900.913KP for specific details). Below is a summary of the contract and pricing:

The first year, the Fire Department would pay \$2,807.04. This would include:

- AB3 Camera Bundle
- USB-C to USB-A Cable for AB3 or Flex 2
- Wing Clip Mount, Axon Rapidlock
- North American Power Cord for AB3 & T7 1-Bay Dock/Datatport
- AB3 1-Bay Dock Bundle
- BWC Unlimited with TAP 10YR
- Unlimited Evidence.com TAP Bundle

Then an additional \$1,080.73 for the remaining contract term, through June 2030. Which would cover:

- The license for the Axon Body Camera
- Unlimited Storage (BWC Unlimited with TAP 10YR)
- Replacement camera every 2.5 years

The Fire Department requests Council authorization to enter into a contract with Axon Enterprises Inc. in accordance with the City's Purchasing Policy & Procedure Manual. This contract will be for the remaining term of the Porterville Police Department contract. Funding for this purchase will be from Fire Department funds.

RECOMMENDATION: That the City Council:

1. Authorize staff to enter into a contract with Axon Enterprises Inc. for the purchase of one body-worn camera and equipment, one docking station, one Administration license, unlimited cloud storage and associated installation hardware and technical support for a total of \$11,452.94;
2. Authorize payment(s) to Axon Enterprises Inc. per contract; and
3. Authorize staff to negotiate contract renewal for services upon the current contract's expiration.

ATTACHMENTS: 1. Axon Enterprise, Inc. Quote

Appropriated/Funded:

Review By:

Department Director:  
Bryan Cogburn, Fire Chief

Final Approver: John Lollis, City Manager



**Axon Enterprise, Inc.**  
 17800 N 85th St.  
 Scottsdale, Arizona 85255  
 United States  
 VAT: 86-0741227  
 Domestic: (800) 978-2737  
 International: +1.800.978.2737

**Q-439444-44900.913KP**

Issued: 12/05/2022

Quote Expiration: 12/15/2022

Estimated Contract Start Date: 01/15/2023

Account Number: 148556

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
350 N D St 350 N D St Porterville, CA 93257-3651 USA	Porterville Police Dept. - CA 291 N Main St Porterville, CA 93257-3737 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Kyle Panasewicz Phone: +1 4803294734 Email: kylep@axon.com Fax: (480) 905-2071	Arelli Adams Phone: 559-782-7526 Email: aadams@ci.porterville.ca.us Fax:

## Quote Summary

Program Length	101.5333 Months
<b>TOTAL COST</b>	<b>\$10,970.27</b>
<b>ESTIMATED TOTAL W/ TAX</b>	<b>\$11,452.94</b>

## Discount Summary

Average Savings Per Year	\$21.09
<b>TOTAL SAVINGS</b>	<b>\$2,140.98</b>

## Payment Summary

Date	Subtotal	Tax	Total
Dec 2022	\$2,623.49	\$183.55	\$2,807.04
Jun 2023	\$1,043.34	\$37.39	\$1,080.73
Jun 2024	\$1,043.34	\$37.39	\$1,080.73
Jun 2025	\$1,043.34	\$37.39	\$1,080.73
Jun 2026	\$1,043.34	\$37.39	\$1,080.73
Jun 2027	\$1,043.34	\$37.39	\$1,080.73
Jun 2028	\$1,043.34	\$37.39	\$1,080.73
Jun 2029	\$1,043.34	\$37.39	\$1,080.73
Jun 2030	\$1,043.40	\$37.39	\$1,080.79
<b>Total</b>	<b>\$10,970.27</b>	<b>\$482.67</b>	<b>\$11,452.94</b>



Quote Unbundled Price:	\$13,111.25
Quote List Price:	\$10,970.27
Quote Subtotal:	\$10,970.27

## Pricing

*All deliverables are detailed in Delivery Schedules section lower in proposal*

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
<b>Program</b>									
73843	UNLIMITED EVIDENCE.COM TAP BUNDLE TRUE UP PAYMENT YEAR 1	1	19		\$35.85	\$35.85	\$681.15	\$63.01	\$744.16
BWCUwTAP10Yr	BWC Unlimited with TAP 10YR	1	102	\$113.05	\$92.06	\$92.06	\$9,390.12	\$336.51	\$9,726.63
<b>A la Carte Hardware</b>									
AB31BD	AB3 1-Bay Dock Bundle	1			\$200.00	\$200.00	\$200.00	\$18.50	\$218.50
AB3C	AB3 Camera Bundle	1			\$699.00	\$699.00	\$699.00	\$64.65	\$763.65
<b>Total</b>							<b>\$10,970.27</b>	<b>\$482.67</b>	<b>\$11,452.94</b>

## Delivery Schedule

### Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
AB3 1-Bay Dock Bundle	71104	NORTH AMER POWER CORD FOR AB3 & T7 1-BAY DOCK/DATAPORT	1	12/15/2022
AB3 1-Bay Dock Bundle	74211	AXON BODY 3 - 1 BAY DOCK	1	12/15/2022
AB3 Camera Bundle	11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2	2	12/15/2022
AB3 Camera Bundle	73202	AXON BODY 3 - NA10 - US - BLK - RAPIDLOCK	1	12/15/2022
AB3 Camera Bundle	74028	WING CLIP MOUNT, AXON RAPIDLOCK	2	12/15/2022
BWC Unlimited with TAP 10YR	73309	AXON CAMERA REFRESH ONE	1	06/15/2025
BWC Unlimited with TAP 10YR	73313	1-BAY DOCK AXON CAMERA REFRESH ONE	1	06/15/2025
BWC Unlimited with TAP 10YR	73310	AXON CAMERA REFRESH TWO	1	12/15/2028
BWC Unlimited with TAP 10YR	73314	1-BAY DOCK AXON CAMERA REFRESH TWO	1	12/15/2028
BWC Unlimited with TAP 10YR	73317	1-BAY DOCK AXON CAMERA REFRESH THREE	1	06/15/2030
BWC Unlimited with TAP 10YR	73345	AXON CAMERA REFRESH THREE	1	06/15/2030
BWC Unlimited with TAP 10YR	73318	1-BAY DOCK AXON CAMERA REFRESH FOUR	1	06/01/2031
BWC Unlimited with TAP 10YR	73346	AXON CAMERA REFRESH FOUR	1	06/01/2031

### Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BWC Unlimited with TAP 10YR	73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE	1	01/15/2023	06/30/2031
BWC Unlimited with TAP 10YR	73746	PROFESSIONAL EVIDENCE.COM LICENSE	1	01/15/2023	06/30/2031

### Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BWC Unlimited with TAP 10YR	80464	EXT WARRANTY, CAMERA (TAP)	1	12/15/2023	06/30/2031
BWC Unlimited with TAP 10YR	80466	EXT WARRANTY, SINGLE-BAY DOCK (TAP)	1	12/15/2023	06/30/2031

## Payment Details

### Dec 2022

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
True Up	73843	UNLIMITED EVIDENCE.COM TAP BUNDLE TRUE UP PAYMENT YEAR 1	1	\$681.15	\$63.01	\$744.16
True Up	AB31BD	AB3 1-Bay Dock Bundle	1	\$200.00	\$18.50	\$218.50
True Up	AB3C	AB3 Camera Bundle	1	\$699.00	\$64.65	\$763.65
Year 1	BWCUwTAP10Yr	BWC Unlimited with TAP 10YR	1	\$1,043.34	\$37.39	\$1,080.73
<b>Total</b>				<b>\$2,623.49</b>	<b>\$183.55</b>	<b>\$2,807.04</b>

### Jun 2023

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	BWCUwTAP10Yr	BWC Unlimited with TAP 10YR	1	\$1,043.34	\$37.39	\$1,080.73
<b>Total</b>				<b>\$1,043.34</b>	<b>\$37.39</b>	<b>\$1,080.73</b>

### Jun 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	BWCUwTAP10Yr	BWC Unlimited with TAP 10YR	1	\$1,043.34	\$37.39	\$1,080.73
<b>Total</b>				<b>\$1,043.34</b>	<b>\$37.39</b>	<b>\$1,080.73</b>

### Jun 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	BWCUwTAP10Yr	BWC Unlimited with TAP 10YR	1	\$1,043.34	\$37.39	\$1,080.73
<b>Total</b>				<b>\$1,043.34</b>	<b>\$37.39</b>	<b>\$1,080.73</b>

### Jun 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 5	BWCUwTAP10Yr	BWC Unlimited with TAP 10YR	1	\$1,043.34	\$37.39	\$1,080.73
<b>Total</b>				<b>\$1,043.34</b>	<b>\$37.39</b>	<b>\$1,080.73</b>

### Jun 2027

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 6	BWCUwTAP10Yr	BWC Unlimited with TAP 10YR	1	\$1,043.34	\$37.39	\$1,080.73
<b>Total</b>				<b>\$1,043.34</b>	<b>\$37.39</b>	<b>\$1,080.73</b>

### Jun 2028

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 7	BWCUwTAP10Yr	BWC Unlimited with TAP 10YR	1	\$1,043.34	\$37.39	\$1,080.73
<b>Total</b>				<b>\$1,043.34</b>	<b>\$37.39</b>	<b>\$1,080.73</b>

Jun 2029						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 8	BWCUwTAP10Yr	BWC Unlimited with TAP 10YR	1	\$1,043.34	\$37.39	\$1,080.73
<b>Total</b>				<b>\$1,043.34</b>	<b>\$37.39</b>	<b>\$1,080.73</b>

Jun 2030						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 9	BWCUwTAP10Yr	BWC Unlimited with TAP 10YR	1	\$1,043.40	\$37.39	\$1,080.79
<b>Total</b>				<b>\$1,043.40</b>	<b>\$37.39</b>	<b>\$1,080.79</b>

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

## Standard Terms and Conditions

### Axon Enterprise Inc. Sales Terms and Conditions

#### Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

#### ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

#### Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

---

Signature

---

Date Signed

12/5/2022





## CITY COUNCIL AGENDA – JANUARY 17, 2023

**SUBJECT:** Authorization to Repair Transit Vehicle No. 8113

**SOURCE:** Public Works

**COMMENT:** On October 28, 2021, a Ford Transit Van (Unit No. 8113) was involved in a vehicle collision, resulting in the vehicle sustaining moderate damage and requiring the vehicle to be removed from service. Staff obtained three estimates, and the repair was awarded to Milinich Body Works at the City Council's meeting on March 15, 2022. After receiving approval, the vehicle was taken to Milinich Body Works. Milinich declined to perform the repair, so staff reached out to the two remaining body shops to see if they would repair the vehicle. Only Porterville Collision was responsive, and agreed to repair the vehicle at their original estimate.

Council awarded the repair to Porterville Collision at its meeting on May 17, 2022 for a cost not to exceed \$24,209. The vehicle was scheduled for repair upon receiving approval from Council. City staff attempted to take the vehicle in for repair in July 2022, but the body shop re-scheduled for November 2022. Staff again attempted to take it in November, but they rescheduled it for December 2022. When staff again tried to take it in December, they ultimately declined to repair the vehicle.

Staff proceeded to take the vehicle to E.M. Tharp, Inc. for an estimate, which they provided. Staff is requesting authorization to enter into an agreement with E.M. Tharp, Inc. to repair the damage to Transit Vehicle No. 8113 for an estimated cost of \$24,173, which includes a ten percent (10%) contingency cost for damage that is not yet known but may be present upon repair of the vehicle. The City is in receipt of a check from CalTIP in the amount of \$7,831.92 in payment of the insurance claim. The remaining cost of repair will be paid by reimbursement from TCRTA. CalTip, the City's transit insurance provider, will seek subrogation from the party at fault.

**RECOMMENDATION:** That the City Council:

1. Authorize the repair of transit vehicle No. 8113 by E.M. Tharp, Inc. at a cost not to exceed \$24,173 (inclusive of all parts, taxes, labor, and a 10% contingency); and
2. Authorize payment of said repair upon satisfactory completion.

**ATTACHMENTS:**

1. E.M. Tharp, Inc. Estimate
2. Agenda Staff Report - March 15, 2022

3. Agenda Staff Report - May 17, 2022

Appropriated/Funded:

Review By:

Department Director:  
Michael Knight, Public Works Director

Final Approver: John Lollis, City Manager



**E.M.THARP, Inc.**  
 15243 ROAD 192  
 PORTERVILLE, CA, 93257  
 Tel: 559-361-7524 Fax: 559-784-5672  
 marianoavalos@emtharp.com  
 Tax ID: 94-1218910

**Estimate - Preliminary**

Estimate Prepared by: Mario Avalos  
 Accident Date:  
 Date of Loss:  
 Arrival Date:  
 Type of Loss:  
 Policy Number:  
 Claim Number:

Appraised for:

Date: 1/6/2023  
 Estimate#:

<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>Color</b>	<b>Trim</b>
2021	FORD	TRANSIT PASSENGER VAN	BLACK	
<b>Unit Number</b>	<b>License Plate #</b>	<b>Mileage</b>	<b>Serial#/VIN#</b>	
8113	161807		1FBVU4X86LKA46152	

Sup	Seq	Labor Type	Labor Op	Description	Part Type	Part Number	Dollar Amount	Labor Units
	1	Body	Rem/Rep	Extension, Rear Side Panel High Roof L	New	BK3Z 61513A13 D	\$194.53 T	8.6#*
	2	Body	Rem/Rep	Panel, Rear Corner High Roof L	New	CK4Z 61280A59 C	\$237.69 T	5.3#*
	3	Body	Rem/Rep	Panel, Rear Outer Pillar High Roof L	New	BK3Z 6141039 B	\$188.33 T	6.2#*
	4	Body	Rem/Rep	Panel, Front Lower L	New	KK3Z 6110129 B	\$62.50 T	2.5#*
	5	Body	Rem/Rep	Panel, Rear Lower L	New	BK3Z 6110129 B	\$65.60 T	2.5#*
	6	Body	Rem/Rep	Grille, Air Inlet L	New	7G9Z 58280B62 A	\$22.10 T	.2*
	7	Body	Rem/Rep	Panel Assy, Rear Inner Side Medium Roof, High Roof L	New	LK4Z 6127865 J	\$394.29 T	8.5*
	8	Body	Rem/Rep	Panel Assy, Inner Corner High Roof L	New	CK4Z 6140455 F	\$575.00 T	2.5*
	9	Body	Rem/Rep	Moulding Assy, Wheel Opening Single Rear Wheels L	New	KK3Z 61280K97 AA	\$85.96 T	.3*
	10	Body	Rem/Rep	Bumper, Door Stop Hinged Side Doors L	New	KK4Z 16758 CC	\$10.15 T	.2*
	11	Body	Rem/Rep	Reinforcement, Bumper Outer L	New	KK4Z 61247A64 E	\$25.16 T	.2*
	12	Body	Rem/Rep	Reinforcement, Bumper Inner L	New	KK4Z 61247A64 C	\$12.45 T	.2*
	13	Body	Rem/Rep	Shell, Back Door High Roof R	New	CK4Z 6140010 X	\$703.22 T	5.6*

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Page 1 of 3

Sup	Seq	Labor Type	Labor Op	Description	Part Type	Part Number	Dollar Amount	Labor Units
	14	Body	Rem/Rep	Shell, Back Door High Roof L	New	CK4Z 6140011 AB	\$878.53 T	5.6*
	15	Body	Rem/Rep	Cover, Rear Bumper Black	New	LK4Z 17C829 FA	\$201.59 T	.6*
	16	Ref	Ref	Refinish Front Outer Side Panel L	Exist		T	3.4
	17	Ref	Ref	Refinish Rear Outer Side Panel L	Exist		T	4.2
	18	Ref	Ref	Refinish Rear Side Panel Extension L	Exist		T	2.0
	19	Ref	Ref	Refinish Rear Lower Panel L	Exist		T	1.2#
	20	Ref	Ref	Refinish Rear Outer Pillar Panel L	Exist		T	2.2
	21	Ref	Ref	Section Rear Outer Side Panel L	Exist		T	18.9#
	22	Ref	Ref	Section Outer Wheelhouse Panel L	Exist		T	3.5#
	23	Ref	Ref	Refinish Roof Outside Complete	Exist		T	10.9
	24	Ref	Ref	Refinish Back Door High Roof R	Exist		T	3.1
	25	Ref	Ref	Refinish Back Door High Roof L	Exist		T	3.1
	26			Shop Materials			\$500.00 T	*
	27			Paint Materials			\$1,300.00 T	*
	28			Hazardous Waste			\$25.00	*
	29			Mask for Overspray			T	2.0*

\* - Judgement Item  
# - Labor Note Applies

#### Labor

Body	49.0	Hrs @	\$155.00	\$7,595.00
Refinish	52.5	Hrs @	\$155.00	\$8,137.50
Labor Total				<u>\$15,732.50</u>

#### Parts

Parts Subtotal	\$3,657.10
Less Adjustments	
Parts Total	<u>\$3,657.10</u>

#### Additional Costs and Operations

Addl. Costs/Ops Total	\$2,135.00
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#### Tax

Parts Tax @	8.25%	\$301.71
Addl. Costs Tax @	8.25%	\$148.50
Tax Total		<u>\$450.21</u>

#### Totals

Sub Total:	<u>\$21,974.81</u>
Customer Resp.	<u>\$0.00</u>
<b>Net Total</b>	<b>\$21,974.81</b>

2021 FORD TRANSIT PASSENGER VAN

Sup	Seq	Labor Type	Labor Op	Description	Part Type	Part Number	Dollar Amount	Labor Units
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The above is an estimate based on our inspection and does not cover any additional parts or labor which may be required after the work has started. Occasionally, worn or damaged parts are discovered which may not be evident on the first inspection. Because of this, the above prices are not guaranteed. Quotations on parts and labor are current and subject to change.

*This is a preliminary estimate. Additional changes to the estimate may be required for the actual repair.*

*TruckEst does not automatically include items required by many business repair partners. This application allows the author to manually enter line items such as overlap deductions.*

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Page 3 of 3



## CITY COUNCIL AGENDA – MARCH 15, 2022

**SUBJECT:** Authorization to Repair Transit Vehicle #8113

**SOURCE:** Public Works

**COMMENT:** On October 28, 2021, a Transit Ford Van (Unit #8113) was involved in a vehicle collision, resulting in the vehicle sustaining moderate damage and requiring the vehicle to be removed from service.

The following three estimates were obtained by staff:

Contractor	Total
Milnich Body Works	\$12,831.92
Golden State Paint and Body	\$16,585.35
Porterville Collision Center	\$22,008.08

Based on the estimates provided, staff is requesting authorization to enter into an agreement with Milnich Body Works to repair the damage to Transit Vehicle #8113 for an estimated cost of \$14,116, which includes a ten percent (10%) contingency cost for damage that is not yet known but may be present upon repair of the vehicle. The City is in receipt of a check from CalTIP in the amount of \$7,831.92 in payment of the insurance claim. The cost of repair will be paid by Transit Operating Funds. CalTip, the City's transit insurance provider, will seek subrogation from the party at fault.

**RECOMMENDATION:** That the City Council:

1. Authorize the transit vehicle repair by Milnich Body Works at a cost not to exceed \$14,116 (inclusive of all parts, taxes, labor, including a ten percent (10%) contingency); and
2. Authorize payment of said repair upon satisfactory completion.

**ATTACHMENTS:** 1. Transit Vehicle Repair Estimates

**Appropriated/Funded:**

**Review By:**

Department Director:  
Michael Knight, Public Works Director

Final Approver: John Lollis, City Manager



## CITY COUNCIL AGENDA – MAY 17, 2022

**SUBJECT:** Authorization to Repair Transit Vehicle No. 8113

**SOURCE:** Public Works

**COMMENT:** On October 28, 2021, a Transit Ford Van (Unit No. 8113) was involved in a vehicle collision, resulting in the vehicle sustaining moderate damage and requiring the vehicle to be removed from service. Staff obtained three estimates, and the repair was awarded to Milinich Body Works at the City Council meeting on March 15, 2022. After receiving approval, the vehicle was taken to Milinich Body Works. They declined to perform the repair, so staff reached out to the two remaining body shops to see if they would repair the vehicle. Only Porterville Collision was responsive, and agreed to repair the vehicle at their original estimate.

Staff is requesting authorization to enter into an agreement with Porterville Collision to repair the damage to Transit Vehicle No. 8113 for an estimated cost of \$24,209, which includes a ten percent (10%) contingency cost for damage that is not yet known but may be present upon repair of the vehicle. The City is in receipt of a check from CalTIP in the amount of \$7,831.92 in payment of the insurance claim. The remaining cost of repair will be paid by Transit Operating Funds. CalTip, the City's transit insurance provider, will seek subrogation from the party at fault.

**RECOMMENDATION:** That the City Council:

1. Authorize the repair of transit vehicle no. 8113 by Porterville Collision at a cost not to exceed \$24,209 (inclusive of all parts, taxes, labor, and a 10% contingency); and
2. Authorize payment of said repair upon satisfactory completion.

**ATTACHMENTS:** 1. Transit Vehicle Repair Estimates

**Appropriated/Funded:**

**Review By:**

Department Director:  
Michael Knight, Public Works Director

Final Approver: John Lollis, City Manager



## CITY COUNCIL AGENDA – JANUARY 17, 2023

SUBJECT: Authorization to Repair Transit Van No. 8123

SOURCE: Public Works

COMMENT: Transit Van #8123 is a front-line active Transit Van involved in a collision with a canopy structure. The damage is to the roof and must be repaired to prevent damage from water leaking into the interior of the van. The vehicle was taken to three body shops to obtain estimates. However, only one shop was able to provide an estimate. This is due to the roof height of the Ford Transit van, and paint booth availability. E.M. Tharp, Inc. is the only local shop with a paint booth that can accommodate a vehicle of this height.

Staff is requesting authorization to utilize E.M. Tharp, Inc. to perform the repair at an estimated cost not to exceed \$9,718 (inclusive of all parts, taxes, and labor, including a 10% contingency). The cost of the repairs will be reimbursed by the Tulare County Regional Transit Agency.

RECOMMENDATION: That the City Council:

1. Authorize transit van collision repair by E.M. Tharp, Inc. at a cost not to exceed \$9,718 (inclusive of all parts, taxes, and labor, including a 10% contingency); and
2. Authorize payment of said repair upon satisfactory completion.

ATTACHMENTS: 1. E.M. Tharp, Inc. Estimate

Appropriated/Funded:

Review By:

Department Director:  
Michael Knight, Public Works Director

Final Approver: John Lollis, City Manager

**E.M.THARP, Inc.**  
 15243 ROAD 192  
 PORTERVILLE, CA, 93257  
 Tel: 559-361-7524 Fax: 559-784-5672  
 marianoavalos@emtharp.com  
 Tax ID: 94-1218910

**Estimate - Preliminary**

**Estimate Prepared by:** Mario Avalos

**Appraised for:**

Accident Date:

Date of Loss:

Date: 12/16/2022

Arrival Date:

Estimate#:

Type of Loss:

Policy Number:

Claim Number:

**Insured:**

Company: CITY OF PORTERVILLE

<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>Color</b>	<b>Trim</b>
2021	FORD	TRANSIT PASSENGER VAN	BLACK	
<b>Unit Number</b>	<b>License Plate #</b>	<b>Mileage</b>	<b>Serial#/VIN#</b>	
8123	1610816		1FBVU4X87LKA97126	

Sup	Seq	Labor Type	Labor Op	Description *	Part Type	Part Number	Dollar Amount	Labor Units
	1			Shop Materials			\$350.00 T	*
	2			Paint Materials			\$600.00 T	*
	3			Hazardous Waste			\$25.00	*
	4			Mask for Overspray				T 1.0*
	5	Ref	Ref	Refinish Roof Outside Complete	Exist			T 10.9
	6	Ref	Ref	Refinish Back Door High Roof R	Exist			T 3.1
	7	Ref	Ref	Refinish Rear Outer Side Panel L	Exist			T 4.2
	8	Body	Repair	Panel, Front Roof	Exist			T 15.0#
	9	Body	Repair	Panel, Rear Roof	Exist			T 10.0#
	10	Body	Repair	Shell, Back Door High Roof R	Exist			T 6.0

\* - Judgement Item

# - Labor Note Applies

**Labor**

Body	31.0	Hrs @ \$155.00	\$4,805.00
Refinish	18.2	Hrs @ \$155.00	\$2,821.00
<b>Labor Total</b>			<b>\$7,626.00</b>

**Parts**

Parts Subtotal	\$0.00
Less Adjustments	
<b>Parts Total</b>	<b>\$0.00</b>

**Additional Costs and Operations**

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Page 1 of 2

Sup Seq	Labor Type	Labor Op	Description	Part Type	Part Number	Dollar Amount	Labor Units
Addl. Costs/Ops Total							\$1,130.00
<b>Tax</b>							
Addl. Costs Tax @ 8.25%							\$78.38
Tax Total							\$78.38
<b>Totals</b>							
Sub Total:							\$8,834.38
Customer Resp.							\$0.00
<b>Net Total</b>							<b>\$8,834.38</b>

The above is an estimate based on our inspection and does not cover any additional parts or labor which may be required after the work has started. Occasionally, worn or damaged parts are discovered which may not be evident on the first inspection. Because of this, the above prices are not guaranteed. Quotations on parts and labor are current and subject to change.

*This is a preliminary estimate. Additional changes to the estimate may be required for the actual repair.*

*TruckEst does not automatically include items required by many business repair partners. This application allows the author to manually enter line items such as overlap deductions.*

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Page 2 of 2





## CITY COUNCIL AGENDA – JANUARY 17, 2023

**SUBJECT:** Authorization to Distribute a Request for Qualifications for Design Services - Parks Master Plan

**SOURCE:** Parks and Leisure Services

**COMMENT:** The City's current Parks Master Plan is over twenty (20) years old and is in need of an update . The City's Parks Master Plan will provide guidance and direction for the future design and development of facilities to meet the needs of the City's residents over the next ten (10) years. It also addresses the goals and objectives of the City's adopted General Plan. A few of the deliverables of the Consultant will include: developing a public engagement strategy; performing field data collection; providing project management; and working closely with City staff.

Staff has proceeded with the preparation of a Request for Qualifications for design services for this project. The firms interested in the project shall submit a statement of qualifications that will be reviewed and rated by a selection panel. The highest ranking firms may or may not be asked to participate in an interview panel and ranked again.

Staff will then present the results of the ranking to City Council for approval and to direct staff to negotiate a fee with the highest ranking firm or the firm determined by Council. The chosen firm will meet with staff to fine tune the scope and deliver a fee. If the fee is acceptable, staff will then seek Council's approval to execute a Service Agreement so that the firm can commence with the needed design work for the Parks Master Plan.

**RECOMMENDATION:** That the City Council authorize staff to distribute a Design Services Request for Qualifications for a Parks Master Plan.

**ATTACHMENTS:**

1. Draft Request for Qualifications
2. General Plan Policy Exerpts

Appropriated/Funded:

Review By:

Department Director:  
Donnie Moore, Parks and Leisure Services Director

Final Approver: John Lollis, City Manager





## **REQUEST FOR QUALIFICATIONS**

**Professional Services – Parks Master Plan**  
**January 2023**

**PREPARED BY:**  
**PARKS AND LEISURE SERVICES DEPARTMENT**  
**January 2023**

**I     INTRODUCTION AND OBJECTIVES:**

The City of Porterville (hereinafter referred to as "CITY") is requesting statements of qualifications (SOQs) from qualified consultant firms to provide professional services to develop a Parks Master Plan that addresses the goals and objectives of the City's adopted General Plan. This document identifies the general project scope and procedures for Consultant involvement in this process. Responding consultants must have relevant experience and the ability to provide the requisite professional services.

**II    EXAMINATION OF PROPOSAL DOCUMENTS:**

By submitting a proposal, each CONSULTANT represents that it has thoroughly examined and become familiar with the work required under this RFQ and that it is capable of performing quality work to achieve the objectives of CITY.

**III   ADDENDA/CLARIFICATIONS:**

Any CITY changes to this RFQ will be made via written addendum. No verbal modification shall be binding.

**IV    PROPOSAL REQUIREMENTS:**

Proposals for this project will be accepted at this office until 4:00 p.m., on Tuesday, February 28, 2023. Three (3) copies of the proposal shall be submitted in a sealed envelope, plainly marked "Statement of Qualifications for Parks Master Plan." Cost proposals shall not be submitted until requested by the CITY. Proposals shall be addressed to:

Daniel Cervantez, City Engineer  
Engineering & Project Management Department  
City of Porterville  
291 N. Main Street  
Porterville, CA 93257

The City reserves the right to reject any and all proposals, which do not meet the requirements of this RFQ and/or any portion of the requirements of this project.

**V     PRE-CONTRACTUAL EXPENSES:**

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Pre-contractual expenses are defined as expenses incurred by the CONSULTANT in:

1) preparing and reproducing its proposal in response to this RFQ; 2) submitting its proposal to CITY; 3) negotiating with CITY any matter related to this RFQ and CONSULTANT's proposal; 4) other matters prior to the date of award of a Contract.

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CITY shall not be liable for any pre-contractual expenses incurred by CONSULTANT in the preparation of proposals. Pre-contractual expenses shall not be included in the cost proposal.

**VI EXCEPTIONS/DEVIATIONS:**

Any exceptions to the requirements of this RFQ must be included in the CONSULTANT's proposal. Such exceptions must be included as a separate element of the proposal entitled "Exceptions and Deviations."

**VII CONSULTANT REPRESENTATIVE:**

The CONSULTANT shall assign a responsible representative and an alternate, both of whom shall be identified in the proposal. The CONSULTANT's representative shall remain in responsible charge for the duration of the project. Should the CONSULTANT's primary representative be unable to continue with the project, the CONSULTANT's alternate representative shall become the primary representative. No personnel changes will be acceptable without prior approval by CITY. CITY reserves the right to reject any changes in personnel at any time during the course of this project. CITY also reserves the right to terminate the contract if, in the opinion of CITY, substantial changes in project management may jeopardize the successful completion of this project to the satisfaction of CITY.

**VIII LOCAL AGENCY REPRESENTATIVE:**

Sarah Weaver, Project Manager, shall be the Contract Administrator and contact person for all communications with CITY.

**IX INSURANCE REQUIREMENTS:**

The CONSULTANT shall maintain and provide current copies to CITY of the following minimum insurance coverage for the duration of this project:

- Full liability under Worker's Compensation laws of the State of California
- General comprehensive liability (*bodily injury and property damage*)\*
- Professional liability insurance (*errors and omissions*)\*
- Automotive liability Insurance\*

\*All must provide a combined single limit (CSL) of not less than \$2 million per occurrence.

**X INDEMNIFICATION:**

The CONSULTANT shall indemnify, defend, and hold harmless CITY, its elected and appointed officers, employees agents from and against any and all claims, including attorney's fees and reasonable expenses for litigation or settlement, for any loss, damages, bodily injuries, and loss of property caused by negligent acts, omissions, or willful misconduct by the successful CONSULTANT and its subconsultants arising out of performance requirements of the Contract.

**XI SUBCONTRACTING:**

Only those firms identified in the Contract as subcontractor's or subconsultant's shall be allowed to perform work for this project. Any amendments to this requirement shall be made in writing by prime CONSULTANT to CITY. CITY has the right to reject any requested amendments at any time during the course of this project.

**XII FEDERAL, STATE, AND LOCAL LAWS:**

The CONSULTANT shall comply with all federal, state, and local laws, rules, regulations, ordinances, and statutes.

**XIII PROPOSAL EVALUATION CRITERIA:**

Evaluation criteria used to select the CONSULTANT shall include, but not be limited to, the following:

- A. Firm(s) experience with similar projects;
- B. Firm(s) key personnel qualifications/certifications and experience, especially the project manager and individuals performing services;
- C. Firm(s) understanding of the project requirements;
- D. Firm(s) ability to provide the required services in a timely and cost-effective manner to meet the required schedule;
- E. Firm(s) policy in providing Equal Employment Opportunity; and
- F. Firm(s) approach to provide the best product for CITY.

The attached CITY'S Consultant Selection Rating Form shall be used to rate each firm.

**XIV CONSULTANT SELECTION AND INTERVIEWS:**

CITY selection committee, consisting of the Contract Administrator and at least two additional staff members familiar with the project requirements, will review all proposals and rank CONSULTANTs according to their demonstrated competence and professional qualifications as assessed by their response to this RFQ and the evaluation criteria contained in the CITY'S Consultant Selection Rating Form. The highest ranked CONSULTANT(s) may be invited for oral interviews with CITY team. Interviews, if deemed necessary by CITY, are tentatively scheduled for the fourth week of March 2023. Each participating firm will be contacted via telephone for verification of interview date and time. Failure to be available at the time of a scheduled interview shall be considered non-responsive and shall be cause for elimination from any further consideration. CITY reserves the right to begin negotiations and enter into a Contract without interviews or further discussion.

**XV COST PROPOSAL:**



The cost proposal shall not be submitted until requested by the CITY. Negotiations with the top-ranked candidate(s) may begin immediately. If an agreement cannot be reached within ten (10) working days, CITY may begin negotiations with the next selected candidate(s) and proceed. If necessary, this process will continue until either an agreement is reached or CITY elects to re-advertise for new proposals. CITY reserves the right to reject any and all proposals prior to award of a Contract. All cost proposals not opened shall be returned to their respective firms.

**XVI CONTRACTS/AGREEMENTS:**

The successful CONSULTANT shall enter into upcoming Contracts with CITY that are based on the contents of this RFQ, the CONSULTANT's proposal, and CITY Contract. Where two or more CONSULTANT's desire to submit a single proposal (joint venture), only one CONSULTANT shall be listed as prime CONSULTANT. All others shall be listed as subconsultants. The chosen CONSULTANT is expected to be presented at the City Council meeting scheduled for Tuesday, April 18, 2023. Issuance of this RFQ and receipt of proposals does not commit CITY to award a Contract. CITY reserves the right to postpone award of a Contract for its own convenience, accept or reject any or all proposals received in response to this RFQ, and cancel any or all portions of this RFQ and resulting Contract.

**XVII COMPENSATION:**

- A. All items of work required for completion of the project/s to result from this RFQ shall be paid for following the cost proposal format specified in each task order request. Costs for any and all items not specifically listed, but required to complete the work for projects (including all exceptions and deviations stated included in CONSULTANT's proposal), shall be included as part of the total cost proposed. No additional compensation shall be paid for such items. No additional compensation shall be given for any reproduction costs, except those in excess of the requirements stated in this RFQ. Only a change in scope or any significant task addition or increase shall receive consideration for additional compensation.
- B. If the CONSULTANT feels that any work it has been directed to perform is beyond the scope of the Contract and constitutes extra work, it shall notify CITY in writing within ten (10) days. CITY will review such notice and, if justified, authorize additional compensation to the CONSULTANT on a fair and equitable basis.
- C. Monthly progress payments will be made to the CONSULTANT only upon submittal of invoices to CITY. Said invoice shall indicate the percentage completion of each task, as well as the overall percentage completion of the entire project. In addition, an updated schedule showing tasks and their degree of completion shall be provided.

**XVIII OWNERSHIP OF REPORTS AND DOCUMENTS:**

Originals of all documents, letters, drawings, design calculations, estimates, specifications, and other documents and data produced under the terms of the Contract shall become the property of CITY. CITY shall retain all rights in copyright. Copies may be made and retained by the CONSULTANT for its records, but shall not be furnished to others without the written consent of CITY for a period of three (3) years from the date of acceptance, by CITY, of all requirements of this project.

**XIX PROPOSAL FORMAT AND CONTENT:**

Proposals shall be brief and include a concise address of the following information:

A. Firm Experience:

1. A brief list of similar projects completed in the last five (5) years, indicate the specific relationship if other than principal and each firm's responsibilities. Descriptions of pertinent experience should include a summary of work performed, adherence to schedules, the duration of each project, and the name, title, and phone number of clients that may be contacted for reference.
2. Other information that might aid CITY in ascertaining proposing firm's qualifications.

B. Consultant Team:

Name of prime consulting firm, subconsultant(s), names of principals, associates, project manager, and key personnel, their proposed level and areas of responsibility, and their qualifications/certifications in those areas. The CONSULTANT's Project Manager and key personnel will be an important factor considered by CITY.

1. Any changes to personnel assigned to this project shall be made in writing to CITY. CITY reserves the right to reject any proposal with modified personnel.
2. If subconsultant's are used, names of subconsultant's key personnel for the project, their professional experience, qualifications/certifications, and training, which are applicable to this project, and the scope of services that will be provided by each subconsultant.
3. The office location from which the CONSULTANT(s) shall operate along with telephone and/or cell number of the project manager.

C. Proposal Format:



1. Proposals shall contain no more than twenty (20) pages, excluding cover sheet, table of contents, index sheets, and resumes, double-sided, font size no less than 10 pt., and single or double-spaced. Cover letters will be counted as part of the twenty sheets. The City encourages the use of recycled materials.
2. Proposals should include, but not be limited to, the following:
  - a. Page numbering;
  - b. Table of Contents, if applicable;
  - c. Section dividers with tabs, if applicable;
  - d. Identification of offering firms, including name, address, and telephone number of each firm;
  - e. Prime CONSULTANT organizational chart, which includes subconsultant(s) with names and titles of personnel to be used for this project;
  - f. Acknowledgment of receipt of RFQ addenda, if any;
  - g. Concise, complete response addressing each of the items, 'a' through 'p', as shown in the City's "Consultant Selection Rating Form"; and
  - h. Exceptions to or deviations from the requirements of this RFQ, separating technical exceptions from contractual exceptions. Any alternative approach proposed by the CONSULTANT shall be thoroughly explained and shall meet the objectives of CITY.

**CITY OF PORTERVILLE**  
**REQUEST FOR QUALIFICATIONS (RFQ) FOR PARKS MASTER PLAN**

The City of Porterville seeks "Statement of Qualifications" (SOQ) from qualified engineering firms for the purpose of developing a Parks Master Plan. This document identifies the general project scope and procedures for Consultant involvement in this process. Responding consultants must have relevant experience and the ability to provide the requisite professional services.

**SCOPE OF SERVICES:**

The consultant will respond directly to the Engineering and Project Management Director or their designee on the project. The selected consultant will perform, but not be limited to the following tasks:

1. Meet with City staff to ascertain the full scope of work and determine the level and amount of information and drawings available to the consultant to assist in the preparation of the formal "scope of service". Said scope shall be prepared and transmitted to the City for review and concurrence. The consultant shall include their "fee" for all work described in the scope of services and, if acceptable to the City, the scope of services and associated fee shall form the basis for the Consulting Services agreement. A brief description of some of the work needed is listed below.
2. Provide clarifications and answer questions as needed.
3. Coordinate early consultation and ongoing meetings with City staff and staff at other agencies.
4. Provide other consulting services as available through the selected firm.
5. Public Engagement & Information - The consultant will develop a public involvement strategy and methodologies to encourage citizen participation in the decision-making process, ensure that all interested stakeholders are aware of participation opportunities and make sure that the final recommendations are consistent with community needs and desires. The consultant should be prepared to provide a menu of options to meet these goals within the City's community, which may include:
  - a. Interviews with key stakeholders to identify significant issues;
  - b. Focus Groups with various representatives of various special interests;
  - c. Meetings with public agencies involved in parks, open space, and recreation;
  - d. Community Workshops.
6. The consultant will work with City staff to comply with public meeting notification requirements and will be responsible for preparing a public information program inclusive of producing materials to help inform the public about the master plan process, progress, key recommendations and findings.

7. The Consultant shall provide a working schedule indicating major milestones to complete the work identified in the scope of services above.
8. The Consultant will be required to perform field data collection necessary to complete the requirements of the Project. The Consultant is solely responsible for safety of its employees including any sub-consultant employees during any field operations.
9. The Consultant shall provide project management to a level commensurate with the Project including clearly defined lines of communication between the City and the Consultant, coordination necessary for successful completion of the Project, timely invoicing for services rendered, and notification of tasks outside the executed Agreement.

**DESIRABLE QUALIFICATIONS OF THE CONSULTANT:**

The City is seeking a qualified consultant with the following qualifications:

1. Experience in the preparation of a Parks Master Plan for other agencies similar in size and need.
2. The Consultant's proven ability to expeditiously and accurately produce the required product in a concise and useable format.
3. The "design team" should be comprised of professionals with the technical competence and resources to perform the work specific to this RFQ.
4. The "design team" should include the proper mix of professionals capable of producing the desired outcome of CITY.

**LOCAL AGENCY RESPONSIBILITIES:**

The CONSULTANT will report to the CITY's Contract Administrator. The CONSULTANT shall not proceed with any work until the CITY provides the Notice to Proceed to the CONSULTANT.

The CITY's Contract Administrator will directly handle the project management and monitoring of the CONSULTANT's work to ensure it is complete, accurate, and consistent with the terms and conditions of the CONSULTANT contract. The Contract Administrator and designees will also inspect, review, and discuss project progress, comply with Federal, State and Local policies and regulations, and other requirements to further the prosecution of the contract work with the least delay.

The CITY's Contract Administrator (or designee) shall be responsible for the following:

- Serve as the CITY's primary contact person for the CONSULTANT
- Monitor the CONSULTANT's progress and provide direction
- Review billings and determines whether costs billed are reasonable in relation to the work performed during billing period
- Approve the CONSULTANT's progress payments

- Identify other CITY personnel for CONSULTANT to contact, if needed
  - Provide access to CITY facilities as required
  - Provide available data pertinent to the Project
  - Provide CONSULTANT with CITY documents including policies, procedures, regulations and standards pertinent to the Project
  - Attend meetings with CONSULTANT, and conduct meetings where appropriate
  - Provide a list of stakeholders and other agency personnel involved with the Project
  - Examine documents submitted to CITY by CONSULTANT and render decisions pertaining thereto in a timely manner
- 
-

# CONSULTANT SELECTION RATING FORM

Project Name:  
Project Number:

Date:

## Evaluation Factor

Evaluation Factor	Rating Factor Numerical Range & Weighting Based on Importance of Factor	FIRM	FIRM	FIRM	FIRM	FIRM
		Score	Score	Score	Score	Score
a. Capability to perform all or most aspects of the project.	0-10					
b. Recent experience in projects comparable to the proposed project.	0-10					
c. Firm's reputation for professional integrity and competence.	0-5					
d. Key personnel's professional background and caliber.	0-7					
e. Adequate qualified personnel available for assignment to the project.	0-5					
f. Recent experience in specialized areas of expertise associated with the project.	0-5					
g. Demonstrated ability to meet schedules or deadlines.	0-10					
h. Demonstrated ability to complete projects without having major cost escalations or overruns.	0-7					
i. Qualifications and experience of outside consultants regularly engaged by the consultant under consideration.	0-10					
j. Quality of project previously undertaken.	0-10					
k. Familiarity with and proximity to the geographic location of the project.	0-5					
l. Capability of a branch office, which will do the work to perform independently of the home office, or conversely, its capability to obtain necessary support from the home office.	0-3					
m. Demonstration of an understanding of the project's potential problems and the City's special concerns.	0-5					
n. Degree of interest shown in undertaking the project.	0-3					
o. Evidence that consultant is an equal opportunity employer.	0-2					
p. Proximity of firm's office to project.	0-3					
TOTAL SCORE:						
RANKING:						

Highest Possible Score = 100



**Exhibit 10-R: A&E BOILERPLATE AGREEMENT LANGUAGE**

(For Local Assistance Federal-aid Projects)

NOTE TO LOCAL AGENCY - BE SURE THAT YOUR LEGAL STAFF REVIEWS AND APPROVES ALL CONSULTANT CONTRACTS BEFORE EXECUTION. THIS AGREEMENT LANGUAGE IS RECOMMENDED LANGUAGE, **EXCEPT TITLE VI APPENDICES A-E MUST BE PHYSICALLY INCLUDED, UNMODIFIED, IN THE EXECUTED CONTRACT FOR ALL FEDERAL-AID PROJECTS, REFER TO ARTICLE XXXII.** MODIFY AS RECOMMENDED BY YOUR OWN LEGAL STAFF AND TO FIT YOUR PARTICULAR REQUIREMENTS AND PROJECT.

THE FISCAL AND FEDERAL PROVISIONS ARE REQUIRED IN ALL FEDERALLY FUNDED CONTRACTS. THE ORIGINAL INTENT OF THE ARTICLE SHALL REMAIN, IF MODIFIED BY YOUR LEGAL STAFF.

This exhibit contains fiscal requirements from 2 CFR 200 and **is to** be used for state-only funded contracts as well.

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I INTRODUCTION.....	3
ARTICLE II CONSULTANT'S REPORTS OR MEETINGS.....	4
ARTICLE III STATEMENT OF WORK.....	5
ARTICLE IV PERFORMANCE PERIOD.....	6
ARTICLE V ALLOWABLE COSTS AND PAYMENTS.....	6
ARTICLE VI TERMINATION.....	11
ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS.....	11
ARTICLE VIII RETENTION OF RECORD/AUDITS.....	12
ARTICLE IX AUDIT REVIEW PROCEDURES.....	12
ARTICLE X SUBCONTRACTING.....	14
ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES.....	15
ARTICLE XII STATE PREVAILING WAGE RATES.....	16
ARTICLE XIII CONFLICT OF INTEREST.....	19
ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION.....	20
ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING.....	20
ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE.....	21
ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION.....	22
ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION.....	22
ARTICLE XIX INSURANCE.....	26
ARTICLE XX FUNDING REQUIREMENTS.....	27
ARTICLE XXI CHANGE IN TERMS.....	27
ARTICLE XXII CONTINGENT FEE.....	27
ARTICLE XXIII DISPUTES.....	28

ARTICLE XXIV INSPECTION OF WORK.....	28
ARTICLE XXV SAFETY .....	28
ARTICLE XXVI OWNERSHIP OF DATA.....	29
ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR.....	29
ARTICLE XXVIII CONFIDENTIALITY OF DATA.....	30
ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION .....	30
ARTICLE XXX EVALUATION OF CONSULTANT .....	31
ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT .....	31
ARTICLE XXXII TITLE VI ASSURANCES.....	31
ARTICLE XXXIII NOTIFICATION.....	36
ARTICLE XXXIV CONTRACT.....	36
ARTICLE XXXV SIGNATURES .....	36

**ARTICLE I INTRODUCTION**

This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:

(NAME OF CONSULTANT)

Incorporated in the State of (NAME OF STATE)

The Project Manager for the "CONSULTANT" will be (NAME)

The name of the "LOCAL AGENCY" is as follows:

(NAME)

The Contract Administrator for LOCAL AGENCY will be (NAME)

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated (DATE). The approved CONSULTANT's Cost Proposal is attached hereto (Attachment #) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure 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 negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. LOCAL AGENCY 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 LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. 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 LOCAL AGENCY 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. 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 LOCAL AGENCY. 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 LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. 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. 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.

## ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

*(Choose either Option 1 or Option 2)*

*(Option 1 - Use paragraphs A & B below for standard AGREEMENTs)*

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

*(Option 2 - Use paragraphs A & B below for on-call AGREEMENTs)*

- A. CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for LOCAL AGENCY's Contract Administrator or Project Coordinator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

**ARTICLE III STATEMENT OF WORK**

(Insert Appropriate Statement of work including a Description of the Deliverables) *in the following sections. If a section does not apply to the AGREEMENT, state "Not Applicable to this AGREEMENT."*)

**A. CONSULTANT Services**

*Detail based on the services to be furnished should be provided by CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in CONSULTANT AGREEMENT should be included. Describe acceptance criteria, and if the responsible CONSULTANT/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the AGREEMENT including registration number.*

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. Right of Way**

*State whether Right of Way requirements are to be determined and shown by CONSULTANT, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way parcel maps are to be furnished.*

**C. Surveys**

*State whether or not the CONSULTANT has the responsibility for performing preliminary or construction surveys.*

**D. Subsurface Investigations**

*State specifically whether or not CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of CONSULTANT, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the Standard Environmental Reference.*

**E. Local Agency Obligations**

*All data applicable to the project and in possession of LOCAL AGENCY, another agency, or government agency that are to be made available to CONSULTANT are referred to in the AGREEMENT. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.*

**F. Conferences, Site Visits, Inspection of Work**

This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

**G. Checking Shop Drawings**

*For AGREEMENTs requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by CONSULTANT may be included in the AGREEMENT fee, or provision may be made for separate payment.*

**H. CONSULTANT Services During Construction**



*The extent, if any of CONSULTANT's services during the course of construction as material testing, construction surveys. etc., are specified in the AGREEMENT together with the method of payment for such services.*

I. Documentation and Schedules

*AGREEMENTs where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the AGREEMENT objectives.*

J. Deliverables and Number of Copies

*The number of copies or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way parcel maps shall be specified. Provision may be made for payment for additional copies.*

#### ARTICLE IV PERFORMANCE PERIOD

*A time must be set for beginning and ending the work under the AGREEMENT. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the AGREEMENT. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONSULTANT, they should be identified and incorporated into the AGREEMENT.*

A. This AGREEMENT shall go into effect on (DATE), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on (DATE), unless extended by AGREEMENT amendment.

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

*Use paragraph C below in addition to paragraphs A & B above for on-call AGREEMENTs. On-call AGREEMENTs shall be 5 years maximum.*

C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task 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 task order in progress only. The maximum term shall not exceed five (5) years.

#### ARTICLE V ALLOWABLE COSTS AND PAYMENTS

*(Choose either Option 1, 2, 3, or 4)*

*(Option 1 - Use paragraphs A through K below for Cost-Plus-Fixed Fee AGREEMENTs. Use [Exhibit 10-H1: Cost Proposal Format](#))*

A. The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY's approved overhead rate set forth in the

Cost Proposal. In the event, that LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by LOCAL AGENCY shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I" of this Article shall not be exceeded, unless authorized by AGREEMENT amendment.

- B. The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT. CONSULTANT's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or AGREEMENT award.
- C. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$(AMOUNT). The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- E. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT.
- G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- H. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)  
(ADDRESS)

- I. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed \$(Amount).
- J. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.



*(Option 2 - For Cost per Unit of Work AGREEMENTs, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and re-letter the remaining paragraphs. Adjust as necessary for work specific to your project. Use [Exhibit 10-H3: Cost Proposal Format](#)).*

- A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$(Amount) per approved Cost Proposal. This rate shall be for fully equipped vehicle(s) specified in Article III Statement of Work, as applicable. The specified rate to be paid for equipment shall be, as listed in the approved Cost Proposal.
- C. The method of payment for this AGREEMENT, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and AGREEMENT is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I," of this article shall not be exceeded unless authorized by AGREEMENT amendment.

*(Option 3 - Use paragraphs A through P for Specific Rates of Compensation Agreements [such as on-call Agreements]. This payment method shall only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. The specific rates of compensation payment method should be limited to AGREEMENTs or components of AGREEMENTs for specialized or support type services where the CONSULTANT is not in direct control of the number of hours worked, such as construction engineering and inspection. Use [Exhibit 10-H2: Cost Proposal Format](#)).*

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal. 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 thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.
- B. 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 Task Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.

- D. After a project to be performed under this AGREEMENT is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task 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; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, 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. *(Local Agency to include either (a) or (b) below; delete the other one)*  
(a) Reimbursement for transportation and subsistence costs shall not exceed State rates.  
(b) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
- K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task 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 Task 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, project title and Task Order number. Credits due LOCAL AGENCY 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 LOCAL AGENCY's Contract Administrator at the following address:

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)  
(ADDRESS)

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task 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. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed \$ (Amount). 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 Task Orders.

*(Option 4 - Use paragraphs A through E below for lump sum agreements. Use [Exhibit 10-H1: Cost Proposal Format](#))*

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article III Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. 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 and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)  
(ADDRESS)

E. The total amount payable by LOCAL AGENCY shall not exceed \$(Amount).

#### ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY 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.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY 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.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY 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. Upon termination, LOCAL AGENCY 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.

#### ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- 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 LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant 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.



**ARTICLE VIII RETENTION OF RECORD/AUDITS**

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance 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 workpapers 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 and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. LOCAL AGENCY, 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, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

**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 LOCAL AGENCY'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 LOCAL AGENCY'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 LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant 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, LOCAL AGENCY, 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 LOCAL AGENCY 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 LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY 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 the Independent Office of Audits and Investigations (IOAI). IOAI, 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 LOCAL AGENCY 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 IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI 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 IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY 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 IOAI.

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 IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI 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. IOAI 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 IOAI 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 LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY 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 LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.



**ARTICLE X SUBCONTRACTING**

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants 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 Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. 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 LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.
- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.
- F. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

- G. Prompt Payment of Withheld Funds to Subconsultants

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant. (Choose either Method 1, Method 2, or Method 3 below and delete the other two.)

**Method 1:** No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. CONSULTANTS and subconsultants are prohibited from holding retainage from



subconsultants. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

**Method 2:** No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. Any retainage kept by CONSULTANT or by a subconsultant must be paid in full to the earning subconsultant within 15 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

**Method 3:** The LOCAL AGENCY shall hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY of the contract work and pay retainage to CONSULTANT based on these acceptances. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the LOCAL AGENCY. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT; deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

## ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by LOCAL AGENCY'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 LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal 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 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, LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY procedures; and credit LOCAL AGENCY 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 LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
  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. No CONSULTANT or Subconsultant 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. 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 (<https://dot.ca.gov/programs/construction/labor-compliance>). 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 LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY 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 Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
1. Each CONSULTANT and Subconsultant 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 Subconsultant 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 LOCAL AGENCY representatives 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 upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, 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 LOCAL AGENCY 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 LOCAL AGENCY 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 Subconsultant performing the work shall not be marked or obliterated.
  5. The CONSULTANT shall inform LOCAL AGENCY 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 Subconsultant 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 Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, 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 LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. 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 LOCAL AGENCY Contract Administrator.



## F. Penalty

1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY 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 Subconsultant 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 Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant 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 Subconsultant 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 Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
  - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant 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 Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
  - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant'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 Subconsultant for work performed on the public works project.
  - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.

6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY 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 Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants 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 subconsultants 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 subconsultants 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 subconsultants 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 subconsultants' 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 LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY 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 subconsultant and any firm affiliated with the CONSULTANT or subconsultant 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.

#### **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 LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY 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 LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

*(Include this article in all AGREEMENTs where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the AGREEMENT; delete this article and re-number the subsequent articles.)*

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
1. No State, Federal, or LOCAL AGENCY 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 subrecipients 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 subconsultants shall not deny the AGREEMENT's benefits to 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 subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants 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 LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants 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 Subconsultants.



- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

## 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 LOCAL AGENCY. 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 (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

## ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This project is funded with State funds only so DBE Participation is not required.

**ARTICLE XIX INSURANCE**

*(Choose either Option 1 or Option 2)*

*(Option 1 - for AGREEMENT with a scope of services that may require the CONSULTANT or subconsultant to work within the operating state or Local Agency Highway Right of Way; where there would be exposure to public traffic or construction operations).*

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
  - 1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.
  - 2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
  - 3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.

- C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

*(Option 2 - for AGREEMENTs with a scope of services that will not require the CONSULTANT or subconsultant to work within the operating state or Local Agency Highway Right of Way where there would be exposure to public traffic or construction CONSULTANT operations).*

CONSULTANT is not required to show evidence of general comprehensive liability insurance.

## **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 LOCAL AGENCY 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 LOCAL AGENCY 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. LOCAL AGENCY 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 LOCAL AGENCY'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 LOCAL AGENCY'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, LOCAL AGENCY 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

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute 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.

*(Choose either Option 1 or Option 2)*

*(Option 1 - Use paragraphs A through C below for all AGREEMENTs without PS&E submittal)*

- A. 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 LOCAL AGENCY's Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. 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.

*(Option 2 - Replace Paragraph B, above, with the following for AGREEMENTs requiring the submission of PS&E)*

- B. 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 LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

### ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, 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 LOCAL AGENCY Safety Officer and other LOCAL AGENCY 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, LOCAL AGENCY 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.

*(Add the following paragraph to all AGREEMENTs, which may require trenching of five feet or deeper)*

- D. 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 under this AGREEMENT shall become the property of City, and 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 Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the 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.

#### **ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR**

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



- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. 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. Services of CONSULTANT's personnel in connection with LOCAL AGENCY'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.

#### **ARTICLE XXVIII CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY'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.
- D. 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 LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.

*(For PS&E contracts add paragraph F, below, to paragraphs A through E, above)*

- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, 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 subcontractors does voluntarily provide information in violation of this Contract, 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 LOCAL AGENCY. 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 record.

**ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT**

The LOCAL AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the LOCAL AGENCY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

**ARTICLE XXXII TITLE VI ASSURANCES****APPENDICES A - E of the TITLE VI ASSURANCES**

The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a consultant to contain Appendices A and E of the Title VI Assurances. Include Appendices B, C, and D if applicable as shown below. In addition, the consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract.

The clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a LOCAL AGENCY.

The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the LOCAL AGENCY with other parties:

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

**APPENDIX A**

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:



- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.



## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### (HABENDUM CLAUSE)

**TO HAVE AND TO HOLD** said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\* (\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

## APPENDIX C

### CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does



hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

#### **APPENDIX D**

#### **CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*



- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

## APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

### Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin; and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**ARTICLE XXXIII NOTIFICATION**

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

\_\_\_\_\_  
(CONSULTANT)\_\_\_\_\_  
(NAME) \_\_\_\_\_, Project Manager\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_

LOCAL AGENCY:

\_\_\_\_\_  
(LOCAL AGENCY)\_\_\_\_\_  
(NAME) \_\_\_\_\_, Contract Administrator\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_

**ARTICLE XXXIV CONTRACT**

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, 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**

(Name of LOCAL AGENCY)

(Name of CONSULTANT)

\_\_\_\_\_  
(Signature)  
(Name of Signer)\_\_\_\_\_  
(Signature)  
(Name of Signer)

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3

## COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

☐ Prime Consultant ☐ Subconsultant ☐ 2<sup>nd</sup> Tier Subconsultant

Consultant \_\_\_\_\_

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Date \_\_\_\_\_

## DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
_____	_____	_____	_____	\$ 0.00
_____	_____	_____	_____	\$ 0.00
_____	_____	_____	_____	\$ 0.00
_____	_____	_____	_____	\$ 0.00

## LABOR COSTS

a) Subtotal Direct Labor Costs \_\_\_\_\_ \$ 0.00

b) Anticipated Salary Increases (see page 2 for calculation) \_\_\_\_\_

c) TOTAL DIRECT LABOR COSTS [(a) + (b)] \_\_\_\_\_ \$ 0.00

## INDIRECT COSTS

d) Fringe Benefits (Rate: 0.00% ) e) Total Fringe Benefits [(c) x (d)] \_\_\_\_\_ \$ 0.00f) Overhead (Rate: 0.00% ) g) Overhead [(c) x (f)] \_\_\_\_\_ \$ 0.00h) General and Administrative (Rate: 0.00% ) i) Gen & Admin [(c) x (h)] \_\_\_\_\_ \$ 0.00

j) TOTAL INDIRECT COSTS [(e) + (g) + (i)] \_\_\_\_\_ \$ 0.00

## FIXED FEE

k) TOTAL FIXED FEE [(c) + (j)] x fixed fee 0.00% ] \_\_\_\_\_ \$ 0.00

## l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs				\$ 0.00
Equipment Rental and Supplies				\$ 0.00
Permit Fees				\$ 0.00
Plan Sheets				\$ 0.00
Test				\$ 0.00

l) TOTAL OTHER DIRECT COSTS \_\_\_\_\_ \$ 0.00

## m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

Subconsultant 1: \_\_\_\_\_

Subconsultant 2: \_\_\_\_\_

Subconsultant 3: \_\_\_\_\_

Subconsultant 4: \_\_\_\_\_

m) TOTAL SUBCONSULTANTS' COSTS \_\_\_\_\_ \$ 0.00

n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)] \_\_\_\_\_ \$ 0.00

TOTAL COST [(c) + (j) + (k) + (n)] \_\_\_\_\_ \$ 0.00

## NOTES:

- Key personnel **must** be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

**EXHIBIT 10-H1 COST PROPOSAL** Page 2 of 3**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

**1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal		Avg Hourly Rate	5 Year Contract Duration
\$250,000.00	500	=	\$50.00	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)**

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$50.00	+	2%	=	\$51.00	Year 2 Avg Hourly Rate
Year 2	\$51.00	+	2%	=	\$52.02	Year 3 Avg Hourly Rate
Year 3	\$52.02	+	2%	=	\$53.06	Year 4 Avg Hourly Rate
Year 4	\$53.06	+	2%	=	\$54.12	Year 5 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	20.0%	*	5000	=	1000	Estimated Hours Year 1
Year 2	40.0%	*	5000	=	2000	Estimated Hours Year 2
Year 3	15.0%	*	5000	=	750	Estimated Hours Year 3
Year 4	15.0%	*	5000	=	750	Estimated Hours Year 4
Year 5	10.0%	*	5000	=	500	Estimated Hours Year 5
Total	100%		Total	=	5000	

**4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)**

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$50.00	*	1000	=	\$50,000.00	Estimated Hours Year 1
Year 2	\$51.00	*	2000	=	\$102,000.00	Estimated Hours Year 2
Year 3	\$52.02	*	750	=	\$39,015.00	Estimated Hours Year 3
Year 4	\$53.06	*	750	=	\$39,795.30	Estimated Hours Year 4
Year 5	\$54.12	*	500	=	\$27,060.80	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$257,871.10	
Direct Labor Subtotal before Escalation				=	\$250,000.00	
Estimated total of Direct Labor Salary Increase				=	\$7,871.10	Transfer to Page 1

**NOTES:**

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable.  
(i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.



**EXHIBIT 10-H1 COST PROPOSAL** Page 3 of 3

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: \_\_\_\_\_ Title \*: \_\_\_\_\_ \$ 0.00

Signature : \_\_\_\_\_ Date of Certification (mm/dd/yyyy): \_\_\_\_\_

Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

**\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.**

List services the consultant is providing under the proposed contract:

--

**EXHIBIT 10-H2 COST PROPOSAL** Page 1 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)  
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant \_\_\_\_\_ ☐ Prime Consultant ☐ Subconsultant ☐ 2<sup>nd</sup> Tier Subconsultant

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Participation Amount \$ \_\_\_\_\_ Date \_\_\_\_\_

For Combined Rate	Fringe Benefit % + General & Administrative %	=	Combined ICR%
	OR		
For Home Office Rate	Fringe Benefit % + General & Administrative %	=	Home Office ICR%
For Field Office Rate	Fringe Benefit % + General & Administrative %	=	Field Office ICR%

	Fee	=	%
--	-----	---	---

**BILLING INFORMATION****CALCULATION INFORMATION**

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>			Effective Date of Hourly Rate		Actual or Avg. Hourly Rate <sup>4</sup>	% or \$ Increase	Hourly Range - for Classifications Only
	Straight <sup>3</sup>	OT (1.5x)	OT (2x)	From	To			
John Doe – Project Manager * Civil Engineer II	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Sue Jones – Construction Engineer/Inspector Engineer I	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Buddy Black – Claims Engineer Engineer III	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Land Surveyor **	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	\$00 - \$00
Technician	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	\$00 - \$00

(Add pages as necessary)

## NOTES:

1. Key personnel must be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate \* (1 + IC<sub>R</sub>) \* (1 + Fee). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

## EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)  
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant \_\_\_\_\_ ☐ Prime Consultant ☐ Subconsultant

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Date \_\_\_\_\_

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs				\$ 0.00
Equipment Rental and Supplies				\$ 0.00
Permit Fees				\$ 0.00
Plan Sheets				\$ 0.00
Test				\$ 0.00
Vehicle				\$ 0.00
Subconsultant 1:				
Subconsultant 2:				
Subconsultant 3:				
Subconsultant 4:				
Subconsultant 5:				

Note: Add additional pages if necessary.

## NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.



7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

**EXHIBIT 10-H2 COST PROPOSAL** Page 3 of 3**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Accepted Accounting Principles (GAAP)
8. Terms and conditions of the contract
9. [Title 23 United States Code Section 112](#) - Letting of Contracts
10. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
11. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
12. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

**Prime Consultant or Subconsultant Certifying:**

Name: \_\_\_\_\_ Title\*: \_\_\_\_\_ \$ 0.00  
 Signature: \_\_\_\_\_ Date of Certification (mm/dd/yyyy): \_\_\_\_\_  
 Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Address: \_\_\_\_\_

\* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

**EXHIBIT 10-H3 COST PROPOSAL** Page 1 of 2COST PER UNIT OF WORK CONTRACTS  
(GEOTECHNICAL AND MATERIAL TESTING)

Note: Mark-ups are Not Allowed

☐ Prime Consultant☐ Subconsultant☐ 2<sup>nd</sup> Tier Subconsultant

Consultant \_\_\_\_\_

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Date \_\_\_\_\_

**Unit/Item of Work:****(Example: Log of Test Boring for Soils Report, or ADL Testing for Hazardous Waste Material Study) Include as many items as necessary.**

DIRECT LABOR	Hours	Billing Hourly Rate (\$)	Total (\$)
Professional (Classification)*	_____	_____	_____
Sub-professional/Technical**	_____	_____	_____
EQUIPMENT 1 (with Operator)	_____	_____	_____
EQUIPMENT 2 (with Operator)	_____	_____	_____

**Consultant's Other Direct Costs (ODC) – Itemize:**

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs				\$ 0.00
Equipment Rental and Supplies				\$ 0.00
Permit Fees				\$ 0.00
Plan Sheets				\$ 0.00
Test				\$ 0.00
Subconsultant 1:				
Subconsultant 2:				
Subconsultant 3:				
Subconsultant 4:				
Subconsultant 5:				

Note: Attach additional pages if necessary.

**TOTAL COST PER UNIT OF WORK** \_\_\_\_\_**NOTES:**

1. Key personnel **must** be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals. The cost proposal format shall not be amended.
2. Hourly billing rates should include prevailing wage rates and be consistent with publicly advertised rates charged to all clients (Commercial, Private or Public).
3. Mobilization/De-mobilization is based on site location and number and frequency of tests/items.
4. ODC items shall be based on actual costs and supported by historical data and other documentation.
5. ODC items that would be considered "tools of the trade" are not reimbursable.
6. Billing Hourly Rates must be actual, allowable, and reasonable.



**EXHIBIT 10-H3 COST PROPOSAL** Page 2 of 2**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

13. Generally Accepted Accounting Principles (GAAP)
14. Terms and conditions of the contract
15. [Title 23 United States Code Section 112](#) - Letting of Contracts
16. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
17. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
18. [48 Code of Federal Regulation Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

**Prime Consultant or Subconsultant Certifying:**

Name: \_\_\_\_\_ Title\*: \_\_\_\_\_ \$ 0.00  
Signature: \_\_\_\_\_ Date of Certification (mm/dd/yyyy) \_\_\_\_\_  
Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Address: \_\_\_\_\_

\* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:



## 2

# Land Use

This element of the General Plan constitutes the framework for land use planning in Porterville. To provide context, the evolution of the City is described and existing land use in the City is summarized. The guiding principles of the land use framework, the General Plan Land Use Diagram (Diagram), the land use classification system, and the buildout of this Plan to the year 2030 are then presented.

### **2.1 BACKGROUND & CONTEXT**

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#### **HISTORICAL LAND USE DEVELOPMENT**

Much of the existing land use pattern found in the Planning Area can be traced back to Porterville's evolution as a valley agriculture center. Downtown Porterville is similar to many older Central Valley downtown districts, with a mixture of retail, public facilities, and older residential neighborhoods. Larger commercial, agriculture, and newer residential neighborhoods are located further out from the city center. Some industrial land is located adjacent to State Route 190 (SR 190) and Union Pacific Railroad. Parks and schools are distributed throughout residential neighborhoods within the city.

#### **EXISTING LAND USE CHARACTERISTICS**

The existing land use pattern in the Planning Area, based on 2005 data, is illustrated in Figure 2-1, and current land uses are listed in Table 2-1. Single Family Residential and Public/Quasi-Public were the most significant existing land uses located within the 2005 City Limits, each representing more than 20 percent of the total land use. More than 1,500 acres (17 percent) of the incorporated land was designated as vacant, with no identified land use designation.

Within the Planning Area, approximately 21,270 acres or 59 percent of the total land area was being used for agriculture and other rural uses (generally categorized as Agriculture/Rural/Conservation). Thirteen percent of the whole Planning Area was categorized as single family residential and 10 percent was considered vacant.

Other land uses in the Planning Area include commercial, retail, and industrial. Downtown lies near the center of the Planning Area, bordered by Morton Avenue to the north, Olive Avenue to the south, D Street to the west, and Fourth Street to the east. Main Street is the central commercial street. Other large commercial areas are located along State Route 65 (SR 65) and Olive Avenue. The majority of the industrial sites are in proximity to the intersection of SR 190 and Main Street, and in proximity to the Union Pacific Railroad. A few industrial developments are also located near the Porterville Municipal Airport.

**Table 2-1: Existing Land Use: Porterville Planning Area (2005)**

Land Use	<u>Incorporated</u>		<u>Unincorporated</u>		<u>Total Planning Area</u>	
	Acres	Percentage	Acres	Percentage	Total Acres	Percent of Total
Agriculture/Rural/Conservation	820	9%	20,390	75%	21,270	59%
Single Family Residential	2,230	24%	2,525	9%	4,760	13%
Multi-Family Residential	170	2%	65	0%	240	1%
Retail Shopping	80	1%	0	0%	80	0%
Commercial	480	5%	277	1%	760	2%
Industrial	320	3%	31	0%	350	1%
Public/Quasi-Public	2,020	22%	614	2%	2,630	7%
Vacant	1,580	17%	2,009	7%	3,590	10%
Unclassified (Roads, water, etc.)	1,461	16%	1,220	4%	2,661	7%
<b>Total</b>	<b>9,161</b>	<b>100%</b>	<b>27,130</b>	<b>100%</b>	<b>36,341</b>	<b>100%</b>

Table includes development projects approved in 2005.

Source: Tulare County Assessor, Dyett & Bhatia, 2007.

## 2.2 GROWTH STRATEGY

This General Plan shows how the community would like Porterville to grow over the planning period, through 2030. Through integration of all the General Plan Elements, this General Plan will guide sustainable physical and economic growth, while conserving natural and cultural resources.

### COMPACT

#### *Urban Development Boundary*

Clearly defined urban edges reflect a commitment to focus future growth within the City in order to prevent urban sprawl and protect environmentally sensitive areas. The Urban Development Boundary (UDB) is one of the best strategies to achieve this. The UDB protects the health, safety, welfare, and quality of life of the residents of Porterville by concentrating



future residential, commercial, and industrial growth in areas already served by urban services or areas where such services are to be provided consistent with this General Plan.

The UDB is an administrative boundary beyond which urban development is not allowed during the time period for which it is effective. The current UDB was most recently amended in 1993. Tulare County Local Agency Formation Commission (LAFCO) allows the UDB to be reviewed and amended every five years to ensure an adequate land supply is provided to accommodate 10 years of residential land demand and 20 years of non-residential land demand. Following General Plan adoption, the UDB will be reviewed and updated.

### *Open Space Action Plan*

Porterville's Open Space Action Plan consists of the goals, principles and policies presented in the Open Space & Conservation Element. The open space network reinforces the limits of urban development by designating land around the growth area as Agriculture/Rural/Conservation, Park, and Rural Residential. Additional detail on how the action plan will be implemented is in the Implementation Chapter. Taken together, these initiatives specifically respond to and are consistent with the Government Code's requirements for an Open Space Action Plan.

### *Infill Development*

The Urban Development Boundary complements General Plan policies emphasizing infill development, a thriving downtown, new industrial parks and additional housing opportunities. In addition to the 1,580 acres of vacant land within the 2006 City limits, more than 700 acres can be classified as underutilized, based on a improvement to land value ratio, and may have redevelopment potential. Infill development is encouraged with the Urban Development Boundary. In addition, the Economic Development and Land Use Elements provide strategies for fostering a strong Downtown that is the center of the community and a source of positive identity for the City of Porterville.

## **BALANCED**

The General Plan Land Use Diagram (Figure 2-2) illustrates a mix of land uses that meet the housing and economic development needs of the community while balancing growth so that Downtown is once again the "heart of the City" and environmental and cultural resources are protected. In recent years, the majority of the growth and development has occurred in the northwest of the City. This Plan re-centers the City on Downtown by promoting growth in the eastern portions of the Planning Area.

In addition to balancing the anticipated growth geographically, the General Plan Land Use Diagram balances residential growth with employment-generating land uses. More than 2,000 additional acres of commercial and industrial land for potential employment development have been planned. This will help not only to create jobs for local residents, but also balance the job to housing ratio.

## **EQUITABLE**

This General Plan is predicated on the idea that new development should pay its own way, so existing residents do not have to assume the costs of providing infrastructure and services to

growth areas. The key principle underpinning the Plan's policies for development mitigation is that the development community has an obligation to pay its fair share of costs so growth will not diminish the quality of public services, facilities, and lifestyle that are enjoyed by those who live in the community. Development mitigation and growth management policies will be used as tools to manage all development within Porterville and protect and enhance open space and environmental resources.

## BETTER NEIGHBORHOODS

The General Plan directs residential expansion in the new growth areas into a network of approximately seventeen neighborhoods. These neighborhoods are planned to contain a mix of uses and housing types. Each neighborhood will have a well-defined, mixed-use center with neighborhood commercial and publicly-oriented uses, such as a park and recreation facility or a school. By creating these centrally located hubs, a larger number of residents have the option to bike or walk for non-work related trips. The General Plan Land Use Diagram depicts seven residential and two mixed-use land use designations. These land uses will accommodate a diverse range of housing types and prices to provide more housing choices. Policies in the General Plan strive to promote the integration of new neighborhoods with existing urban development, and to preserve and enhance neighborhood connectivity with a continuous street network.



*The General Plan will promote development of new neighborhoods around publicly-oriented uses.*

One of the new neighborhoods proposed in the General Plan Land Use Diagram is a Resort Residential community along the northwestern shore of Lake Success. This area is envisioned to incorporate a mix of land uses which provide a variety of housing types for all ages and income levels, and a complete open space system. The residential neighborhoods would be environmentally planned to be compact and walkable with some commercial and community services. The recreational facilities may include a golf course, a hotel, new boat ramps, parks, and trails.

## ECONOMIC OPPORTUNITIES

Another priority over the next two decades is to ensure opportunities for economic development for the residents and the City as a whole. New jobs and industries, a skilled labor force, thriving local businesses and a high-quality of life for all residents will help preserve "the good life." In order to facilitate economic development, a range of commercial and retail sites and ample land for industrial and educational development has been designated in the General Plan Land Use Diagram. The Economic Development Element provides additional policies and strategies for this initiative. The Land Use Element also provides guidance for new and revitalized commercial areas, including neighborhood and regional shopping centers, office parks and mixed-use districts.



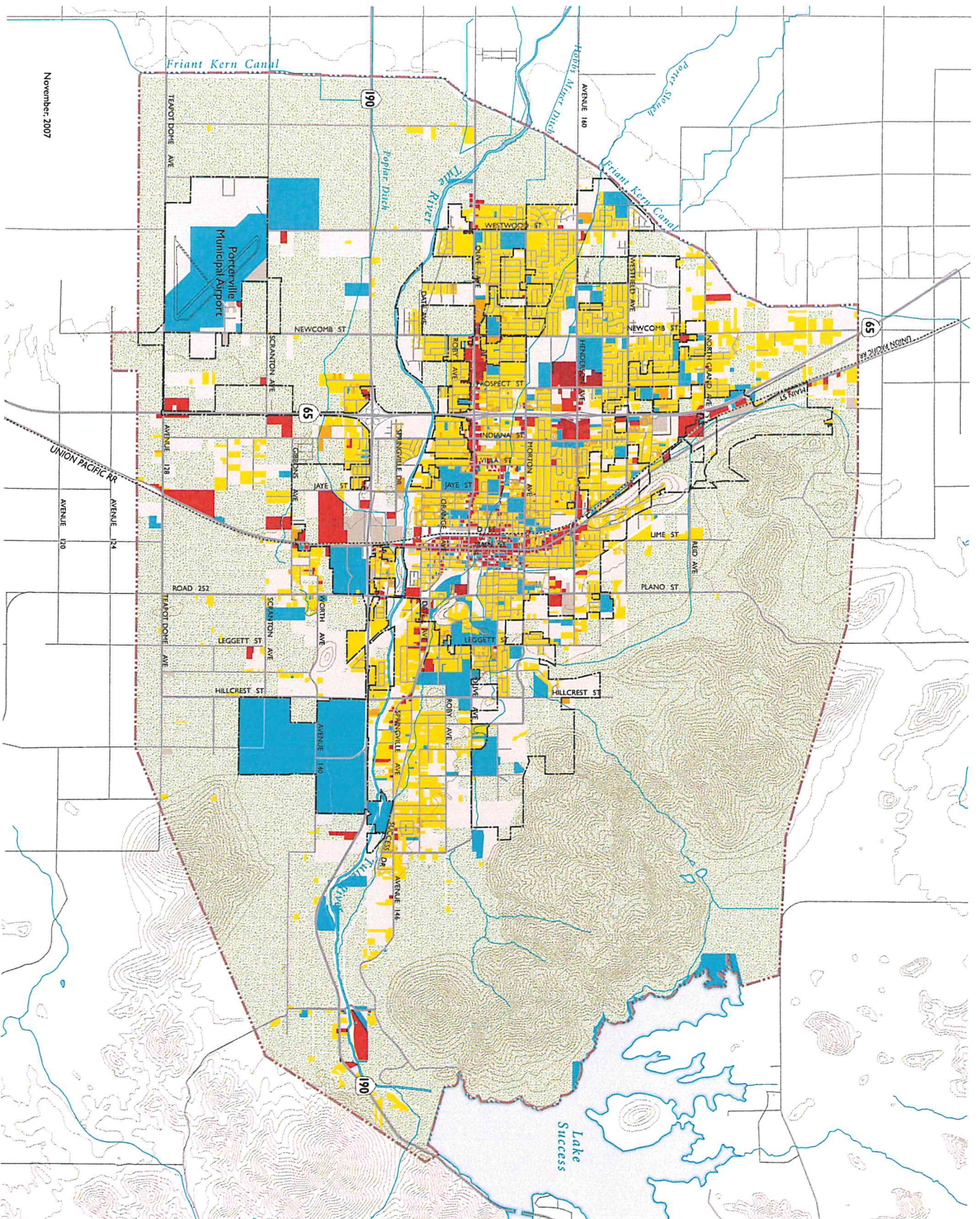
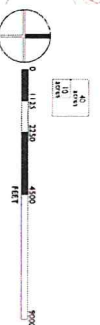


Figure 2-1  
Existing Land Use

- Rural/Agriculture/Conservation
- Single Family Residential
- Multi-family Residential
- Commercial
- Shopping Center
- Public Quasi-public
- Industrial
- Vacant
- Planning Area
- City Limits

Source: Tulare County Assessor, 2004  
Dyer & Bhattacharya, 2004







## GUIDING POLICIES

- LU-G-1 *Promote a sustainable, balanced land use pattern that responds to existing needs and future needs of the City.*
- LU-G-2 *Maintain a well-defined, compact urban form with Downtown as the “heart of the City.”*
- LU-G-3 *Promote sustainability in the design and development of public and private development projects.*
- LU-G-4 *Provide transitions between types and intensities of land use using high-quality urban design and greenway buffers.*
- LU-G-5 *Ensure that new development pays for the public facilities and infrastructure improvements required to meet the demands resulting from that growth.*

## IMPLEMENTATION POLICIES

- LU-I-1 Amend the Zoning Ordinance to include use regulations, development standards, and minimum performance requirements for zoning districts as needed to implement the General Plan.
- LU-I-2 Require a mix of civic, retail and service-oriented uses in the commercial component of neighborhood centers.  
  
*The Zoning Ordinance will establish a minimum site area and use mix so centers include more than just a convenience store or gas station. They also will need to provide for transit stops and related amenities. The City may offer FAR or density bonuses or other incentives for projects undertaking elective improvements that further the City’s community design and/or open space objectives. This type of density bonus cannot be combined with the affordable housing bonus. Off-site improvements directly resulting from a project’s impacts, as specified in the Zoning Ordinance, will be required under the City’s development mitigation program; the bonus is intended for improvements that go beyond the required minimum.*
- LU-I-3 Amend the Urban Development Boundary (UDB) in order to guide growth through annexation and development, and the efficient extension of public services to new areas.  
  
*The UDB will be periodically reviewed and updated to ensure that it provides for a 10-year supply of developable residential land and a 20-year supply of developable commercial and industrial land, consistent with the General Plan and LAFCO requirements. The UDB will be adopted separately by the City Council as a General Plan implementation policy.*
- LU-I-4 Seek LAFCO approval of a Sphere of Influence (SOI) line that accommodates planned urban development under a General Plan.

*This policy is not intended to limit extension of services to existing rural uses, nor deny existing rural property owners the option of requesting annexation.*

- LU-I-5      Require contiguous development within the UDB unless it can be demonstrated that development of property which is contiguous to urban development is unavailable.

*The City desires to prevent leapfrog development where development skips over available land to outlying and isolated areas. Contiguous development will reduce sprawl, safeguard agriculture land, and reduce the cost of extending services.*

- LU-I-6      Adopt, and maintain in place, a development mitigation program to ensure that all new growth is paying its share of the costs associated with that growth. This program will include two components:

- *Local Mitigation Program:* The local development fee program will establish fees, exactions, assessments or other mitigation measures to fund streets and other city-owned facilities. Revenue provided from this program shall not be used to replace private developer funding of any required improvements that have or would have been committed to any project.
- *Regional Mitigation Program:* The regional development fee program will establish fees, exactions, assessments or other mitigation measures to fund State highway and other regional transportation improvements needed to mitigate the impacts of planned development under the General Plan. Regional development impact fees may be established under this program that would apply to all new development in the City, unless exempt.

- LU-I-7      Use other funding mechanisms to augment developer and/or mitigation fees, when and where appropriate.

*In certain situations, it may benefit the City to advance funds, prior to developer funding and/or project completion. Additional financing options available to the City include but are not limited to: reimbursement agreements; redevelopment tax increment financing; debt financing; and assessment districts. None of these mechanisms precludes the developer's responsibility to pay the cost or mitigate the impact of their proposed development.*

- LU-I-8      Approve development projects only after making findings that one or more of the following conditions are met:

- No General Fund revenue will be used to replace developer funding that has or would have been committed to any other public project;
- The development project will fully fund all public facilities and infrastructure, including streets, water, sewer and storm drainage systems, parks and public safety facilities and equipment, as necessary to directly mitigate the impact of the new development; and
- The development project will pay impact fees for public facilities and infrastructure improvements in proportion to the development's impacts, as per the approved master plans.



- LU-I-9            Establish a comprehensive design review process for multi-family housing, commercial and industrial development with an appropriate level of review based on project type and size.

## 2.3 GENERAL PLAN LAND USE DIAGRAM

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The General Plan Land Use Diagram, Figure 2-2, is a graphic representation of the Plan's themes and policies. It designates the proposed general location, distribution, and extent of land uses through 2030. The Diagram is to be used and interpreted only in conjunction with the text and other figures contained in the General Plan. The Diagram legend includes the land use classifications described below, which represent an adopted component of the Plan.

The Diagram is not parcel-specific and uses on sites less than one acre in size are generally not depicted. The Zoning Map which will be prepared subsequent to the adoption of the General Plan will be parcel-specific.

### DENSITY/INTENSITY STANDARDS

As required by State law, the land use classifications of the General Plan specify a range for housing density and building intensity for each land use type. Residential density is expressed as housing units per gross acre (including public streets and other rights-of-way). Maximum permitted ratio of gross floor area to site area, called Floor Area Ratio (FAR), is specified for non-residential uses. FAR is a broad measure of building bulk that controls both visual prominence and traffic generation. It can be clearly translated to a limit on building bulk in the Zoning Ordinance and is independent of the type of use occupying the building. These density/intensity standards allow circulation and public facility needs to be determined.

Density (housing units per acre) and intensity (FAR) standards are for gross developable land (that is, including proposed streets and other rights-of-way), but excluding areas subject to physical or environmental constraints, which include ridgelines and steep hillside slopes, creek corridors and floodways, and areas to be dedicated for greenways or habitat protection. The density/intensity standards do not imply that development projects will be approved at the maximum density or intensity specified for each use. Zoning regulations consistent with General Plan policies and/or site conditions may reduce development potential within the stated ranges.

The Zoning Ordinance, as amended to implement the General Plan, may provide specific exceptions to the FAR limitations for uses with low employment densities, such as research facilities, or low peak-hour traffic generation, such as a hotel or hospital. Intensity standards for non-residential and mixed-use development are for each entire development site; that is, intensities on individual parcels may exceed the maximum, provided each overall development project does not exceed the stipulated intensity. This type of flexibility in density and intensity standards may also be provided for planned developments in the Zoning Ordinance.

## LAND USE CLASSIFICATIONS

The following descriptions apply to land uses indicated on the General Plan Land Use Diagram. Land use classifications are organized into the following categories: Residential, Mixed-Use, Commercial, Office/Industrial, and Public/Open Space.

### *Residential*

*Rural Residential.* This designation is intended to allow opportunities for rural living on lots ranging in size from 2.5 to 10 acres or more. This land use is around the periphery of the community because it helps serve as a transition between agriculture/open space and more intensive urban uses. This type of development helps define the limits of urban development. Clustered development is encouraged, and smaller lots may be allowed, provided that the overall density does not exceed 0.2 units per acre, with lower limits applying in the Hillside Development Zone.

*Resort Residential.* This designation is intended to allow residential development along the Lake Success shore and surrounding hillsides. There is an emphasis on creating a resort community with supporting commercial and recreation uses. Pedestrian-oriented design standards, including clustered development patterns, will promote sustainable development. The maximum overall density is 5.0 units per acre, with lower limits applying in the Hillside Development Zone.

*Very Low Density Residential.* This designation is typical of large lot or executive home single-family subdivisions. The maximum residential density is 2.5 units per gross acre.

*Low Density Residential.* This density represents typical single-family subdivisions. The maximum residential density is 6.0 units per gross acre.

*Low-Medium Density Residential.* This density is also for typical single-family subdivisions, but allows for smaller lots. The maximum residential density is 9.0 units per gross acre.

*Medium Density Residential.* This density range would accommodate a variety of housing types, such as small-lot single-family homes, detached zero lot line developments, duplexes, townhouses, and garden apartments. Pedestrian-oriented design and clustered development can support higher levels of density. The maximum residential density is 12.0 units per gross acre.

*High Density Residential.* This classification is intended to accommodate attached homes, two- to four-plexes, and apartment buildings. The maximum residential density is 24.0 units per gross acre.



### *Mixed-Use*

*Downtown Mixed-Use.* Downtown Mixed-Use development allows for a mostly vertical mix of commercial, service, office, and residential uses. The vertical nature of this type of use may allow for a reduction in the minimum parking requirements. This designation allows a maximum FAR of 3.0. The maximum residential density is 30.0 units per gross acre.

*Commercial Mixed-Use.* This designation allows for either horizontal or vertical mixed-use development. Commercial, service, office, and residential uses are allowed. Buildings more than one story are strongly encouraged. The designation allows a maximum FAR of 2.0. The maximum residential density is 24.0 units per gross acre.

### *Commercial/Office/Industrial*

*Downtown Retail.* Pedestrian-oriented and “Main Street” design standards, a vertical mix of uses, and the retention of a unique retail environment is the focus in the Downtown area. This designation allows for a maximum FAR of 3.0.

*Retail Centers.* Design and use standards will be established for regional shopping centers located at major circulation intersections. Large format or “big box” retail and auto sales as well as travel related services, such as hotels and gas stations are allowed. This designation allows for a maximum FAR of 0.35.

*General and Service Commercial.* This designation is intended for retail and services uses that meet local and regional demand. Examples of allowable uses include: equipment rental and repair, commercial print shops, auto sales, storage facilities, and wholesale businesses, and specialized retail not normally found in shopping centers. Accessory office uses related to the primary commercial use are also allowed. This designation allows for a maximum FAR of 0.40.

*Neighborhood Commercial.* This designation is intended for small-scale commercial development that primarily provides office space and convenience retail for local neighborhoods. This designation allows for a maximum FAR of 0.30.

*Professional Office.* This designation is intended for office complex development, including professional and medical offices, as well as research and development activities. Small restaurants, support services, convenience retail and limited medium and high density residential are also allowed. This designation allows for a maximum FAR of 0.50.

*Industrial Park.* This designation comprises a mix of light industrial, secondary office, bulk retail, and service uses. Typical uses include warehouse, mini-storage, research and development, wholesale, bulk retail, and office space with limited customer access. Other uses may be allowed, such as commercial recreation, distribution centers, or other uses that require large, warehouse-style buildings. Small-scale retail and service uses serving local employees and visitors are permitted as secondary uses. This designation allows for a maximum FAR of 0.40.

*Industrial.* This designation allows primary manufacturing, refining, and similar activities including those with outdoor facilities. It also accommodates warehousing, distribution, with support commercial services and ancillary office space. No retail uses are allowed. This designation allows for a maximum FAR of 0.60.

### ***Agriculture/Rural/Conservation***

*Agriculture/Rural/Conservation.* This designation preserves agricultural and resource conservation areas. Incidental residential uses with septic systems are allowed, subject to health and environmental standards. Clustered housing is strongly encouraged because it makes the provision of other infrastructure, such as roads and electricity, more cost-effective and limits the impact on natural resources. Industrial gravel and aggregate mining is allowed in areas designated as Mineral Resource Zones.



*The General Plan will protect surrounding productive agricultural lands.*

### ***Public Uses and Open Space***

*Public/Institutional.* This designation is intended for lands owned by public entities, including the Municipal Airport, City Hall, County buildings, and the hospital. At the Municipal Airport, industrial park uses will be allowed. It will provide for needed public facilities, including, but not limited to, recycling centers, sewage treatment ponds, and police and fire stations. This designation allows for a maximum FAR of 0.25.

*Education.* This designation is intended for lands owned by public or private entities for educational purposes, including schools, colleges, vocational training facilities, and administrative offices.

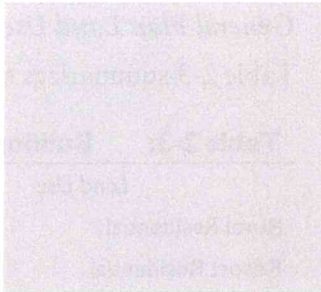
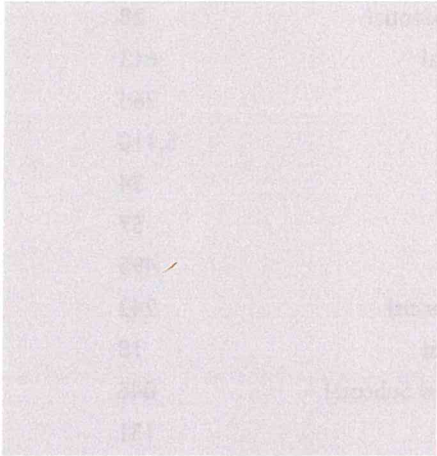
*Commercial Recreation.* This designation is intended for campgrounds, off-road vehicle complexes, and other recreation areas where patrons usually pay to participate. The maximum FAR is 0.10.

*Park.* This designation applies to both public and private recreation sites and facilities. It allows for a maximum FAR of 0.10.

Table 2-2 summarizes the density and intensity (FAR) standards used in the General Plan, which reflect both allowed and typical buildout densities for residential areas.



**Table 2-2: Standards for Density & Development Intensity**

Land Use	Maximum Residential Density (du/gross acre)	Maximum Floor Area Ratio (FAR)
Rural Residential	0.2	
Resort Residential	5.0	
Very-Low Density Residential	2.5	
Low Density Residential	6.0	
Low-Medium Density Residential	9.0	
Medium Density Residential	12.0	
High Density Residential	24.0	
Downtown Mixed-Use	30.0	
Commercial Mixed-Use	18.0	
Retail Commercial		0.35
General Commercial		0.40
Neighborhood Commercial		0.30
Professional Office		0.50
Industrial Park		0.40
Industrial		0.60
Agriculture/ Rural/ Conservation		NA
Public/Institutional		0.25
Education		NA
Commercial Recreation		0.10
Park		0.10

Source: Dyett & Bhatia, 2007.

### Overlays

*Hillside Development Zone.* All development within the Hillside Development Zone is subject to hillside development and design standards. Review criteria and limitations on maximum density are based on slope.

*Downtown Planning Area.* This overlay is intended to emphasize the Downtown area where the City wants to promote mixed-use development. Pedestrian-oriented design standards will apply.

*Transition Landscape Buffers.* This designation is intended to provide a variable-width landscaped buffer between industrial and industrial park uses, or heavily traveled highways and residential



Hillside development will be regulated by the City's Hillside Development Ordinance.

land uses. The recommended buffer widths are between 150 to 200 feet. Frontage roads, orchards, and recreational uses are allowed in these areas.

### General Plan Land Use Diagram Summary

Table 2-3 summarizes the total land use acreages at buildout for the Planning Area.

**Table 2-3: Buildout General Plan Land Use Acreage**

<i>Land Use</i>	<i>Developed Land<sup>1</sup></i>	<i>General Plan</i>	<i>2030 Total</i>	<i>Percent of Total</i>
Rural Residential	324	1,731	2,055	5.7%
Resort Residential	-	1,084	1,084	3.0%
Very Low Density Residential	79	1,699	1,778	4.9%
Low Density Residential	3,802	4,339	8,141	22.4%
Low-Medium Density Residential	28	223	251	<1%
Medium Density Residential	613	438	1,051	2.9%
High Density Residential	264	11	275	<1%
Residential Subtotal	5,110	9,525	14,635	40.3%
Downtown Mixed-Use	34	25	59	<1%
Commercial Mixed-Use	57	58	115	<1%
Retail Centers	495	251	746	2.1%
General & Service Commercial	242	76	318	<1%
Neighborhood Commercial	18	129	147	<1%
Mixed-Use and Commercial Subtotal	846	539	1,385	3.8%
Industrial Park	131	1,314	1,445	4.0%
Industrial	312	171	483	1.3%
Professional Office	100	1	101	<1%
Office and Industrial Subtotal	543	1,486	2,029	5.6%
Public/Institutional	1,255	348	1,603	4.4%
Education	419	343	762	2.1%
Parks & Open Space	313	993	1,306	3.6%
Commercial Recreation	-	55	55	<1%
Public and Open Space Subtotal	1,987	1,739	3,726	10.3%
Agriculture/Rural/Conservation	266	11,658	11,924	32.8%
Unclassified (Roads, water, etc.)	3	2,639	2,642	7.3%
<b>TOTAL</b>	<b>8,755</b>	<b>27,586</b>	<b>36,341</b>	<b>100%</b>

<sup>1</sup> Developed Land includes development projects approved in 2005.

Source: City of Porterville; Dyett & Bhatia, 2007.



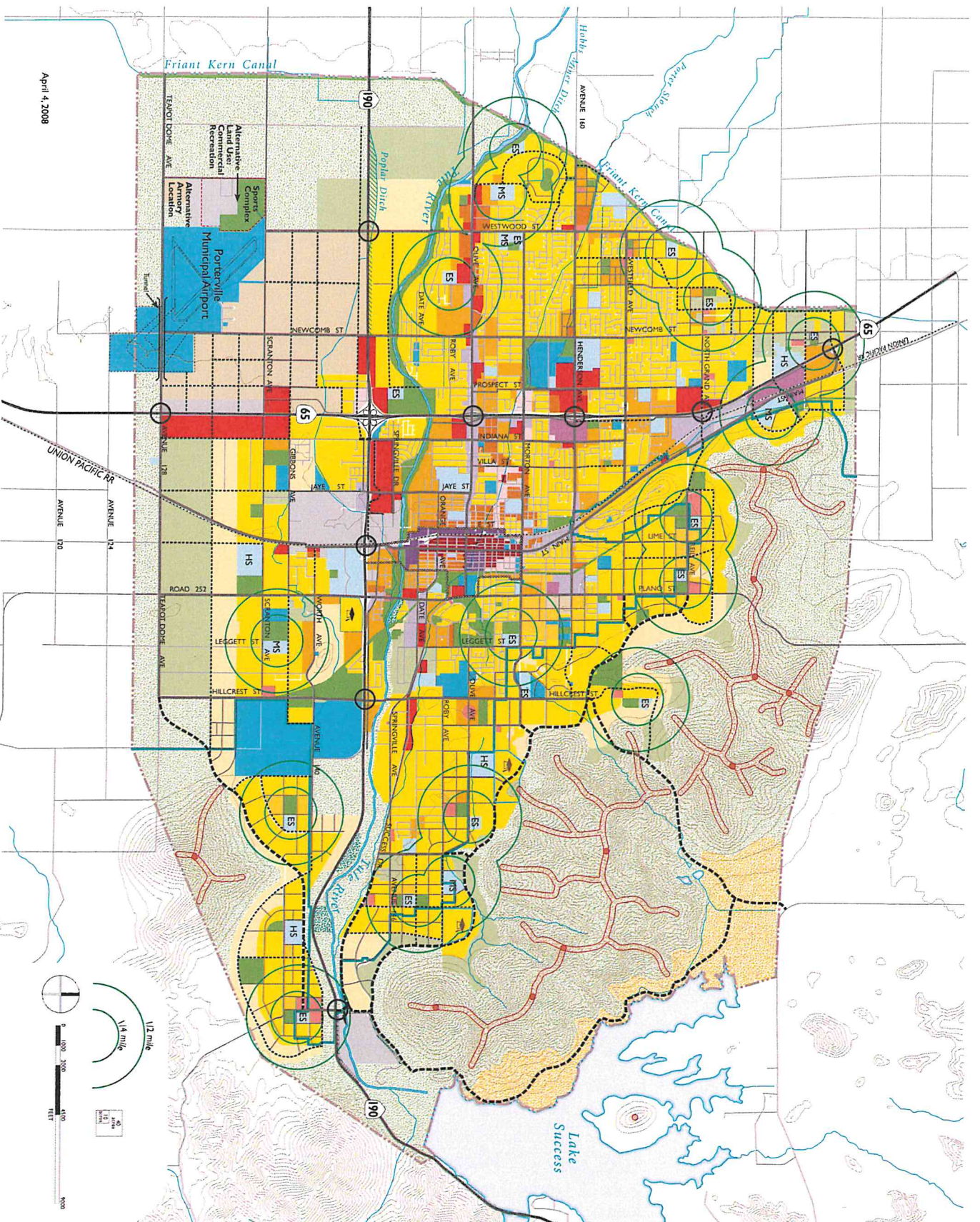


Figure 2-2  
General Plan Land Use Diagram

- Agriculture/Rural/Conservation
- Rural Residential
- Resort Residential
- Very Low Density Residential
- Low Density Residential
- Low Medium Density Residential
- Medium Density Residential
- High Density Residential
- Downtown Mixed Use
- Commercial Mixed Use
- Downtown Retail
- Retail Centers
- General & Service Commercial
- Neighborhood Commercial
- Professional Office
- Industrial Park
- Industrial
- Public/Institutional
- Education
  - ES Elementary School
  - MS Middle School
  - HS High School
  - Campus College (3 Potential Site)
- Parks and Recreation
- Commercial Recreation
- Landscape Buffer
- Ridgeline
- Existing/Proposed Arterial
- Existing/Proposed Collector
- Potential Intersection Improvement
- Other Street (conceptual)
- Downtown Planning Area
- Planning Area
- Hillside Development Zone

Note: Undeveloped roads, parks, schools, and trails are identified conceptually. Specific siting will be determined through the Development Review process and/or the approval of right-of-way alignments.





## 2.4 RESIDENTIAL NEIGHBORHOODS

The General Plan promotes a mix of residential densities and compact neighborhood design that provide for efficient use of available land resources and maintain a compact form that is less intrusive on the surrounding countryside. The Plan also provides for a mix of housing types to serve the needs of all Porterville residents.

Community facilities that are appropriate for a residential environment, including residential care, day care, elderly care, and alcoholism or drug abuse recovery or treatment facilities will be allowed within neighborhoods, consistent with State and federal law, because they are considered “protected” facilities and local zoning can not exclude them as long as specified standards and licensing requirements are met.



*New multifamily development will occur around neighborhood centers and at other appropriate locations.*

### GUIDING POLICIES

- LU-G-6 Provide for residential development with strong community identities, appropriate and compatible scales of development, identifiable centers and edges and well-defined public spaces for recreation and civic activities.*
- LU-G-7 Guide new development into compact neighborhoods with a defined, mixed-use center including public open space, a school or other community facilities, and neighborhood commercial.*
- LU-G-8 Allow and encourage efficient infill development in existing neighborhoods.*
- LU-G-9 Provide sufficient land with appropriate parcel sizes to support a full range of housing types and prices.*

### IMPLEMENTATION POLICIES

- LU-I-10 Amend the Zoning and Subdivision Ordinances to include:*
- Minimum lot sizes and densities consistent with the Plan’s land use classifications;
  - Development standards that permit townhouses and zero-lot line attached or detached single-family dwellings on sites designated for low-medium, medium, or medium-high densities;
  - Development standards that permit second units, small family daycares, and residential care homes in neighborhoods in accord with State law; and

- Sustainable design standards that will achieve compact, walkable neighborhoods and provide an interconnected network of local streets.
- LU-I-11 Only allow gated communities in very low density, planned development areas, and Resort Residential areas.
- LU-I-12 Require residential development on slopes over six percent to comply with the Hillside Development Ordinance.
- This ordinance establishes a Hillside Development zoning district with standards and review procedures tailored to the City's needs and expectation for hillside development.*
- LU-I-13 Discourage residential development within the Airport Safety Zone. If residential development is approved in the County within the Airport Safety Zone, it must comply with Tulare County Airport Land Use Commission's land-use compatibility standards and density restrictions.
- The County is currently preparing an Airport Land Use Compatibility Plan which will include updated information for a safety zone.*
- LU-I-14 Allow residential developments to employ creative site design, landscaping, and architectural quality that blend with the characteristics of each location and its surroundings and offer superior design solutions.
- LU-I-15 Adopt community design standards for new residential development.
- These could include but are not limited to:*
- *Maximum block length;*
  - *Maximum ratio of block length to width;*
  - *Limited use of dead-end streets;*
  - *Orientation of residential building; and*
  - *Required connectivity.*
- Exceptions may be provided for infill sites and projects in the Hillside Development Zone.*
- LU-I-16 Establish guidelines and incentives to promote green building techniques and materials in residential development.
- LU-I-17 Require that all new subdivisions preserve natural, cultural, and biological resources, including stands of large trees and rock outcroppings, to the maximum extent feasible.
- 
- LU-I-18 Protect existing residential neighborhoods from the encroachment of incompatible activities and land uses, and environmental hazards.
-

- LU-I-19 Enforce zoning and development regulations through project review, construction inspections, and code enforcement, with fees to enable full-cost recovery for providing these services.

*State law allows cities to set permit fees to recover administrative costs.*

## **2.5 RETAIL, COMMERCIAL, OFFICE & MIXED-USE**

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### **RETAIL & COMMERCIAL**

Clusters of commercial uses are designed to provide goods, services, and employment opportunities to both local residents and people from surrounding communities. These clusters are called neighborhood and regional centers. A neighborhood center is composed of a mix of retail, civic, and service-oriented uses which is often surrounded by higher density housing. These centers help support local transit and provide places for social interaction for the neighborhood residents. The Plan provides for new neighborhood centers, located closer to where people live and designed with the pedestrian in mind.

Attractive, well-designed regional centers are critical in shaping the identity and image of Porterville. The Plan builds on the regional accessibility of state routes 65 and 190 in order to plan for regional, auto-oriented commercial development which will capture out-of-town sales tax revenue.

### **OFFICE**

The General Plan recognizes the need for new office development, both in free-standing office buildings within existing commercial areas, along arterial streets and in new office parks. Sites that can accommodate flexible office space facilities will be in demand as the local economy matures and the City implements the Economic Development strategy described in Economic Development Element.

The General Plan Land Use Diagram provides sites for both larger site office parks and smaller, integrated office uses, designated as Professional Office. Smaller sites are typically expected to be local-serving professional and administrative office environments, such as medical, real estate, or financial services. Larger sites are envisioned as office parks that draw employees from a wider area and provide more jobs. Offices are also permitted in Neighborhood Commercial area, the Downtown Planning Area, and Retail Centers and as accessory uses in General and Service Commercial areas and Industrial Parks. A vertical mix of uses where new office uses are located above the first floor or as a secondary use in multi-tenant buildings can be an efficient use of land and promote retail continuity at the street level.

### **MIXED-USE**

Mixed-Use designations which provide commercial and residential uses in the same area can help reduce auto dependence, preserve green space and natural resources, and promote revitalization, economic development, and modestly priced housing. The Downtown Mixed-Use designation encourages a higher-density, vertical mix of uses with residential or office uses above ground floor retail or other commercial uses. It also provides for the development of more multi-family residential within walking distance of Downtown. The Commercial Mixed-



Use designation allows for lower density but multi-story development where the uses may be either horizontally or vertically mixed.

## **GUIDING POLICIES**

- LU-G-10      *Foster viable, pedestrian-oriented neighborhood centers with vertically- and horizontally-mixed-use development.*
- LU-G-11      *Foster strong, visually attractive regional commercial centers with a mix of tenants to serve both local and regional needs.*
- LU-G-12      *Promote the location of professional and administrative offices Downtown, near post-secondary education facilities, and in other mixed-use districts.*

## **IMPLEMENTATION POLICIES**

- LU-I-20      Establish standards for pedestrian-oriented design in neighborhood centers.  
*Pedestrian-oriented design standards may include, but would not be limited to:*
- *Limitations on maximum block length;*
  - *Minimum sidewalk width;*
  - *Required streetscape improvements, including street trees;*
  - *Building height and articulation;*
  - *Building setbacks;*
  - *Location of entries; and*
  - *Parking location and required landscaping.*
- The City also may provide additional incentives for projects that contribute to the pedestrian, bicycle and transit networks, and/or the open space network.*
- LU-I-21      Prohibit new strip commercial developments.  
*For purposes of this policy, strip development is defined as a row of at least three stores, where each has direct access to a street with a surface parking lot between the building and the street. There may or may not be an anchor tenant.*
- LU-I-22      Promote and support the revitalization and infill development in existing retail shopping centers.
- 
- LU-I-23      Establish an incentive program that will provide for density and FAR bonuses for mixed-use development that includes amenities for public benefit, such as workforce housing, pedestrian-oriented facilities (outdoor seating, plazas, weather protection, transit waiting areas), historic preservation, cultural facilities, public art and water features, and open space preservation.
-



- LU-I-24 Allow supporting retail, business services and other complementary uses in Professional Office districts.

## 2.6 INDUSTRY

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The General Plan proposes to shift the focus of industrial development to areas south of SR 190, particularly around the Airport. Existing, well established industrial areas in other parts of the City will be retained. Plan policies seek to increase the supply of pre-zoned, “ready-to-go” job producing land. This will improve Porterville’s competitiveness in the regional economy by decreasing start-up time for new development. In addition, the Plan reduces the potential for conflicts associated with industrial uses adjacent to other sensitive uses.

### GUIDING POLICIES

- LU-G-13 *Improve Porterville’s prominence as a major center of economic activity in Tulare County.*
- LU-G-14 *Ensure the availability of land and buildings to accommodate new industries and the expansion of existing businesses while accounting for market factors.*
- LU-G-15 *Promote clustering of industrial uses into areas that have common needs and are compatible in order to maximize their efficiency.*
- LU-G-16 *Discourage industrial development in locations where access and operations conflict with neighboring land uses.*

### IMPLEMENTATION POLICIES

- LU-I-25 Establish buffering requirements and performance standards intended to minimize harmful effects of excessive noise, light, glare, and other adverse environmental impacts.
- LU-I-26 Actively promote the annexation of industrial designated lands to accommodate planned job growth.
- LU-I-27 Require Master Plans for new Industrial Parks over a specified size to ensure coordination of land use and infrastructure planning.  
*The City could waive this requirement where existing infrastructure can accommodate the planned industrial use.*
- LU-I-28 Foster high-quality design and allow secondary uses, such as child care and other employee-serving amenities in Industrial Parks, if they complement primary use without compromising public health and safety.
- LU-I-29 Offer incentives for industrial development projects that contribute to the pedestrian, bicycle and transit networks, and/or parks and public open space.

## 2.7 PUBLIC & INSTITUTIONAL

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Public and quasi-public facilities, such as government facilities, hospitals and cemeteries, are important elements of community-building. Sites needed for large facilities are indicated on the General Plan Land Use Diagram near mixed-use neighborhood centers and Downtown. Public uses on sites less than two acres in size do not need a separate zoning classification and are not shown on the Diagram.



*The State Development Center is a major institution in Porterville.*

Houses of worship and other places for religious assembly as well as private schools and colleges will be permitted in residential and commercial areas, subject to appropriate location and development standards, and use-permit requirements which will ensure neighborhood compatibility.

For policies related to community facilities, see the Parks, Schools & Community Facilities Element. For policies related to law enforcement and fire service standards, see the Public Health & Safety Element.

### GUIDING POLICIES

- LU-G-17      *Provide sufficient land for civic and institutional uses such as police and fire services, water and sanitary facilities, infrastructure and other City services to meet future demand.*
- LU-G-18      *Support the expansion of Porterville's Sierra View District Hospital and related medical and dental offices in the surrounding area, subject to standards ensuring that surrounding residential areas are not adversely affected.*

### IMPLEMENTATION POLICY

- LU-I-30      Establish appropriate zoning for civic and institutional uses, including development standards that address scale, operation, location, and other characteristics of community facilities, including public and quasi-public facilities that enhance the character and quality of neighborhoods.

## 2.8 PARKS & OPEN SPACE

Parks and open space are a fundamental building block of the General Plan Land Use Diagram. Policies pertaining to parks are found in the Parks, Schools & Community Facilities Element. Policies related to public open space are in the Open Space & Conservation Element. Public uses on sites less than two acres in size do not need a separate zoning classification and are not shown on the Diagram.

### GUIDING POLICY

*LU-G-19 Provide sufficient land for parks and open space to meet future demand.*

## 2.9 DOWNTOWN PORTERVILLE

Since incorporation in 1902, Downtown Porterville has been the “heart of the City.” Main Street forms a spine which supports significant cultural and governmental buildings as well as specialty retail stores and restaurants. Recent street improvements have increased the pedestrian-friendly aspect of Main Street with new paving, contrasting crosswalks, improved lighting and additional landscaping. Public spaces are regularly programmed with local music and cultural events. Plus, most of Porterville’s historic buildings are in or near Downtown.



*Downtown retail and restaurants*

Even with recent improvements, Downtown is still underutilized. Buildings are aging and require rehabilitation. Streets adjacent to Main Street have not been upgraded. Incompatible uses and parking deficiencies further inhibit residents and businesses from fully taking advantage of this resource.

It is a priority for the community to revitalize Downtown. The General Plan Land Use Diagram includes an overlay for the Downtown Planning Area, where additional planning efforts will help define the long-term strategy. The General Plan supports creating new housing opportunities in and near Downtown. New residents will help support local retail and provide a greater level of around-the-clock activity. Additional street improvements will be prioritized to expand the pedestrian-friendly areas beyond Main Street. Specific building and design standards will be written to enhance the character of the area. Efforts will be made to recruit a wider variety of retail stores, restaurants, and cultural facilities.

Additional policies regarding the economic development of Downtown are found in the Economic Development Element. Historic preservation is discussed in the Open Space and Conservation Element.



## GUIDING POLICIES

- LU-G-20      *Enhance Porterville's Downtown as a pedestrian-oriented district that reflects local history and culture.*
- LU-G-21      *Attract and retain specialty retail and restaurant businesses that will enhance Porterville's unique character.*
- LU-G-22      *Promote vertical mix of uses with residential and office uses above the ground floor retail to add vitality to Downtown Porterville.*
- LU-G-23      *Provide sites for multi-family housing within walking distance of Downtown.*
- LU-G-24      *Promote public and private development within Downtown that is sensitive to historic sites.*

## IMPLEMENTATION POLICIES

- LU-I-31      Prepare a Downtown Plan with implementing regulations to support pedestrian-oriented, infill development and a mix of office, residential, retail and civic uses.
- LU-I-32      Include standards in the Zoning Ordinance for housing and mixed-use development within the Downtown area that address:
- Building setbacks and relationship to the street;
  - Outdoor dining areas;
  - Street landscaping to create an attractive and livable environment;
  - Adequate light, air, ventilation, and noise insulation for residential units;
  - Building design, including articulation and quality of materials;
  - Ground floor uses;
  - Location and quality of parking; and
  - Height and setback transitions to adjacent lower density residential uses.
- LU-I-33      Continue to improve the appearance of Main Street and other Downtown streets with traffic calming measures, tree planting, attractive landscaping, street furniture, and water features, etc., that will contribute to the creation of a distinctive image for Porterville's Downtown.
- LU-I-34      Utilize redevelopment, or other tools where available, to revitalize and preserve historic buildings.
- Continue to allow the adaptive reuse of historic buildings. The City could also enable owners to use the State's Historic Buildings Code as an incentive to upgrade historic buildings.*



- LU-I-35 Establish a density bonus/incentive program to spur creation of privately-owned public spaces throughout Downtown, including seating areas, landscaping, water-features, and public art.
- LU-I-36 Expand parking facilities while improving access by other transportation modes.  
*Promote a “park once” concept where motorists are able to drive downtown, quickly find a parking space and then walk or ride public transit to jobs, shops, restaurants and entertainment, without having to get back into their cars until they’re ready to leave.*
- LU-I-37 Update the Redevelopment Project Area plans to support a contemporary mix of retail, office and entertainment uses.  
*This could include support for a greater variety of apparel stores, bookstores and restaurants as well as additional cultural, arts, and entertainment venues that offer quality arts and entertainment functions such as live music, theater, or comedy.*
- LU-I-38 Create and maintain an attractive, pedestrian-friendly circulation system to provide connections between the downtown pedestrian core, adjacent residential, the Transit Center, civic buildings, and parking areas.
- LU-I-39 Identify funding mechanisms for improvements within Downtown, including streetscape enhancements, public space, façade renovation, parking, etc.  
*Explore a wide variety of options, including: redevelopment funds, development fees, community facilities districts, public improvements bonds, and regulatory programs applicable to new development.*
- LU-I-40 Seek grants and other funding sources to support the façade, awning, and signage improvement program.  
*This program could include matching funds, subsidized architecture and design assistance, and/or reduced permit fees.*

## 2.10 LAKE SUCCESS RESORT RESIDENTIAL COMMUNITY

The Resort Residential Community proposed adjacent to Lake Success represents a unique opportunity to plan a new mixed-use Resort Residential community that is vital, livable, and walkable while respecting wildlife habitat and sensitive resources. This General Plan outlines the policies and elements that will integrate this site’s importance as an economic, natural, and community asset.

The City recognizes that development policies and standards for the Resort Residential Community must provide flexibility within a



Lake Success

general framework for land use, open space, and environmental resource management. Therefore, the site planning policies set forth the basic parameters for more detailed master planning and development agreements, while establishing the basic character of a Resort Residential community.

## LAND USE MIX

To ensure that the Resort Residential Community attracts high-quality Resort Residential development, more detailed planning for the area will be required following the adoption of the General Plan. The additional plans will ensure that desired land use intensities and overall level of development are attained. In addition, the specific location of development, number of housing units, variety of land uses, and requirements for community amenities will be determined.

The proposed land use allocation and development concept (see Tables 2-4 and 2-5) for the Resort Residential Community could accommodate up to 2,000 new housing units or more if overall goals are met (while preserving land for open space, parks and recreation facilities, neighborhood commercial and visitor facilities). The ultimate level of development will depend on decisions to be made following detailed site planning, analysis of specific land use mixes within community and neighborhoods, environmental constraints and resource assessment, the specific character of the visitor-oriented mixed-use area, economic jobs analysis, and determination of infrastructure costs. It also will depend on the scope of open space, parks, and recreation facilities planned for the area.

**Table 2-4: Resort Residential Development Concept**

<i>Criteria</i>	<i>Development Concept</i>
Population	4,000 <sup>1</sup>
Housing Units	2,000 <sup>1</sup>
Jobs	500

<sup>1</sup> The maximum number of housing units and resident population may be greater, provided the land use allocations in Table 2-5 are not exceeded, the standards set by the City's hillside development ordinance are met, and level of service standards for arterial and collector streets are maintained.

Source: Dyett & Bhatia, 2007.

The ranges in Table 2-5 reflect the development concept and provide minimum and maximum levels of development for each type of land use, which will allow for flexibility in master planning in response to market conditions, infrastructure costs, and site planning policies. The specific percentages may be adjusted based on a detailed site and market analysis conducted after General Plan adoption to assess potential level of development.

**Table 2-5: Resort Residential Conceptual Land Use Allocations**

Criteria	Gross Acreage (Percent of Total)	
	Minimum	Maximum
Residential Neighborhoods	30%	50%
Civic/Institutional/Small-scale Visitor Oriented Mixed-Use (including overnight accommodations, restaurants and commercial services)	3%	6%
Parks & Recreation (includes local and regional facilities and potentially a new Golf Course)	5%	35%
Other Public Open Space, Protected Hillside (shoreline corridor for public access, slopes over 20%, ridgelines and visible hillsides) <sup>1</sup>	30%	50%
<b>Total</b>	<b>68%</b>	<b>n.a.<sup>2</sup></b>

<sup>1</sup> In the Resort Residential Community, only about 3% of the land is over 20% slope.

<sup>2</sup> The total in this column exceeds 100% reflecting the potential to “mix-and-match” with the 32% that is “unallocated” (the difference between the total in the minimum allocation column and 100%).

Source: Dyett & Bhatia, 2007.

## DENSITY & INTENSITY

Neighborhoods are envisioned to be 80 to 120 acres in size, so that residents would be within one quarter-mile of a neighborhood center or neighborhood park, thereby reducing the need for automobile use for some local trips. Each neighborhood should have a mix of housing, which could be based on residential density allocations or on allocation by basic building type established in a master plan. The master plan could provide specifically for the goal of housing mix to be met by a combination of housing types rather than a combination of different residential densities.

## GUIDING POLICY

**LU-G-25**      *Create a Resort Residential community at Lake Success that is sensitive to the environmental characteristics of the lakefront and surrounding hillsides.*

## IMPLEMENTATION POLICIES

**LU-I-41**      Establish zoning and development standards for a resort residential community that will allow up to 2,000 housing units and up to 100,000 square feet of non-residential space for visitor accommodations, commercial recreation and related supporting uses.

*Additional density and non-residential floor area may be permitted to enable new development to be self-sufficient and pay for all required infrastructure, community facilities, small-scale visitor-oriented mixed-use center, and open space, provided all environmental impacts are mitigated.*

**LU-I-42**      Establish minimum requirements for specific housing types in the Resort Residential area to ensure that the needs of all economic segments of the community are met.



*These should include provisions for some workforce housing at appropriate locations and possibly a requirement that some housing be restricted to seniors to minimize impacts on the school system.*

- LU-I-43      Require master planning using a specific plan—as authorized by the Government Code—or a similar planning program (e.g. a PD Planned Development Plan).

*Master planning will enable the City to review and approve details about the location of various land uses, open spaces and linkages, and establish the standards and detailed design guidelines for individual development units with their community. Topics to be addressed will include, but not be limited to:*

- *Integrating storm drainage requirements in site-specific planning;*
- *Planning for appropriate habitat conservation to preserve and protect special status species in the area;*
- *Preparing site-specific standards and financing programs for public and private improvements including new streets, parks and open space systems, street landscaping, drainage, bikeways and pedestrian walkways;*
- *Creating a streamlined development review process establishing permit review thresholds with clear standards and findings requirements consistent with Plan policies;*
- *Undertaking a fiscal impact analysis and financial feasibility study, including an analysis of revenues, capital and operating costs, development impact fees, bonding costs, and state and federal funding sources for needed improvements, and parks and recreation facilities. A long-range capital improvement program (CIP) for the Resort Residential Community also should be prepared; and*
- *Establishing minimum and maximum densities and intensities and allowable uses for individual neighborhoods (e.g., scale and mix within a visitor-oriented, mixed-use center with potential overnight lodging), consistent with the overall land use allocations and limitations based on performance standards and traffic levels of service established in the General Plan and the Hillside Development Ordinance.*

- LU-I-44      Establish minimum requirements for parks and open space. These will include:

- Providing one or more community-serving recreational facilities, such as tennis courts, golfing opportunities, lakeshore recreation facilities, and community facilities; and
- Providing a minimum 200-foot wide shoreline corridor for public access to and along the lakefront.



# 5

## Parks, Schools & Community Facilities

This element presents Porterville's policies and programs for the development and maintenance of parks, schools, and community facilities. In order to foster compact development, these facilities are viewed as fundamental building blocks for new neighborhoods to be built over the next two decades. As discussed in the Land Use Element, new neighborhoods are designed to protect and enhance community assets including small town character and strong sense of community. The Circulation Element policies ensure that parks and schools will be linked, where possible, by bikeways, trails, and pedestrian facilities.

### **5.1 PARKS**

---

Neighborhood and community parks are an important component of Porterville in 2030, as both recreational and aesthetic resources that contribute to the City's character. Porterville is committed to creating and maintaining a park system that meets citizens' recreational needs, maximizes landscapes endowed by the natural environment, and contributes to the City's quality of life. The Parks, Schools & Community Facilities Element serves as a guide for park planning and development documents prepared by the Department of Parks and Leisure Services and the Parks & Leisure Services Commission.

## PARK CLASSIFICATIONS

The City provides its residents with several types of parks and facilities. Parks are defined as land owned or leased by the City and used for public recreational purposes. Several parks also serve as water detention basins. Park types are classified as follows:

- *Pocket Park.* A park typically under an acre in size intended to serve the needs of a specific neighborhood within a half-mile radius.
- *Neighborhood Park.* A park typically one to 15 acres in size which provide basic recreation activities for one or more neighborhoods. The service area ranges from a half- to one-mile radius. These parks may include facilities such as children's playgrounds, picnic tables, benches, and walkways.
- *Community Park.* A park typically greater than 15 acres in size intended to serve the recreational needs of the entire city, especially those living or working within a two-mile radius. These parks may include facilities such as sport fields, exercise courses, recreation buildings, and restrooms. Other facilities may include community centers, swimming pools, tennis courts, and concession stands.
- *Specialized Recreation.* A park of any size intended to serve the specialized recreational needs of residents. These parks may include large sports fields, off road vehicle parks, and golf courses.
- *Trail/Parkways.* A network of linear parks of varying size intended to serve the recreational needs of city residents. These parks may include facilities such as bikeways, walkways, and riding trails.



Local pocket park

**Table 5-1: Park Facility Standards**

Park Type	Typical Size	Service Area
Pocket	Less than 1 acre	½ mile
Neighborhood	1 to 15 acres	½ to 1 mile radius
Community	More than 15 acres	Entire City
Specialized Recreation	Vary	Entire City
Trails/Parkways	Vary	Entire City

Source: Dyett & Bhatia, 2007.

## EXISTING PARK FACILITIES

Currently, Porterville has 15 parks for a total of almost 295 acres of parkland, plus other community facilities. These facilities range in size from the 0.1-acre North Park pocket park to the 95-acre Sports Complex. Murry Park is currently a 36-acre community park which includes the municipal swimming pool, family picnic areas, pavilions, barbecue pits, sinks, tables and benches, fishing pond, two children's play areas, and restrooms. The Sports Complex consists of a 17-acre Off-Highway Vehicle Park, a two-acre BMX facility, 62 acres of soccer fields, and a 14-acre parking lot. The Porterville Municipal Golf Course features a nine-hole course and driving range. The existing Tule River Parkway is a linear trail along the river from Main Street to SR 65 which features a walking and bike-riding trail. Other community facilities include the Community Center, the Zalud House, and the Heritage Center.



*Murry Park Playground*

With a 2006 population of 45,220 residents, the City has a ratio of 5.1 acres of parkland per 1,000 residents. The park ratio is based on Neighborhood Parks, Community Parks, and Specialized Recreation areas only. Trails, Community Facilities and Pocket Parks do not contribute to the ratio. Table 5-2 summarizes Porterville's existing parks and recreation facilities. Figure 5-1 illustrates the existing parks, as well as the proposed facilities.

**Table 5-2: Existing Park and Recreation Facilities**

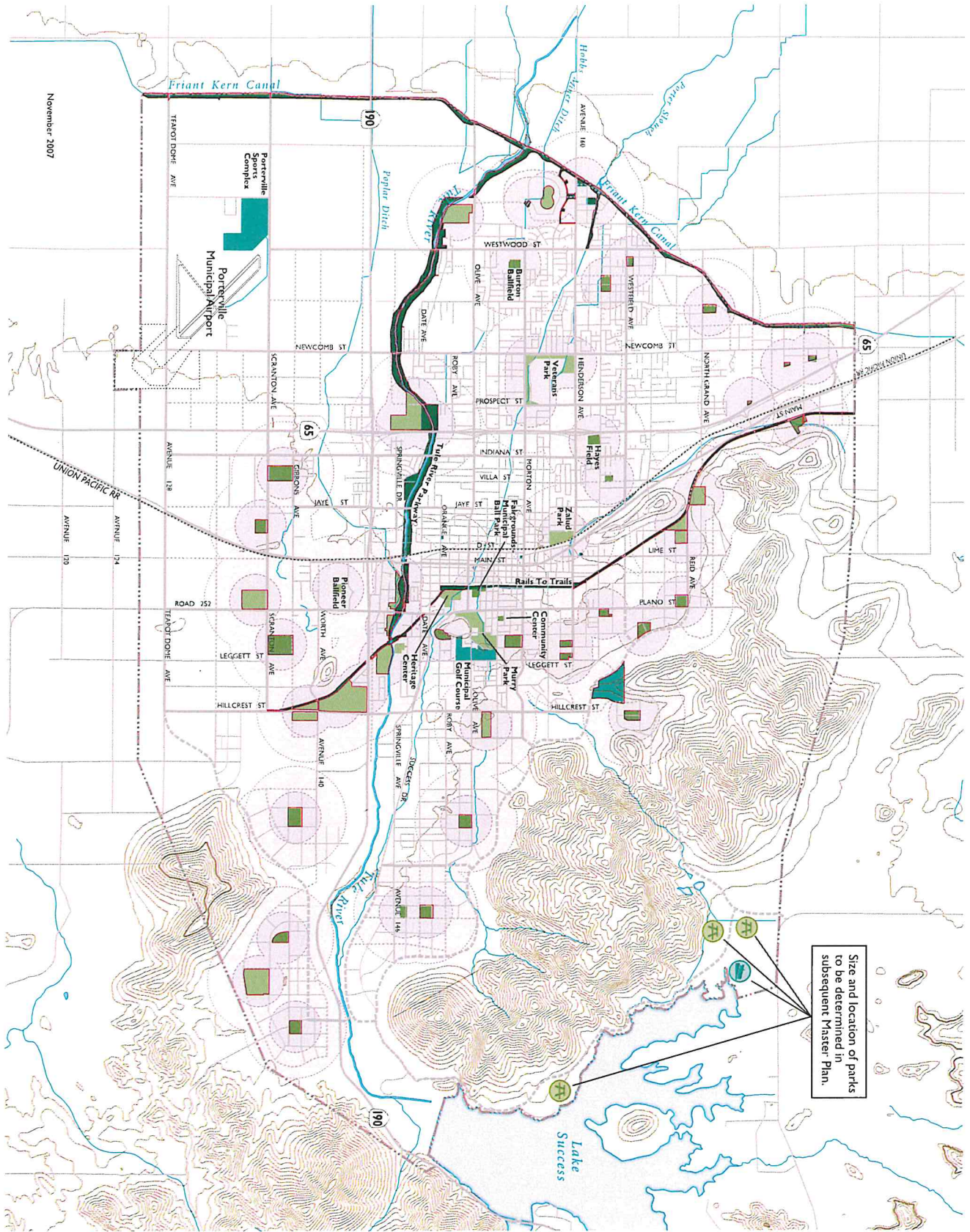
<i>Name</i>	<i>Acres</i>
<b>Pocket Parks</b>	
Centennial Plaza	0.25
Lions Mini Park	0.25
North Park	0.25
Olivewood Mini Park	0.25
<b>Neighborhood Parks</b>	
Burton Ballfield	5.3
Hayes Field	7.5
Pioneer School Ballfield	3.9
<b>Community Parks</b>	
Fairgrounds - Municipal Ball Park	3.6
Murry Park	36.1
Veterans Park	26.0
Zalud Park	14.6
<b>Specialized Recreation</b>	
Porterville Sports Complex	95.5
Municipal Golf Course	38.0
<b>Trails/Parkways</b>	
Rails-to-Trails	14.3
Tule River Parkway	48.3
<b>Other Community Facilities</b>	
Community Center	1.5
Zalud House	0.3
Heritage Center	13.9
<b>Grand Total</b>	<b>309.7<sup>1</sup></b>
<b>Park Ratio Subtotal</b>	<b>230.5</b>
<b>Park Ratio<sup>2</sup></b>	<b>5.1</b>

<sup>1</sup> Total acreage represents gross park acres which may be more than the improved park acres.

<sup>2</sup> Park Ratio is based only on Neighborhood Parks, Community Parks, and Specialized Recreation areas. Pocket Parks, Community Facilities, and Trails are excluded.

Source: City of Porterville, Dyett & Bhatia, 2007.





Size and location of parks to be determined in subsequent Master Plan.

Figure 5-1  
Parks

- Neighborhood Park
- Community Park
- Pocket Park
- Specialized Recreation
- Trails/Parkways
- Proposed
- Potential Park Site
- Potential Specialized Recreation Site

Planning Area



Note: County and state facilities are not shown.



November 2007





## PLANNED PARK NETWORK

The development of an open space and park network integrating park, recreation facilities, and open space is central to enhancing the quality of life and promoting the unique environment of Porterville. A very important component to this network will be the Tule River Parkway, as it is integral to connecting other parks, recreation facilities, neighborhoods, the foothills, and Lake Success. The Plan also proposes sites for additional Sports Complexes.

One major objective for Porterville is to ensure the accessibility of parks to all its residents and visitors. This Plan's parks are located so that the majority of new residential development is within a quarter- or half-mile walking radius of a park. This will ensure that at least 80 percent of the residents live within easy walking distance of a school or park. Trails will be used to connect neighborhoods to parks and recreation facilities.

### *Park Demand*

The City's park standard for neighborhood and community parks is 5.0 acres per 1,000 residents. The goal for all parkland, including specialized facilities, is 10.0 acres per 1,000 residents. The buildout of the General Plan Land Use Diagram would result in approximately 62,080 new residents in Porterville, with a total population of about 107,300. Using this park standard, this additional population would require an additional 620 acres of parkland.

The General Plan provides approximately 870 acres of parkland within the Planning Area. Buildout of the proposed General Plan would result in approximately a park ratio of 6.3 acres of neighborhood and community parks, and 10.3 acres of total parkland per 1,000 residents. Table 5-3 summarizes existing and proposed park calculations. In addition, new development in the Resort Residential Community near Lake Success requires a minimum of 9 acres of parkland per 1,000 residents. With approximately 4,400 additional residents proposed for this area, 40 acres of new parkland would be required. Therefore, in total the General Plan provides 914 acres of additional parkland.

**Table 5-3: Parks by Type at Buildout**

<i>Park Type</i>	<i>Existing Acreage</i>	<i>Proposed Acreage</i>	<i>Total Acreage at Buildout</i>	<i>Parkland Ratio at Buildout<sup>1</sup></i>
Neighborhood	16.7	220	237	2.2
Community	80.3	360	440	4.1
Specialized Recreation	133.5	290	424	3.9
<b>Total<sup>2</sup></b>	<b>230.5</b>	<b>870</b>	<b>1,100</b>	<b>10.3</b>

<sup>1</sup> Acres of neighborhood, community, and specialized recreation parkland per 1,000 residents.

<sup>2</sup> The 40 acres of parkland in the Resort Residential area is not represented in the total because the type of facility has not yet been determined.

Source: Dyett & Bhatia, 2007.

### *Sports Fields Evaluation*

The 2006 *Sports Field Evaluation* evaluated the sports fields in Porterville and made various recommendations to development of existing and future recreational facilities. There are currently seven lighted and four unlit baseball diamonds, 11 soccer fields, and three football

fields. However, the study concludes that these fields are not sufficient, particularly the lighted baseball diamonds, to meet future demand.

The Parks and Leisure Services Commission recommends the development of a Sports Complex with a minimum of four full-size, lighted softball fields and providing lights at the other existing fields.

### ***Parks, Recreation & Open Space Master Plan***

Following General Plan adoption, a new Porterville Parks, Recreation, and Open Space Master Plan will be prepared as a guiding blueprint for the City Council, the Parks and Leisure Services Commission, and the public. In conjunction with the General Plan, this Master Plan will ensure the cohesive development of a parks and open space system that upholds the standards and goals set forth in the General Plan. In addition, the Master Plan will include a range of programs for all ages and interests. It will determine which parks and recreation facilities will be shared with school programs, while others are wholly public.



*Centennial Park off Main Street is an important Downtown amenity.*

## **GUIDING POLICIES**

- PSCF-G-1      *Establish and maintain a high-quality, enjoyable, and attractive public park system for the entire community.*
- PSCF-G-2      *Provide park and recreation facilities within close proximity to residents they are intended to serve.*
- PSCF-G-3      *Ensure adequate funding for park and recreation facilities acquisition, development, operations, maintenance, and enforcement of park rules.*

## **IMPLEMENTATION POLICIES**

- PSCF-I-1      Prepare, adopt, and implement a Parks and Recreation Master Plan, including:
- Plans for the development and acquisition of parks, recreation facilities, trails, and open space;
  - Specific facility standards and guidelines for landscaping, lighting, signage, parking, and recreational equipment design;
  - Performance guidelines to minimize water, energy, and chemical use and preserve wildlife;
  - Recommended programs for parks and recreation; and
  - Programs for enforcement of park rules.



*A comprehensive Master Plan will ensure that planned park, amenities, and recreational programs will serve the needs of all residents regardless of age, income, or ability, including the physically disabled, and that recreational equipment meet passive (picnicking, walking, etc.) and active needs (sports and team activities) of the population. The Plan also will show how existing parks and recreation facilities will be improved to reduce maintenance cost and water use, along with improving safety and aesthetics.*

- PSCF-I-2      Update park impact fees to fund the acquisition and development of land for park and recreation facilities, pursuant to the General Plan.
  
- PSCF-I-3      Amend the Subdivision Ordinance to require that residential developers provide a minimum of five acres of neighborhood and community parks per 1,000 residents or pay in lieu fees.  
  
*In-lieu fees can be used for any capacity-building park and recreation facility improvements.*
  
- PSCF-I-4      Establish additional funding for the acquisition and development of specialized park and recreation facilities to serve existing and future residents.
  
- PSCF-I-5      Require developers for new neighborhoods to agree to the establishment of, or annexation into, a Park Maintenance District in new neighborhoods.
  
- PSCF-I-6      Establish a program for contributions to the City's park system by non-residential developers, based on their proportional share of needs generated and use of facilities.
  
- PSCF-I-7      Establish dedication and reservation requirements in the Subdivision Ordinance for open space, parkways, and trail systems in new residential developments.
  
- PSCF-I-8      Provide lighted facilities for active community recreation areas in order to extend usability, whenever possible.  
  
*Address compatibility with surrounding uses and use energy-efficient lighting design with limited glare and spillover.*
  
- PSCF-I-9      Design park and recreation facilities to be as flexible as possible, so that they may adapt to changes in the population served and in the recreation programs offered.  
  
*Changing neighborhood demographics can lead to different user requirements over the life of a park. By having flexible park facilities, this will enable the park to adapt to the changing needs of the adjacent neighborhood.*
  
- PSCF-I-10     Place neighborhood and community parks at the core of new neighborhoods and co-locate parks and school sites where possible, as depicted on the General Plan Land Use Diagram.

- PSCF-I-11 Combine use of park, recreation, and open space lands with drainage facilities and school facilities, where feasible.
- PSCF-I-12 Evaluate the feasibility and benefit derived from relocating the existing Sports Complex to a more accessible location that can accommodate lighted fields.
- PSCF-I-13 Conduct community surveys as needed to identify unmet demand for park and recreation services.  
*The Parks and Leisure Services Commission will take the lead to conduct and evaluate the survey.*
- PSCF-I-14 Develop a safe and efficient trail network throughout the City that links parks and other key City destinations.
- PSCF-I-15 Continue to support the development of the Tule River Parkway Bicycle and Pedestrian path and the Rails to Trails Project.
- PSCF-I-16 Work with the appropriate government agencies and local businesses to produce a bicycle map that shows touring and commuting bicycle routes, mountain bike trails, and school commute routes.
- PSCF-I-17 Involve citizens, especially the youth, in maintaining park areas through participation in park watches, citizen based graffiti watch and cleanup and repair.
- PSCF-I-18 Cooperate with the school districts to promote joint development and use of school facilities after school hours.  
*Joint development and use of school sites is especially important in developed areas where park standards have not yet been achieved. This approach will maximize opportunities for park and recreation facilities for Porterville residents.*



## CITY COUNCIL AGENDA – JANUARY 17, 2023

**SUBJECT:** Status Report - Developer Impact Fees

**SOURCE:** Finance

**COMMENT:** Pursuant to Government Code Section 66006(b)(1), a detailed fund analysis of the capital improvement funds containing developer impact fees has been prepared. A copy of this analysis has been delivered to the Building Industry Association of Tulare/Kings Counties, Inc. (BIA), per its request.

The format and content of this analysis have been developed around criteria previously approved by the BIA.

**RECOMMENDATION:** That the City Council accept the Status Report on Developer Impact Fees for the fiscal year ended June 30, 2022.

**ATTACHMENTS:** 1. Developer Impact Fee Summary: Fiscal Year 2021-2022

**Appropriated/Funded:**

**Review By:**

Department Director:  
Maria Bemis, Finance Director

Final Approver: John Lollis, City Manager

**DEVELOPER IMPACT FEE SUMMARY**  
**2021/22**

	<b>BEGINNING BALANCES AS OF JULY 1, 2021</b>		<b>FEE COLLECTED</b>		<b>INTEREST EARNED</b>		<b>ELIGIBLE D.I.F. EXPENDITURES</b>		<b>ENDING BALANCES AS OF JUNE 30, 2022</b>
WATER ACREAGE FEE	\$ (21,361,392)	\$	289,845	\$	(98,328)	\$	(99,055)	\$	(21,268,930)
SEWER ACREAGE FEE	\$ (2,602,918)	\$	99,075	\$	(79,157)	\$	(129,962)	\$	(2,712,962)
STORM DRAIN FEE	\$ 2,268,773	\$	399,783	\$	(66,156)	\$	(41,234)	\$	2,561,167
TRANSPORTATION IMPACT FEE	\$ 2,046,097	\$	369,190	\$	(60,159)	\$	(150,000)	\$	2,205,128
PARK IMPACT FEE	\$ -	\$	177,577	\$	193	\$	(177,770)	\$	-



**CITYOF PORTERVILLE  
DEVELOPER FEE-FUNDED PROJECTS  
2021/22**

	<u>Total Expenditure</u>	<u>Allowed D.I.F. Percentage</u>	<u>Eligible D.I.F. Expenditure</u>
<u>Water Projects</u>			
Villa St (Nupchi Xo'Oy)	\$ 66,783.62	100%	\$ 66,783.62
Relocation of meter - 945 E Morton	4,500.00	0%	\$ 0.00
Master plan update	54,128.78	100%	54,128.78
South recharge basin	165.25	0%	0.00
DR#23 dual recharge basin	13,309.00	0%	0.00
North recharge basin	10,186.04	0%	0.00
Well #37 - Summit Estates	14,328.45	100%	14,328.45
Rehabilitate wells	1,928.28	100%	1,928.28
Well #35 - E Porterville	1,077,147.45	0%	0.00
SGMA compliance	132,636.44	0%	0.00
Well #34 - Akin & Central Mutual water system	27,883.37	100%	27,883.37
Auto radio read	171,639.52	0%	0.00
Masterplan payback	786.37	100%	786.37
Urban water mangement plan	50,208.95	0%	0.00
Property purchase - olive grove	3,082,992.06	0%	0.00
Water infrastructure review	14,712.53	0%	0.00
DR#30 - airport/casino basin	20,421.86	0%	0.00
	<u>\$ 4,743,757.97</u>		<u>\$ 99,055.25</u>
<u>SEWER TOTAL</u>			
<u>Sewer Projects</u>			
Master plan payback	\$ 58.10	100%	\$ 58.10
Digester #3 repair/rehab	2,011,593.27	0%	0.00
Nitrification/Denitrification study	132,445.30	0%	0.00
Digester cleaning	41,104.14	0%	0.00
Wastewater needs assessment	95.62	0%	0.00
Master plan update	113,631.23	100%	113,631.23
Tertiary treatment plant	16,272.99	100%	16,272.99
WWTF office building	69,952.05	0%	0.00
Biosolids hauling	6,086.48	0%	0.00
Sewer annexation - area 457	84,086.07	0%	0.00
Sewer annexation - area 474	21,729.06	0%	0.00
Sewer annexation - area 475	42,544.30	0%	0.00
Sewer annexation - area 476	27,988.62	0%	0.00
Sewer annexation - area 478	50,152.91	0%	0.00
Sewer annexation - area 479	324,201.81	0%	0.00
	<u>\$ 2,941,941.95</u>		<u>\$ 129,962.32</u>
<u>SEWER TOTAL</u>			
<u>Storm Drain Projects</u>			
Master plan update	\$ 41,233.57	100%	\$ 41,233.57
Thurman/3rd St storm drain	3,859.86	0%	0.00
	<u>\$ 45,093.43</u>		<u>\$ 41,233.57</u>
<u>STORM DRAIN TOTAL</u>			
<u>Transportation Projects</u>			
Debt service - 2015 Refinancing Project	\$ 150,000.00	100%	\$ 150,000.00
	<u>\$ 150,000.00</u>		<u>\$ 150,000.00</u>
<u>TRANSPORTATION TOTAL</u>			
<u>Park Projects</u>			
Debt service - sports complex	\$ 171,380.26	100%	\$ 171,380.26
Sports complex parking lease	6,389.43	100%	6,389.43
	<u>\$ 177,769.69</u>		<u>\$ 177,769.69</u>
<u>PARK TOTAL</u>			

**CITY OF PORTERVILLE**

**DEVELOPER FEE RATE STRUCTURE  
2021/22**

	<u>Hillside Development</u>	<u>Single Family</u>	<u>Duplex</u>	<u>Multiple Family</u>	<u>Mobile Homes</u>	<u>Institutional</u>	<u>Commercial , Professional</u>
Water Acreage Fee / Acre	\$ 1,945	\$ 4,055	\$ 10,151	\$ 23,699	\$ -	\$ 2,646	\$ 3,048
Sewer Acreage Fee / Acre	\$ 1,322	\$ 2,478	\$ 5,755	\$ 13,427	\$ -	\$ 933	\$ 3,499
Storm Drain Fee / Acre	\$ -	\$ 6,679	\$ 8,910	\$ 13,368	\$ -	\$ 17,816	\$ 17,816
Transportation Fee / Unit	\$ -	\$ 1,337	\$ 903	\$ 903	\$ -	\$ 3,677	\$ 6,994
Park Impact Fee / Unit	\$ -	\$ 887	\$ 689	\$ 689	\$ 498	\$ -	\$ -



## CITY COUNCIL AGENDA – JANUARY 17, 2023

SUBJECT: Acceptance of Police K-9 Safety Equipment Grant

SOURCE: Police

COMMENT: In December 2022, the Police Department's K-9 Unit Supervisor was contacted by the Executive Director of the Spirit of Blue Foundation. The Spirit of Blue Foundation specializes in providing grant funded safety equipment, specifically for Police K-9's.

While they do not usually reach out to Tulare County, this year they had a surplus of grant funds available and offered said funds to be utilized to purchase two Plexus Level II Hybrid K-9 ballistic vests for the Porterville Police Department. The Department received notification from the Spirit of Blue Foundation that funding in the amount of \$3,770.00 was approved for the Department.

The Spirit of Blue's mission is to enhance Officer safety by providing safety equipment. This grant is intended to provide the necessary equipment for the Department's Police working dogs to be protected from threats while serving the community.

The Spirit of Blue Foundation is a 501(c)(3) organization and has confirmed that the entire cost of the vests will be covered by the grant.

Attached is a copy of the Grant Award Letter.

RECOMMENDATION: That the City Council:

1) Authorize the acceptance of the grant in the amount of \$3,770.00; and

2) Authorize staff to sign all necessary documents that pertain to the grant.

ATTACHMENTS: 1. Grant Award Letter

Appropriated/Funded:

Review By:

Department Director:  
Jake Castellow, Chief of Police

Final Approver: John Lollis, City Manager







**SPIRIT OF BLUE**

December 1, 2022

Sgt. Brian Pinheiro  
Porterville Police Department  
350 N D Street  
Porterville, CA 93257

Dear Sgt. Pinheiro,

The Spirit of Blue Foundation 501(c)(3) is pleased to inform you that the Porterville Police Department has been selected to receive a Safety Equipment Grant in the form of a K9 ballistic vests. The vests will be sourced directly from Survival Armor by Spirit of Blue and will be donated to your agency.

The primary sponsor of the grant is the Renee and Gordon Graham Foundation. Their generous gift of \$20,000 was used to create the 2022 Southern California K9 Safety Initiative which will be distributed to agencies or associations to benefit police working dogs in the region.

Sportsmen Organized for Law Enforcement (SOLE) also contributed to make this grant possible.

The grant includes:

- Two (2) Plexus Level II Hybrid K9 vests (Survival Armor)

The value of the grant being awarded is \$3,770. Nothing additional will be provided as part of the grant.

In keeping with the Spirit of Blue's mission of enhancing officer safety and vitality through meeting safety equipment and training needs, this grant is intended to provide the necessary equipment for your police working dogs to be protected from threats while serving their community.

Again, congratulations on your agency being selected. We are hopeful that the use of this grant aids greatly in the safety of your police working dogs and the effectiveness of your agency.

Sincerely,

Ryan T. Smith  
Executive Director



## CITY COUNCIL AGENDA – JANUARY 17, 2023

**SUBJECT:** Acceptance of Donation of Little Library by Milt Stowe

**SOURCE:** City Manager's Office

**COMMENT:** At its meeting December 20, 2022, former Mayor and Council Member Milt Stowe expressed to the City Council during Oral Communications his interest in donating to the City a Little Library that had been dedicated to him upon his recent departure from the City Council in appreciation for his career of service to the Porterville community. Mr. Stowe recommended the Little Library be placed in front of the Information Technology building, which is located directly west of City Hall and east of Fire Station 71 on W. Cleveland Avenue. A Little Library is a free book-sharing receptacle where anyone may take a book, or bring a book to share, and function on the honor system. In this case, the Little Library is shaped like a mailbox and decorated like a view from Google Earth.

By accepting the donation from Mr. Stowe, the City would be responsible for the Little Library's maintenance and repair.

**RECOMMENDATION:** That the City Council consider acceptance of the donation of the Little Library by Milt Stowe.

**ATTACHMENTS:**

**Appropriated/Funded:**

**Review By:**

Department Director:  
John Lollis, City Manager

Final Approver: John Lollis, City Manager



## CITY COUNCIL AGENDA – JANUARY 17, 2023

SUBJECT: Amended Barn Theater Revocable License Agreement

SOURCE: City Manager's Office

COMMENT: For more than sixty (60) years, the Barn Theater, located at 42 South Plano Street, has been providing community entertainment. In April 2017, the City Council approved the Revocable License Agreement renewal with the Barn Theatre with a twenty-five (25) year term effective April 18, 2017 through April 17, 2042. This was the second consecutive twenty-five (25) year License Agreement between the City and the Barn Theatre. The Agreement states that 'the property is deemed suitable, necessary, and proper for use by the Barn Theater in carrying on and conducting a community enterprise of a non-profit, non-political, and non-religious nature for which the Barn Theater has been incorporated and organized, and is now engaged in, carrying on and conducting as a community enterprise, and for the benefit, enlightenment, amusement, recreation, education and advancement of the Porterville area, and not for the profit of any individual or enterprise.

During the pandemic, the Barn Theatre, similar to other non-profit organizations, attempted new types of activities in order to continue providing some sort of offerings to the community and needed revenues to the organization. The Barn Theatre Board of Directors expressed an interest to the City in having the Agreement amended to provide clarity on what types of fundraising activities the Barn Theater can provide to the community. Fundraising enables the Barn Theater to fulfill its primary purpose of providing community enrichment activities and theater programs. At its meeting on November 30, 2022, the City's Internal Audit Committee finalized the draft amendment to the current Revocable License Agreement. The proposed amendment that was agreed upon by the Barn Theatre representatives and the Internal Audit Committee is: "As a community non-profit that is dependent on its fundraising activities, the Barn Theater shall be allowed to conduct fundraising and/or community enrichment activities at the property including, but not limited to fine arts performances and recitals, concerts, comedy nights, art displays and art nights, talent shows, dance shows, dinners and luncheons, Christmas parties, weddings, birthday parties, and baby showers and shall be allowed to sublicense the property to community clubs for such clubs' meetings."

In addition to other minor edits and clarifications, the proposed amended Revocable License Agreement would modify the term of the current Agreement from twenty-five (25) years to five years, with a mutual option for an extension of an additional year.

RECOMMENDATION: That the City Council consider approval of the proposed amendments to the current Revocable License Agreement between the City and the Barn Theatre.

ATTACHMENTS:

1. Barn Theater Revocable License Agreement - Final Draft
2. Barn Theater Revocable License Agreement - Final Draft (Redline)
3. Barn Theater Revocable License Agreement (2017)

Appropriated/Funded:

Review By:

Department Director:  
John Lollis, City Manager

Final Approver: John Lollis, City Manager



## **REVOCABLE LICENSE AGREEMENT**

THIS AGREEMENT, made and entered into the 17th of January, 2023, by and between the CITY OF PORTERVILLE, a municipal corporation, hereinafter called the Licensor, and THE BARN THEATRE, a non-profit California public benefit corporation, hereinafter called the LICENSEE:

### **W I T N E S S E T H:**

WHEREAS the LICENSOR is the owner of the hereinafter described real Property; and

WHEREAS, the property is deemed suitable, necessary, and proper by the LICENSOR and the LICENSEE for use by the LICENSEE in carrying on and conducting a community enterprise of a non-profit, non-political, and non-religious nature for which the LICENSEE has been incorporated and organized, and is now engaged in, carrying on and conducting as a community enterprise, and for the benefit, enlightenment, amusement, recreation, education, and advancement of the Porterville Area, and not for the profit of any individual or enterprise.

NOW, THEREFORE, it is hereby covenanted and agreed between the LICENSOR and the LICENSEE as follows, to wit:

1. The real property herein referred to and covered by the terms of this license is that certain real property situated in the City of Porterville, County of Tulare, State of California, described as follows to wit:

Beginning at the Northwest corner of Northeast  
Quarter of Section 36, Township 21 South, Range 27  
East, MD. B & M., said point being on the East  
Line of Plano Street in the City of Porterville,

County of Tulare, State of California; thence South 3°55' East along the easterly line of said Plano Street 375 feet to the point of beginning of the parcel being described; thence East 170 feet; thence South 7°East 375 feet, more or less, to the Northwesterly line of Park Drive; thence southerly and westerly along said westerly and northerly line of Park Drive 200 feet, more or less, to the easterly line of the said Plano Street; thence northerly along the easterly line of said Plano Street 500 feet, more or less, to the point of beginning.  
Excepting therefrom, the westerly 20 feet measured at right angles to said easterly line of Plano Street, and also excepting such portions thereof as may be required for the widening of Park Drive.

2. That the LICENSOR for and in consideration of the promises, covenants, agreements, and stipulations herein contained on the part and behalf of the LICENSEE to be paid, kept, and performed, at the time and in the form and manner herein specified, with time being made the essence hereof, hereby grants to the LICENSEE a license to engage, use and employ the described real property together with the appurtenances thereon for the purpose of carrying on and conducting as a community enterprise for the benefit, enlightenment, amusement, recreation, education and advancement of the Porterville Area a theatre group in accordance with the By-laws and Articles of Incorporation of LICENSEE. The LICENSEE shall use and employ the real property together with the improvements thereon exclusively for the usual and customary theatrical activities of the LICENSEE; and no business, retail, or wholesale, activities or enterprises shall be carried on or conducted for profit or be allowed, suffered, or permitted to be carried on at or upon the property during the terms of this

license, except as otherwise specified in this Agreement. As a community non-profit that is dependent on its fundraising activities, LICENSEE shall be allowed to also conduct fundraising and/or community enrichment activities at the property including, but not limited to fine arts performances and recitals, concerts, comedy nights, art displays and art nights, talent shows, dance shows, dinners and luncheons, Christmas parties, weddings, birthday parties, and baby showers and shall be allowed to sublicense the property to community clubs for such clubs' meetings. LICENSEE shall be allowed to grant a sublicense, for a period of not more than two (2) consecutive days to other individuals and organizations for the use of the premises, provided that LICENSEE complies with the requirements of this Agreement, including, but not limited to, Paragraphs 5, 16, 17, 18, and 19.

3. The LICENSEE agrees at all times during the term of license to use, the described real property together with improvements thereon, solely and exclusively for activities of the LICENSEE presently authorized by its Articles of Incorporation and By-laws, it being further stipulated that no substantial amendment to the Articles or By-laws of the LICENSEE may be used to amend, extend, or modify the terms and provisions of this license without first obtaining the express written consent of the LICENSOR.
4. The Parties further agree that all of the terms, provisions, stipulations, agreements, and conditions herein contained on the part and behalf of the LICENSEE to be paid, kept, and performed, shall be and the same are hereby

expressly declared to be continuing conditions, covenants and agreement by precedent to any right on behalf of the LICENSEE to enjoy or exercise any of the rights or privileges granted by this license.

5. LICENSEE agrees that in the use, employment and enjoyment of this license by the LICENSEE, the LICENSEE shall not suffer, allow, or permit any religious discrimination, political discrimination, race discrimination, or any other form of illegal discrimination to be engaged in, conducted, carried on, or participated in by the LICENSEE or any agent, employee, or servant of the LICENSEE in carrying on or conducting any of the activities of the LICENSEE with reference to the use, employment and enjoyment of this license.
6. That during the entire term of this license, the LICENSEE shall at all times maintain with the State of California its status as a non-profit corporation.
7. That the term of this license shall commence as of January 18,, 2023, for a period of approximately five (5) years, ending at midnight on December 30, 2027. The parties may agree to extend this Agreement to be reviewed and adjusted for an additional (1) year, with the terms of said Agreement to be reviewed and modified as the parties deem appropriate prior to renewal.
8. The LICENSEE stipulates and agrees that in the occupancy of the real property and the improvements thereon that the LICENSEE shall not suffer, allow or permit any waste to be committed thereto or thereon, nor shall the LICENSEE suffer, allow, or permit any mechanic's lien or other liens to be filed upon the real property or any of the improvements thereon; nor shall the LICENSEE suffer, allow, or permit the building or permanent improvement thereto, other



than trade fixtures, to be removed from the real property during the term hereof without permission of the LICENSOR first had and received.

9. The LICENSOR shall have the free right at all times by its authorized agents or representatives of entry upon the property and into, upon, and about the improvements thereon for purposes of inspection and posting of any legal notices thereon.
10. That any and all signs erected or maintained by the LICENSEE upon the property or any of the improvements thereon shall fully comply with and conform to all regulations and standards of the City of Porterville now in force or which may hereafter be in full force and effect.
11. The LICENSEE shall of its own proper cost and expense, and without any cost, charge, or expenses to the LICENSOR, pay and discharge when due and before delinquent all light, electric power, water, gas, telephone, garbage removal, all utilities, and all other occupation charges for the premises and the same shall not be suffered, allowed, or permitted to become a charge or lien upon the real property.
12. It is expressly stipulated and agreed herein that the LICENSOR shall not be called upon, expected to, nor shall the LICENSOR, pay and discharge any costs whatsoever arising from or in any connection with the use and enjoyment of this license by the LICENSEE or in the use and enjoyment of any of the improvements placed upon the property by the LICENSEE.
13. The LICENSEE shall at all times during the terms of this license keep and maintain all of the buildings, fixtures, and grounds directly adjacent to the

building. LICENSEE shall ensure the same is kept in good order and repair, inside and outside, together with all fixtures and appurtenances used and employed in the occupancy/license of the real property and the improvements thereon, including sewer lines, plumbing fixtures, electrical fixtures and all conveniences or necessities used and employed by the LICENSEE in the occupancy of the premises; and the LICENSEE shall at its sole cost and expense from time to time, as the needs may arise therefore, make renewals and replacements thereof in first class modern character and efficiency. LICENSOR shall maintain the turf area, parking lot, and prune trees when necessary.

14. The LICENSEE shall promptly and completely observe, comply with, and conform to all present and future applicable federal, state, and local laws, requirements, and standards in the operation and use of the License and the premises, and its programs on this premises. This includes, but is not limited to, State and Federal discrimination and disability laws and regulations. LICENSEE shall, at its own cost and expense, make any and all improvements thereon or alteration thereto, structurally, or otherwise, that may be required at any time hereafter by any such present or future law, rule, requirement, order, direction, ordinance, or regulations. Failure to comply is grounds for immediate termination of this License by LICENSOR, and any notice requirements required pursuant to this Agreement shall not apply.
15. LICENSEE must maintain all outdoor consumption of beer, wine, and distilled spirits within the outdoor forty-by-100-foot, fenced-in consumption area.

16. LICENSEE shall not make any material alterations, improvements, additions, or any other structural or building changes without the prior written approval of the LICENSOR.
17. The LICENSEE shall not suffer, allow, or permit any property, properly or legally assessable to the LICENSEE, to be assessed against the LICENSOR or against the real property or for which the LICENSOR shall be liable or responsible to pay, or for the same to become a charge or lien upon the real property. In the event any possessory interest tax is assessed as a result of this Agreement, LICENSEE shall pay and be responsible for the full amount assessed.
18. Except as allowed pursuant to Paragraph 2 above, it is expressly stipulated, covenanted and agreed that this license shall not be assigned, transferred, mortgaged or hypothecated in any manner; nor shall the buildings or improvements or facilities used and employed by the LICENSEE in enjoying this license be sublicensed without the prior written consent of the LICENSOR's *Parks and Leisure Services Director or his Designee*; for each such assignment or sublicensing, it being further stipulated that the consent by the LICENSOR to any one assignment/sublicense shall not be construed as a consent to any further of additional assigning or sublicensing.
19. The LICENSEE covenants and agrees at all times during the term of the license to keep and maintain all buildings, structures, and insurable improvements on or pertinent to the real property fully insured (with LICENSOR named as an additional insured) for the replacement value to insure that the building can be

replaced in the event of a fire with comprehensive coverage and in an amount and in such company or companies as may be acceptable to the LICENSOR; and all such policies of insurance shall be delivered to and held by the LICENSOR, except, however, that if the improvements shall have a mortgage thereon, a mortgage loss clause may be attached thereto in favor of such mortgage to the extent of the outstanding balance due on the aforesaid construction loan.

20. The LICENSEE, as a material part of the considerations to be rendered to the LICENSOR for the granting of the license, and to the fullest extent permitted by law, covenants and agrees, to the fullest extent permitted by law, to release, indemnify, defend and hold LICENSOR harmless and free from all liability and claims for damages by reason of any injury to any person or persons, or property of any kind whatsoever, from any cause or causes whatsoever while in, upon, or in any way connected with said licensed premises, or the premises adjacent thereto during the term of license or any extension thereof. It is further stipulated and agreed that the LICENSEE shall save, indemnify, and defend the LICENSOR, all of its officers, agents and employees of and from all claims, demands, actions or causes of actions arising from or in any way connected with the occupation and of the demised premises, *including but not limited to any sublicense or use by other parties*, together with all costs and attorney's fees; that at all times during the term of this license, LICENSEE shall be and is hereby required and it hereby agrees to keep in full force and effect, with the premium fully prepaid thereon Two Million Dollars \$2,000,000.00 for personal injury and property damage *(covering all occupation and use of the premises)* combined



single limits with liquor and product liability, and shall file with the LICENSOR the original policies and/or certificate thereof.

21. If the LICENSEE shall fail, neglect, or refuse to pay, do, or perform any of the terms, stipulations, promises, covenants, conditions, or agreements hereof on its part and behalf to be paid, kept and performed, the LICENSOR may, at its option, but it shall not be obligated to do so, pay or cause the same to be paid, done or performed, and the amount of money expended by the LICENSOR in so doing, or incurred by the LICENSOR in so doing, shall become a debt immediately due from the LICENSEE to LICENSOR, and shall constitute a material breach hereof entitling LICENSOR to immediate termination hereof pursuant to paragraph 21 below.
22. If the LICENSEE shall fail, neglect or refuse to pay, for a period of (30) days after notice, do or perform any of the items in the form and manner herein provided, the terms, provisions, covenants, conditions, and agreements hereof on its part and behalf to paid, kept and performed, the LICENSOR may terminate and cancel license and at such time and in such event, full and compete title to all improvements, buildings, structures, fixtures, excluding trade fixtures, shall have then vested in the LICENSOR, subject to the encumbrances now existing against such structures; and the LICENSOR may immediately re-enter into the possession of said real property together with all of the said improvements, and the same to have, hold, and enjoy thereafter as the sole, absolute and unconditional owner. In such event, LICENSEE shall have a period of thirty (30)

days after notice to remove its personal property and trade fixtures from the premises.

23. LICENSEE covenants and agrees on the last day of the term of this license, or the sooner determination of the term this license, to peacefully leave, surrender, and vacate to the LICENSOR the said real property together with the improvements thereon and the fixtures attached thereto in good order and condition and state of repair.
24. Failure on the behalf of the LICENSOR to insist on strict performance of the covenants, terms, stipulations, agreements and conditions of the license shall not be construed as a waiver by the LICENSOR of any of its rights hereunder, or as a waiver or a relinquishment of the strict future performance of the covenants, conditions and agreement herein contained, but all and each thereof shall be and remain in full force and effect.
25. If any litigation is commenced between the parties to this Agreement concerning the Agreement or the rights and duties of either in relation to the Agreement, the party prevailing in the Litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to its cost for the litigation including expert witness fees and a reasonable sum as and for its attorney's fees in the litigation, which shall be determined by the court in that litigation or in a separate action brought for that purpose.
26. The parties agree that this Agreement is entered into and is to be performed in Tulare Country, California.

27. Each party and its legal counsel have participated fully in the review and revisions of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

WITNESS the hands and seals of the parties the day and year first above written.

CITY OF PORTERVILLE

BY \_\_\_\_\_  
Martha A. Flores, Mayor

BY \_\_\_\_\_  
John D. Lollis, City Clerk

BARN THEATRE

BY \_\_\_\_\_  
Denise Everhart, President

## REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT, made and entered into the \_\_\_\_\_ of \_\_\_\_\_, 2022~~17~~,  
by and between the CITY OF PORTERVILLE, a municipal corporation, hereinafter called  
the Licensor, and ~~THE~~he BARN THEATRE, a non-profit California public benefit  
corporation, hereinafter called the LICENSEE:

### WITNESSETH:

~~WHEREAS,~~WHEREAS the LICENSOR is the owner of the hereinafter  
described real  
Property; and

WHEREAS, the property is deemed suitable, necessary, and proper by the  
LICENSOR and the LICENSEE for use by the LICENSEE in carrying on and conducting  
a community enterprise of a non-profit, non-political, and non-religious nature for which  
the LICENSEE has been incorporated and organized, and is now engaged in, carrying on  
and conducting as a community enterprise, and for the benefit, enlightenment, amusement,  
recreation, education, and advancement of the Porterville Area, and not for the profit of  
any individual or enterprise.

NOW, THEREFORE, it is hereby covenanted and agreed between the LICENSOR  
and the LICENSEE as follows, to wit:

1. The real property herein referred to and covered by the terms of this license  
is that certain real property situated in the City of Porterville, County of  
Tulare, State of California, described as follows to wit:

Beginning at the Northwest corner of Northeast  
Quarter of Section 36, Township 21 South, Range 27



East, MD. B & M., said point being on the East Line of Plano Street in the City of Porterville, County of Tulare, State of California; thence South 3°55' East along the easterly line of said Plano Street 375 feet to the point of beginning of the parcel being described; thence East 170 feet; thence South 7°East 375 feet, more or less, to the Northwesterly line of Park Drive; thence southerly and westerly along said westerly and northerly line of Park Drive 200 feet, more or less, to the easterly line of the said Plano Street; thence northerly along the easterly line of said Plano Street 500 feet, more or less, to the point of beginning. Excepting therefrom, the westerly 20 feet measured at right angles to said easterly line of Plano Street, and also excepting such portions thereof as may be required for the widening of Park Drive.

2. That the LICENSOR- for and in consideration of the promises, covenants, agreements, and stipulations herein contained on the part and behalf of the LICENSEE to be paid, -kept, and performed, -at the time and in the form and manner herein specified, with time being made the essence hereof, hereby grants to the LICENSEE a license to engage, use and employ the described real property together with the appurtenances thereon for the purpose of carrying on and conducting as a community enterprise for the benefit, enlightenment, amusement, recreation, education and advancement of the Porterville Area a theatre group in accordance with the By-laws and Articles of Incorporation of LICENSEE. The LICENSEE shall use and employ the real property together with the improvements thereon exclusively for the usual and customary theatrical activities of the LICENSEE;- and no business, retail, or wholesale, activities or enterprises shall be carried on or conducted for profit or be allowed, suffered, or

permitted to be carried on at or upon the property during the terms of this license, except as otherwise specified in this Agreement. As a community non-profit that is dependent on its fundraising activities, LICENSEE shall be allowed to also conduct fundraising and/or community enrichment activities at the property including, but not limited to fine arts performances and recitals, concerts, comedy nights, art displays and art nights, talent shows, dance shows, dinners and luncheons, Christmas parties, weddings, birthday parties, and baby showers and shall be allowed to sublicense the property to community clubs for such clubs' meetings. LICENSEE shall be allowed to grant a sublicense, for a period of not more than two (2) consecutive days to other individuals and organizations for the use of the premises, provided that ~~LICENSEE does this no more than five (5) times per year, and LICENSEE~~ complies with the requirements of this Agreement, including, but not limited to, Paragraphs 5, 16, 17, 18, and 19.

3. The LICENSEE agrees at all times during the term of license to use, the described real property together with improvements thereon, solely and exclusively for activities of the ~~LICENSEE~~ presently authorized by its Articles of Incorporation and By-laws, it being further stipulated that no substantial amendment to the Articles or By-laws of the ~~LICENSEE~~ may be used to amend, extend, or modify the terms and provisions of this license without first obtaining the express written consent of the LICENSOR.

4. The Parties further agree that all of the terms, provisions, stipulations, agreements, and conditions herein contained on the part and behalf of the LICENSEE- to be paid, kept, and performed, shall be and the same are hereby expressly declared to be continuing conditions, covenants and agreement by precedent to any right on behalf of the LICENSEE to enjoy or exercise any of the rights or privileges granted by this license.
5. LICENSEE agrees that in the use, employment and enjoyment of this license by the LICENSEE, the LICENSEE shall not suffer, allow, or permit any religious discrimination, political discrimination, race discrimination, or any other form of illegal discrimination to be engaged in, conducted, carried on, or participated in by the LICENSEE or any agent, employee, or servant of the LICENSEE in carrying on or conducting any of the activities of the LICENSEE with reference to the use, employment and enjoyment of this license.
6. That during the entire term of this license, the LICENSEE shall at all times maintain with the State of California its status as a non-profit corporation.
7. That the term of this license shall commence as of ~~October April 171, 2021~~<sup>2</sup>, for a period of five (5) years, ending at midnight on ~~September 30April 17, 2012~~<sup>7</sup>.  
The parties may agree to extend this Agreement to be reviewed and adjusted for an additional (1) year, with the terms of said Agreement to be reviewed and modified as the parties deem appropriate prior to renewal.
8. The LICENSEE stipulates and agrees that in the occupancy of the real property and the improvements thereon that the LICENSEE shall not suffer, allow or permit any waste to be committed thereto or thereon, nor shall the LICENSEE

suffer, allow, or permit any mechanic's lien or other liens to be filed upon the real property or any of the improvements thereon; nor shall the LICENSEE suffer, allow, or permit the building or permanent improvement thereto, other than trade fixtures, to be removed from the real property during the term hereof without permission of the LICENSOR first had and received.

9. The LICENSOR shall have the free right at all times by its authorized agents or representatives of entry upon the property and into, upon, and about the improvements thereon for purposes of inspection and posting of any legal notices thereon.
10. That any and all signs erected or maintained by the LICENSEE upon the property or any of the improvements thereon shall fully comply with and conform to all regulations and standards of the City of Porterville now in force or which may hereafter be in full force and effect.
11. The LICENSEE shall of its own proper cost and expense, and without any cost, charge, or expenses to the LICENSOR, pay and discharge when due and before delinquent all light, electric power, water, gas, telephone, garbage removal, all utilities, and all other occupation charges for the premises and the same shall not be suffered, allowed, or permitted to become a charge or lien upon the real property.
12. It is expressly stipulated and agreed herein that the LICENSOR shall not be called upon, expected to, nor shall the LICENSOR, pay and discharge any costs whatsoever arising from or in any connection with the use and enjoyment of this



license by the LICENSEE or in the use and enjoyment of any of the improvements placed upon the property by the LICENSEE.

13. The LICENSEE shall at all times during the terms of this license keep and maintain all of the buildings, fixtures, and grounds directly adjacent to the building. LICENSEE shall ensure the same is kept in good order and repair, inside and outside, together with all fixtures and appurtenances used and employed in the occupancy/license of the real property and the improvements thereon, including sewer lines, plumbing fixtures, electrical fixtures and all conveniences or necessities used and employed by the LICENSEE in the occupancy of the premises; and the LICENSEE shall at its sole cost and expense from time to time, as the needs may arise therefore, make renewals and replacements thereof in first class modern character and efficiency. LICENSOR shall maintain the turf area, parking lot, and prune trees when necessary.

14. The LICENSEE shall promptly and completely observe, comply with, and conform to all present and future applicable federal, ~~state~~state, and local laws, requirements, and standards in the operation and use of the License and the premises, and its programs on this premises~~-.~~  This includes, but is not limited to, State and Federal discrimination and disability laws and regulations. LICENSEE shall, at its own cost and expense, make any and all improvements thereon or alteration thereto, ~~structurally~~structurally, or otherwise, that may be required at any time hereafter by any such present or future law, rule, requirement, order, direction, ordinance, or regulations. Failure to comply is

grounds for immediate termination of this License by LICENSOR, and any notice requirements required pursuant to this Agreement shall not apply.

15. LICENSEE must maintain all outdoor consumption of beer, ~~wine~~wine, and distilled spirits within the outdoor ~~forty--by--100--foot,~~ fenced--in consumption area.

16. LICENSEE shall not make any material alterations, improvements, additions, or any other structural or building changes without the prior written approval of the LICENSOR.

17. The LICENSEE shall not suffer, allow, or permit any property, properly or legally assessable to the LICENSEE, to be assessed against the LICENSOR or against the real property or for which the LICENSOR shall be liable or responsible to pay, or for the same to become a charge or lien upon the real property--\_. In the event any possessory interest tax is assessed as a result of this Agreement, LICENSEE shall pay and be responsible for the full amount assessed.

Except as allowed pursuant to Paragraph 2 above,

18. ~~It~~ it is expressly stipulated, covenanted and agreed that this license shall not be assigned, transferred, mortgaged or hypothecated in any manner; nor shall the buildings or improvements or facilities used and employed by the LICENSEE in enjoying this license be sublicensed without the prior written consent of the LICENSOR's *Parks and Leisure Services Director or his Designee*; for each such assignment or sublicensing, it being further stipulated that the consent by

the LICENSOR to any one assignment/sublicense shall not be construed as a consent to any further of additional assigning or sublicensing.

19. The LICENSEE covenants and agrees at all times during the term of the license to keep and maintain all buildings, structures, and insurable improvements on or pertinent to the real property fully insured (with LICENSOR named as an additional insured) for the replacement value to insure that the building can be replaced in the event of a fire with comprehensive coverage and in an amount and in such company or companies as may be acceptable to the LICENSOR; and all such policies of insurance shall be delivered to and held by the LICENSOR, except, however, that if the improvements shall have a mortgage thereon, a mortgage loss clause may be attached thereto in favor of such mortgage to the extent of the outstanding balance due on the aforesaid construction loan.
20. The LICENSEE, as a material part of the considerations to be rendered to the LICENSOR for the granting of the license, and to the fullest extent permitted by law, covenants and agrees, to the fullest extent permitted by law, to release, indemnify, defend and hold LICENSOR harmless and free from all liability and claims for damages by reason of any injury to any person or persons, or property of any kind whatsoever, from any cause or causes whatsoever while in, upon, or in any way connected with said licensed premises, or the premises adjacent thereto during the term of license or any extension thereof. It is further stipulated and agreed that the LICENSEE shall save, indemnify, and defend the LICENSOR, all of its officers, agents and employees of and from all claims, demands, actions or causes of actions arising from or in any way connected with

the occupation and of the demised premises, *including but not limited to any sublicense or use by other parties*, together with all costs and attorney's fees; that at all times during the term of this license, LICENSEE shall be and is hereby required and it hereby agrees to keep in full force and effect, with the premium fully prepaid thereon Two Million Dollars \$2,000,000.00 for personal injury and property damage (*covering all occupation and use of the premises*) combined single limits with liquor and product liability, and shall file with the LICENSOR the original policies and/or certificate thereof.

21. If the LICENSEE shall fail, neglect, or refuse to pay, do, or perform any of the terms, stipulations, promises, covenants, conditions, or agreements hereof on its part and behalf to be paid, kept and performed, the LICENSOR may, at its option, but it shall not be obligated to do so, pay or cause the same to be paid, done or performed, and the amount of money expended by the LICENSOR in so doing, or incurred by the LICENSOR in so doing, shall become a debt immediately due from the LICENSEE to LICENSOR, and shall constitute a material breach hereof entitling LICENSOR to immediate termination hereof pursuant to paragraph 21 below.

22. If the LICENSEE shall fail, neglect or refuse to pay, for a period of (30) days after notice, do or perform any of the items in the form and manner herein provided, the terms, provisions, covenants, conditions, and agreements hereof on its part and behalf to paid, kept and performed, the LICENSOR may terminate and cancel license and at such time and in such event, full and compete title to all improvements, buildings, structures, fixtures, excluding trade fixtures, shall



have then vested in the LICENSOR, subject to the encumbrances now existing against such structures; and the LICENSOR may immediately re-enter into the possession of said real property together with all of the said improvements, and the same to have, hold, and enjoy thereafter as the sole, absolute and unconditional owner. In such event, LICENSEE shall have a period of thirty (30) days after notice to remove its personal property and trade fixtures from the premises.

23. LICENSEE covenants and agrees on the last day of the term of this license, or the sooner determination of the term this license, to peacefully leave, ~~surrender~~ and surrender, and vacate to the LICENSOR the said real property together with the improvements thereon and the fixtures attached thereto in good order and condition and state of repair.
24. Failure on the behalf of the LICENSOR to insist on strict performance of the covenants, terms, stipulations, agreements and conditions of the license shall not be construed as a waiver by the LICENSOR of any of its rights hereunder, or as a waiver or a relinquishment of the strict future performance of the covenants, conditions and agreement herein contained, but all and each thereof shall be and remain in full force and effect.
25. If any litigation is commenced between the parties to this Agreement concerning the Agreement or the rights and duties of either in relation to the Agreement, the party prevailing in the Litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to its cost for the litigation including expert witness fees and a reasonable sum as and for its attorney's fees in the litigation,

which shall be determined by the court in that litigation or in a separate action brought for that purpose.

26. The parties agree that this Agreement is entered into and is to be performed in Tulare County, California.

27. Each party and its legal counsel have participated fully in the review and revisions of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

WITNESS the hands and seals of the parties the day and year first above written.

CITY OF PORTERVILLE

BY \_\_\_\_\_ BY \_\_\_\_\_  
—~~Martha A. Flores~~Virginia R. Gurrola, Mayor \_\_\_\_\_  
—John D. Lollis, City Clerk

BARN THEATRE

BY \_\_\_\_\_  
—Denise Everhart, President

## REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT, made and entered into the 18<sup>th</sup> day of April, 2017, by and between the CITY OF PORTERVILLE, a municipal corporation, hereinafter called the Licensor, and the BARN THEATER, a non-profit corporation, hereinafter called the LICENSEE:

### WITNESSETH:

WHEREAS, the LICENSOR is the owner of the hereinafter described real Property; and

WHEREAS, the property is deemed suitable, necessary, and proper by the LICENSOR and the LICENSEE for use by the LICENSEE in carrying on and conducting a community enterprise of a non-profit, non-political, and non-religious nature for which the LICENSEE has been incorporated and organized, and is now engaged in, carrying on and conducting as a community enterprise, and for the benefit, enlightenment, amusement, recreation, education and advancement of the Porterville Area, and not for the profit of any individual or enterprise.

NOW, THEREFORE, it is hereby covenanted and agreed between the LICENSOR and the LICENSEE as follows, to wit:

1. The real property herein referred to and covered by the terms of this license is that certain real property situated in the City of Porterville, County of Tulare, State of California, described as follows to wit:

Beginning at the Northwest corner of Northeast Quarter of Section 36, Township 21 South, Range 27 East, MD. B & M., said point being on the East Line of Plano Street in the City of Porterville, County of Tulare, State of California; thence South 3°55' East along the easterly line of said Plano Street 375 feet to the point of beginning of the parcel being described; thence East 170 feet; thence South 7° East 375 feet, more or less, to the Northwesterly line of Park Drive; thence southerly and westerly along said westerly and northerly line of Park Drive 200 feet, more or less, to the easterly line of the said Plano Street; thence northerly along the easterly line of said Plano Street 500 feet, more or less, to the point of beginning. Excepting therefrom, the westerly 20 feet measured

at right angles to said easterly line of Plano Street,  
and also excepting such portions thereof as may be required  
for the widening of Park Drive.

2. That the LICENSOR for and in consideration of the promises, covenants, agreements, and stipulations herein contained on the part and behalf of the LICENSEE to be paid, kept and performed, at the time and in the form and manner herein specified, with time being made the essence hereof, hereby grants to the LICENSEE a license to engage, use and employ the described real property together with the appurtenances thereon for the purpose of carrying on and conducting as a community enterprise for the benefit, enlightenment, amusement, recreation, education and advancement of the Porterville Area a theatre group in accordance with the By-laws and Articles of Incorporation of LICENSEE. The LICENSEE shall use and employ the real property together with the improvements thereon exclusively for the usual and customary theatrical activities of the LICENSEE; and no business, retail, or wholesale, activities or enterprises shall be carried on or conducted for profit or be allowed, suffered, or permitted to be carried on at or upon the property during the terms of this license, except as otherwise specified in this Agreement. LICENSEE shall be allowed to grant a sublicense, for a period of not more than two (2) consecutive days to other individuals and organizations for the use of the premises, provided that LICENSEE does this no more than five (5) times per year, and LICENSEE complies with the requirements of this Agreement, including, but not limited to, Paragraphs 5, 16, 17, 18, and 19.
3. The LICENSEE agrees at all times during the term of license to use, the described real property together with improvements thereon, solely and exclusively for activities of the LICENSEE presently authorized by its Articles of Incorporation and By-laws, it being further stipulated that no substantial amendment to the Articles or By-laws of the LICENSEE may be used to amend, extend, or modify the terms and provisions of this license without first obtaining the express written consent of the LICENSOR.
4. The Parties further agree that all of the terms, provisions, stipulations, agreements, and conditions herein contained on the part and behalf of the LICENSEE to be paid, kept, and performed, shall be and the same are hereby expressly declared to be continuing conditions, covenants and agreement by precedent to any right on behalf of the LICENSEE to enjoy or exercise any of the rights or privileges granted by this license.
5. LICENSEE agrees that in the use, employment and enjoyment of this license by the LICENSEE, the LICENSEE shall not suffer, allow, or permit any religious discrimination, political discrimination, race discrimination, or any



other form of illegal discrimination to be engaged in, conducted, carried on, or participated in by the LICENSEE or any agent, employee, or servant of the LICENSEE in carrying on or conducting any of the activities of the LICENSEE with reference to the use, employment and enjoyment of this license.

6. That during the entire term of this license, the LICENSEE shall at all times maintain with the State of California its status as a non-profit corporation.
7. That the term of this license shall commence as of April 18, 2017, for a period of twenty-five (25) years, ending at midnight on April 17, 2042. The parties may agree to extend this Agreement to be reviewed and adjusted for an additional (1) year, with the terms of said Agreement to be reviewed and modified as the parties deem appropriate prior to renewal.
8. The LICENSEE stipulates and agrees that in the occupancy of the real property and the improvements thereon that the LICENSEE shall not suffer, allow or permit any waste to be committed thereto or thereon, nor shall the LICENSEE suffer, allow, or permit any mechanic's lien or other liens to be filed upon the real property or any of the improvements thereon; nor shall the LICENSEE suffer, allow, or permit the building or permanent improvement thereto, other than trade fixtures, to be removed from the real property during the term hereof without permission of the LICENSOR first had and received.
9. The LICENSOR shall have the free right at all times by its authorized agents or representatives of entry upon the property and into, upon, and about the improvements thereon for purposes of inspection and posting of any legal notices thereon.
10. That any and all signs erected or maintained by the LICENSEE upon the property or any of the improvements thereon shall fully comply with and conform to all regulations and standards of the City of Porterville now in force or which may hereafter be in full force and effect.
11. The LICENSEE shall of its own proper cost and expense, and without any cost, charge, or expenses to the LICENSOR, pay and discharge when due and before delinquent all light, electric power, water, gas, telephone, garbage removal, all utilities, and all other occupation charges for the premises and the same shall not be suffered, allowed, or permitted to become a charge or lien upon the real property.
12. It is expressly stipulated and agreed herein that the LICENSOR shall not be called upon, expected to, nor shall the LICENSOR, pay and discharge any costs whatsoever arising from or in any connection with the use and enjoyment of

this license by the LICENSEE or in the use and enjoyment of any of the improvements placed upon the property by the LICENSEE.

13. The LICENSEE shall at all times during the terms of this license keep and maintain all of the buildings, fixtures, and grounds directly adjacent to the building. LICENSEE shall ensure the same is kept in good order and repair, inside and outside, together with all fixtures and appurtenances used and employed in the occupancy/license of the real property and the improvements thereon, including sewer lines, plumbing fixtures, electrical fixtures and all conveniences or necessities used and employed by the LICENSEE in the occupancy of the premises; and the LICENSEE shall at its sole cost and expense from time to time, as the needs may arise therefore, make renewals and replacements thereof in first class modern character and efficiency. LICENSOR shall maintain the turf area, parking lot, and prune trees when necessary.
14. The LICENSEE shall promptly and completely observe, comply with, and conform to all present and future applicable federal, state and local laws, requirements, and standards in the operation and use of the License and the premises, and its programs on this premises. This includes, but is not limited to, State and Federal discrimination and disability laws and regulations. LICENSEE shall, at its own cost and expense, make any and all improvements thereon or alteration thereto, structurally or otherwise, that may be required at any time hereafter by any such present or future law, rule, requirement, order, direction, ordinance, or regulations. Failure to comply is grounds for immediate termination of this License by LICENSOR, and any notice requirements required pursuant to this Agreement shall not apply.
15. LICENSEE must maintain all outdoor consumption of beer, wine and distilled spirits within the outdoor forty by 100 foot fenced in consumption area.
16. LICENSEE shall not make any alterations, improvements, additions or any other structural or building changes without the prior written approval of the LICENSOR.
17. The LICENSEE shall not suffer, allow, or permit any property, properly or legally assessable to the LICENSEE, to be assessed against the LICENSOR or against the real property or for which the LICENSOR shall be liable or responsible to pay, or for the same to become a charge or lien upon the real property. In the event any possessory interest tax is assessed as a result of this Agreement, LICENSEE shall pay and be responsible for the full amount assessed.



18. It is expressly stipulated, covenanted and agreed that this license shall not be assigned, transferred, mortgaged or hypothecated in any manner; nor shall the buildings or improvements or facilities used and employed by the LICENSEE in enjoying this license be sublicensed without the prior written consent of the LICENSOR's *Parks and Leisure Services Director or his Designee*; for each such assignment or sublicensing, it being further stipulated that the consent by the LICENSOR to any one assignment/sublicense shall not be construed as a consent to any further of additional assigning or sublicensing.
19. The LICENSEE covenants and agrees at all times during the term of the license to keep and maintain all buildings, structures, and insurable improvements on or pertinent to the real property fully insured (with LICENSOR named as an additional insured) for the replacement value to insure that the building can be replaced in the event of a fire with comprehensive coverage and in an amount and in such company or companies as may be acceptable to the LICENSOR; and all such policies of insurance shall be delivered to and held by the LICENSOR, except, however, that if the improvements shall have a mortgage thereon, a mortgage loss clause may be attached thereto in favor of such mortgage to the extent of the outstanding balance due on the aforesaid construction loan.
20. The LICENSEE, as a material part of the considerations to be rendered to the LICENSOR for the granting of the license, and to the fullest extent permitted by law, covenants and agrees, to the fullest extent permitted by law, to release, indemnify, defend and hold LICENSOR harmless and free from all liability and claims for damages by reason of any injury to any person or persons, or property of any kind whatsoever, from any cause or causes whatsoever while in, upon, or in any way connected with said licensed premises, or the premises adjacent thereto during the term of license or any extension thereof. It is further stipulated and agreed that the LICENSEE shall save, indemnify, and defend the LICENSOR, all of its officers, agents and employees of and from all claims, demands, actions or causes of actions arising from or in any way connected with the occupation and of the demised premises, *including but not limited to any sublicense or use by other parties*, together with all costs and attorney's fees; that at all times during the term of this license, LICENSEE shall be and is hereby required and it hereby agrees to keep in full force and effect, with the premium fully prepaid thereon Two Million Dollars \$2,000,000.00 for personal injury and property damage (*covering all occupation and use of the premises*) combined single limits with liquor and product liability, and shall file with the LICENSOR the original policies and/or certificate thereof.
21. If the LICENSEE shall fail, neglect, or refuse to pay, do, or perform any of the terms, stipulations, promises, covenants, conditions, or agreements hereof on

its part and behalf to be paid, kept and performed, the LICENSOR may, at its option, but it shall not be obligated to do so, pay or cause the same to be paid, done or performed, and the amount of money expended by the LICENSOR in so doing, or incurred by the LICENSOR in so doing, shall become a debt immediately due from the LICENSEE to LICENSOR, and shall constitute a material breach hereof entitling LICENSOR to immediate termination hereof pursuant to paragraph 21 below.

22. If the LICENSEE shall fail, neglect or refuse to pay, for a period of (30) days after notice, do or perform any of the items in the form and manner herein provided, the terms, provisions, covenants, conditions, and agreements hereof on its part and behalf to paid, kept and performed, the LICENSOR may terminate and cancel license and at such time and in such event, full and compete title to all improvements, buildings, structures, fixtures, excluding trade fixtures, shall have then vested in the LICENSOR, subject to the encumbrances now existing against such structures; and the LICENSOR may immediately re-enter into the possession of said real property together with all of the said improvements, and the same to have, hold, and enjoy thereafter as the sole, absolute and unconditional owner. In such event, LICENSEE shall have a period of thirty (30) days after notice to remove its personal property and trade fixtures from the premises.
23. LICENSEE covenants and agrees on the last day of the term of this license, or the sooner determination of the term this license, to peacefully leave, surrender and vacate to the LICENSOR the said real property together with the improvements thereon and the fixtures attached thereto in good order and condition and state of repair.
24. Failure on the behalf of the LICENSOR to insist on strict performance of the covenants, terms, stipulations, agreements and conditions of the license shall not be construed as a waiver by the LICENSOR of any of its rights hereunder, or as a waiver or a relinquishment of the strict future performance of the covenants, conditions and agreement herein contained, but all and each thereof shall be and remain in full force and effect.
25. If any litigation is commenced between the parties to this Agreement concerning the Agreement or the rights and duties of either in relation to the Agreement, the party prevailing in the Litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to its cost for the litigation including expert witness fees and a reasonable sum as and for its attorney's fees in the litigation, which shall be determined by the court in that litigation or in a separate action brought for that purpose.



26. The parties agree that this Agreement is entered into and is to be performed in Tulare County, California.

27. Each party and its legal counsel have participated fully in the review and revisions of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

WITNESS the hands and seals of the parties the day and year first above written.

CITY OF PORTERVILLE

BY   
Milt Stowe, Mayor

BY   
John D. Lollis, City Clerk

BARN THEATER

BY   
President



CITY COUNCIL AGENDA – JANUARY 17, 2023

SUBJECT: Assignment of Airport Lease - Lot No. 34F

SOURCE: Finance

COMMENT: Steven Huth and Michael Quatacker are the current leaseholders of Lot No. 34F at the Porterville Municipal Airport. Steven Huth has sold his ownership interest in the hangar located on the lot and is requesting the transfer of the lease to the new owners, Michael Quatacker and Debbie Quatacker. Michael Quatacker and Debbie Quatacker are requesting City Council authorization to assume the existing lease agreement between the City and Steven Huth and Michael Quatacker. The original lease agreement terminates on June 30, 2029. The hangar will be utilized for the parking and storage of aircraft.

RECOMMENDATION: That the City Council:

1. Approve the Assignment of Lease for Lot No. 34F at the Porterville Municipal Airport from Steven Huth and Michael Quatacker to Michael Quatacker and Debbie Quatacker; and
2. Authorize the Mayor to sign the Lessor's Consent to Assignment of Lease Agreement on behalf of the City.

ATTACHMENTS:

1. Draft Assignment of Lease
2. Draft Lessor's Consent to Assignment of Lease Agreement
3. Letter of Request dated January 3, 2022
4. Bill of Sale
5. Locator Map

Appropriated/Funded:

Review By:

Department Director:  
Maria Bemis, Finance Director

Final Approver: John Lollis, City Manager

**ASSIGNMENT OF LEASE  
PORTERVILLE MUNICIPAL AIRPORT**

**THIS AGREEMENT**, made this 17<sup>th</sup> day of January, 2023, by and between Steven Huth and Michael Quatacker, P. O. Box 1448, Porterville, CA, owner of a hangar on Lot 34F at the Porterville Municipal Airport, as the Assignor, and Michael Quatacker and Debbie Quatacker, 1279 W. Henderson Ave. #187, Porterville, CA, as the Assignee.

In consideration of the mutual covenants herein contained, each act to be performed hereunder, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Effective January 1, 2022, Assignor hereby assigns, transfers and conveys to Assignee all of his right, title and interest as Lessee, in, to and under a certain Lease Agreement dated July 1, 2014, (hereinafter "Lease"), executed by and between the City of Porterville, as Lessor, and Steven Huth and Michael Quatacker, as original Lessee, providing for the letting of certain premises located at the Porterville Municipal Airport, Porterville, California, being more particularly described as follows:

An airport hangar known as Lot No. 34F, and containing a total area of approximately 2,350 square feet, and establishing an original Lease terminating June 30, 2029.

2. Effective January 1, 2022, Assignee hereby accepts and assumes all of the obligations, responsibilities and liabilities of Assignor under said Lease, and agrees to perform said Lease Agreement according to its terms, covenants and conditions, without exception, and Assignee understands and agrees that Landlord makes no warranty or representation that either Assignor or Assignee would be given an exclusive use in the Porterville Municipal Airport for the use thereof by Assignor and/or Assignee, except as provided in the Lease.

3. Upon execution of this Assignment of Lease and Landlord's consent hereto, the parties' Noticed Address shall be as set forth herein above. The parties further understand there is a \$150 assignment fee, payable to the City of Porterville, and the Assignee must provide proof of aircraft and hangar owner's liability insurance within thirty (30) days of Council approval.

4. Assignor hereby covenants said Lease as valid and existing and hereby warrant that Assignor is not in default as of the date of this Assignment.

5. This Assignment shall be binding upon and shall inure to the benefit of the respective parties, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment of Lease as of the date first above written.

**ASSIGNOR:**  
Steven Huth

BY: \_\_\_\_\_

Michael Quatacker

BY: \_\_\_\_\_

**ASSIGNEE:**  
Michael Quatacker

BY: \_\_\_\_\_

Debbie Quatacker

BY: \_\_\_\_\_

**LESSOR'S CONSENT TO ASSIGNMENT OF LEASE AGREEMENT  
PORTERVILLE MUNICIPAL AIRPORT  
AIRPORT HANGAR LOT NO. 34F**

The City of Porterville, a municipal corporation of the State of California, being the Landlord under the Lease for Airport Hangar Lot No. 34F, described in the foregoing Assignment, hereby consents to the Assignment of Lease Agreement from Steven Huth and Michael Quatacker to Michael Quatacker and Debbie Quatacker, terminating June 30, 2029, for the parking and storage of aircraft, upon the expressed condition that there shall be no further assignment without the prior written consent of the Landlord.

Dated this 17<sup>th</sup> day of January, 2023.

CITY OF PORTERVILLE

BY: \_\_\_\_\_  
Martha A. Flores  
MAYOR, CITY OF PORTERVILLE

"LESSOR"

ATTEST: \_\_\_\_\_  
John D. Lollis, CITY CLERK

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Julia Lew, City Attorney



January 7, 2022

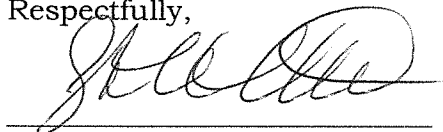
Attn: Janie Rodriguez  
City of Porterville

RE: Assignment of Lease – Lot 34F  
Porterville Municipal Airport

Dear Ms. Rodriguez:

This shall advise that I have sold my ownership interest in the hangar located on Lot 34F of the Porterville Municipal Airport to Mike and Debbie Quatacker. We respectfully request the land lease be assigned to Mr. and Mrs. Quatacker effective January 1, 2022; they will be responsible for all fees and costs related to the assignment of lease and all lease payments coming due on and after January 1, 2022.

Respectfully,



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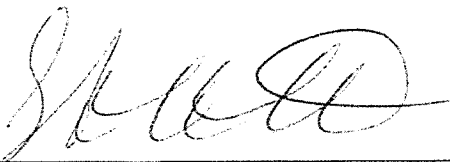
STEVEN HUTH

Received  
12/20/22

## **BILL OF SALE**

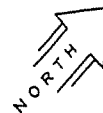
BE IT KNOWN, for good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, STEVEN HUTH, hereby sells, assigns and transfers to MIKE QUATACKER and DEBBIE QUATACKER, their successors and assigns forever, effective January 1, 2022, seller's ownership interest in Lot 34F of the Porterville Municipal Airport, 1893 South Newcomb Street, Porterville, Tulare County, California 93257; Tulare County APN 925-000-228-000;

Signed this 3<sup>RD</sup> day of January, 2022, at Porterville, California.

A handwritten signature in black ink, appearing to read 'SH', is written over a horizontal line.

STEVEN HUTH

# AIRPORT LEASE SITES



44A 44B 44C

40	41	42	43
36	37	38	39

45

46A 46B 46C 46D

35



A	B	C	34	D	E	F
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33

32A

B

C

31C

31A

31B

30B

30A1

30A2

30A3

HANGAR ROAD

HOPE ROAD

THUNDERBOLT DR.

ADMIN.  
BLD.

TAXIWAY

TAXIWAY



## CITY COUNCIL AGENDA – JANUARY 17, 2023

**SUBJECT:** City Council Member Requested Agenda Item - Consider the Formation of a City Council Ad Hoc Committee to Annually Review the Implementation of the City's General Plan.

**SOURCE:** City Manager's Office

**COMMENT:** Council Member Weyhrauch has requested that the Council consider the formation of a Council Ad Hoc Committee to annually review the implementation of the City's General Plan. Pursuant to the current City Council Procedural Handbook, should the Council approve Council Member Weyhrauch's request, the subject would be considered as a Scheduled Matter at the Council's next regular meeting on February 7, 2023.

**RECOMMENDATION:** That the City Council approve Council Member Weyhrauch's request to consider the formation of a Council Ad Hoc Committee to annually review the implementation of the City's General Plan as a Scheduled Matter at the next regular Council meeting.

**ATTACHMENTS:**

Appropriated/Funded:

Review By:

Department Director:  
John Lollis, City Manager

Final Approver: John Lollis, City Manager





## CITY COUNCIL AGENDA – JANUARY 17, 2023

**SUBJECT:** Reaffirm Conditions of State Assembly Bill 361 to Continue Remote Attendance at Public Meetings

**SOURCE:** City Manager's Office

**COMMENT:**

During the prior eighteen (18) months, the City Council and its legislative bodies have conducted teleconferencing meetings as allowed pursuant to a series of Executive Orders, the most recent which expired on September 30, 2021 (Executive Order N-08-021, issued June 11, 2021), which waived all physical presence requirements under the Brown Act as a means of limiting the spread of COVID-19. Pursuant to adopted State law effective September 30, 2021, Assembly Bill 361 (AB 361), extends the authority of public agencies to conduct meetings by teleconference, including video conference, without compliance with all of the Brown Act's limitations on such meetings, which the status of emergency resulting from the COVID-19 pandemic and accompanying recommendations for social distancing remain in place. Consistent with AB 361, the Council must adopt a Resolution consistent with the Governor's State of Emergency, and must review and renew such Resolution every thirty (30) days thereafter. AB 361 will sunset on January 1, 2024, although Governor Newsom announced on October 17, 2022, that the COVID-19 State of Emergency would be concluded on February 28, 2023, thus ending the authority of the legislation. The Council last adopted its Resolution consistent with AB 361 at its meeting on December 20, 2022.

**RECOMMENDATION:** That the City Council consider adoption of the draft Resolution to continue allowing the option to participate in the City's public meetings remotely through the use of the teleconferencing provisions of AB 361.

**ATTACHMENTS:** 1. Draft Resolution

**Appropriated/Funded:**

**Review By:**

Department Director:  
John Lollis, City Manager

Final Approver: John Lollis, City Manager

RESOLUTION \_\_\_\_-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY ASSEMBLY  
BILL 361 ISSUED ON SEPTEMBER 16, 2021, AND AUTHORIZING REMOTE  
TELECONFERENCE MEETINGS OF ALL LEGISLATIVE BODIES OF THE CITY OF  
PORTERVILLE FOR THE PERIOD OF THIRTY (30) DAYS PURSUANT TO BROWN  
ACT PROVISIONS

WHEREAS, the City Council is committed to preserving and nurturing public access and participation in meetings of all City of Porterville legislative bodies; and,

WHEREAS, all meetings of the City's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950-54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and,

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(s), subject to the existence of certain conditions; and,

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and,

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme period to the safety of persons and property within the jurisdictions that are within the City's boundaries, caused by natural, technological, or human-caused disasters; and,

WHEREAS, it is further required that State or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and,

WHEREAS, a State of Emergency has been proclaimed by the Governor of the State of California; and,

WHEREAS, State and local officials continue to promote social distancing measures and City's conference chambers limited capacity would present imminent risk to health and safety of attendees; and,

WHEREAS, as a consequence of the State emergency, the City does hereby find that the legislative bodies of the City shall conduct their meetings without compliance with paragraph three (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph two (2) of subdivision (c) of section 54953; and,

WHEREAS, the City will give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body; and,

WHEREAS, the legislative body will not take any further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored; and,

WHEREAS, the legislative body will not require public comments to be submitted in advance of the meeting and specifies that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time; and,

WHEREAS, the legislative body will not close the public comment until the public comment period has elapsed or until a reasonable amount of time has elapsed as specified.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Porterville as follows:

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference; and,

SECTION 2. Ratification of Governor's Proclamation of a State of Emergency. The City hereby ratifies the Governor of the State of California's Proclamation of March 2, 2020; and,

SECTION 3. Remote Teleconference Meetings. The City Manager and legislative bodies of City of Porterville are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act; and,

SECTION 4. Effective Date of Resolutions. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of February 16, 2023, or such time the Council adopts a subsequent Resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of City of Porterville may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of January, 2023.

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Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

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

Patrice Hildreth, Chief Deputy City Clerk



## CITY COUNCIL AGENDA – JANUARY 17, 2023

SUBJECT: Status and Review of Local Emergency Drought

SOURCE: City Manager's Office

COMMENT:

At its meeting of May 5, 2015, the City Council took action to approve a Resolution Declaring a Drought Emergency in the City of Porterville. At its meeting of December 20, 2022, the Council reviewed the status of existence of local emergency, and acted to continue its Resolution of local emergency.

Governor Brown issued Executive Order B-29-15 on Wednesday, April 1, 2015, which established drought-related mandates and restrictions in addition to those already stipulated in previous Executive Orders B-26-14 and B-28-14. Of significance, the Governor directed the State Water Resources Control Board to impose restrictions to achieve a statewide twenty-five percent (25%) reduction in potable urban water usage through February 28, 2016, in comparison to the amount used in 2013, and with consideration given to per capita usage as a basis. The Governor further directed the Board to impose additional restrictions on commercial, industrial, and institutional properties with significant landscaping (cemeteries, golf courses, parks, schools, etc.), to also achieve a twenty-five (25%) reduction in potable water usage. Also of significance, the Board was directed to prohibit irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or micro-spray systems.

On November 13, 2015, Governor Brown issued Executive Order B-36-15, which extends emergency conservation regulations through October 2016, if drought conditions persist through January 2016. On February 2, 2016, the State Water Resources Control Board adopted extended emergency water conservation regulations, to be in effect March 1 through October 31, 2016.

The City of Porterville benefited somewhat from the extended regulations as the City's water conservation rate has been reduced from thirty-two percent (32%) to twenty-six percent (26%), due to new water connections that have been made and population served (4%), as well as a new climate adjustment factor that was considered (2%).

On May 9, 2016, Governor Brown issued Executive Order B-37-16 ("Making Water Conservation a California Way of Life"), which directs the State Water Resources Control Board to establish new regulations making permanent the emergency conservation regulations. On May 18, 2016, the State Water Resources Control Board adopted a statewide water conservation approach that replaces the percentage reduction-based water conservation standard with a



localized "stress test" approach that mandates urban water suppliers act immediately to ensure at least a three-year supply of water to their customers under continued drought conditions.

On April 7, 2017, Governor Brown issued Executive Order B-40-17, which ended the drought state of emergency in most of California, with the exception of Fresno, Kings, Tulare and Tuolumne counties where emergency water supply and reliability projects are continuing toward addressing diminishing groundwater supplies. The Order maintains monthly reporting requirements and prohibitions on wasteful practices.

On May 31, 2018, Governor Brown signed both AB 1668 (Friedman) and SB 606 (Hertzberg), which set permanent overall targets for indoor and outdoor water consumption. The legislation sets an initial limit for indoor water use of fifty-five (55) gallons per-person per-day in 2022, reducing to 52.5 gallons per-person per-day in 2025, and finally to fifty (50) gallons per-person per-day in 2030. The amount of residential outdoor use is yet-to-be determined, but will allow for varying regional climates. In addition, a standard for water loss due to leak rates in water system pipes will be established. As an urban water provider, the City will need to submit its plan for compliance for approval by the State Water Resources Control Board.

On March 5, 2021, Secretary Vilsack of the United States Department of Agriculture federally-designated Tulare County as a primary natural disaster area due to ongoing drought conditions. On April 21, 2021, Governor Newsom issued a State of Emergency Proclamation due to drought conditions, including Tulare County. On April 27, 2021, the Tulare County Board of Supervisors adopted a Resolution Proclaiming a Local Emergency due to severe drought conditions. On January 4, 2022, the State Water Resources Control Board adopted emergency regulations to supplement voluntary water conservation.

On March 28, 2022, Governor Newsom issued Executive Order N-7-22, that requires the state's largest water providers (including the City of Porterville) to put in place "Level 2" of water shortage contingency plans, which the City is currently in "Level 4." On June 10, 2022, the State Water Resources Control Board adopted emergency regulations to prohibit the watering of nonfunctional or purely decorative grass in commercial, industrial or institutional properties with potable water.

Initially within the city of Porterville, twenty-six (26) residences within the city were determined to have dry wells, for which City staff submitted a Mutual Aid Request to Tulare County OES to initiate the household tank program for identified properties within the city where wells are dry and challenged for permanent connection. The State has committed funding for non-profit agencies to continue drought-related activities, which Self-Help Enterprises has continued the household tank program locally, through State Cleanup and Abatement Account (CAA) emergency funds.

Representatives for the City, County, State (CalOES, DDW, DWR, and SWB)

and non-profit partners continued to meet in support of the long-term permanent water connection project for the entire East Porterville area and the estimated 1,800 expected future connections. DWR identified 423 residential units in the East Porterville area (381 of which are in the City's Urban Development Boundary), that were served by the County's Household Tank Program and desired by the State to be connected to the City's water distribution system as soon as possible. DWR has completed a significant City waterline extension project to permanently connect those 423 residential units to the City's water system (considered Phase I of the project). To provide initial source water for the DWR extension project, CalOES desired to expeditiously connect the new well on Olive Avenue to the City's water system instead of being first equipped as a filling station. Given the new well has an estimated water production value of 800 gallons per minute, as well as a SWB assumed 1.5 gallons per minute per residence, the new well could effectively serve up to five hundred (500) single-family residential units. The City indicated its significant interest that the E. Vandalia Avenue area and its eighty (80) residential units be included in the water connection project, to which the State was agreeable.

Given CalOES has paid for the development of the new well, and its connection to the City's water system, the City will be required under "Drought Redundancy and Resiliency Provisions" to make available to the State up to three million gallons of water per month without charge for emergency purposes. On May 7, 2022, Tulare County OES notified the City that due to deteriorating conditions across the county involving small water systems dependent upon the Friant-Kern Canal that may result in the complete lack of water or "Do Not Drink" orders, the State and County may have to invoke the provision of water from the well.

To proceed with the connection of the new well to the City's water system and the 500 East Porterville and E. Vandalia Avenue residential units, the City Council approved modifications to the Draft Agreement between the City and County at its meeting on April 5, 2016, which the County Board of Supervisors subsequently approved at their meeting on May 10, 2016.

A Memorandum of Understanding between the State, County, and City on the East Porterville permanent water connection project was approved by the Council during a Special Meeting on Tuesday, June 21, 2016, and approved by the Board of Supervisors on Tuesday, June 28, 2016. With the approval of the MOU, the State began the permanent connection of approximately forty (40) homes that are located along existing City water mains. Subsequently, the State officially requested that the City approve the connection of an additional thirty (30) residences as part of the first immediate connections, for up to a total of seventy (70), which the Council approved at its meeting on August 2, 2016.

In regards to the new well's development and connection to the City's water distribution system, the Board of Supervisors awarded the contract for equipping and connecting the new well at its meeting on Tuesday, August 16, 2016, and construction activities commenced the week of October 10, 2016.

County staff had previously indicated that the well would be in service and

connected to the City's system no later than December 2016, however, the well was operational and connected to the City's water distribution as of Friday, February 17, 2017. Given the delay in the well's completion and connection, DWR requested that the Council consider allowing the connection of residences as they become prepared for connection, to which the Council was receptive, and a Draft MOU Amendment was approved by the Council at its meeting on December 6, 2016, and subsequently approved by the Board of Supervisors at its meeting on December 20, 2016. City staff continued to work with County staff toward the transfer of the well's ownership from the County to the City, which at its meeting on April 20, 2021, the Council approved the draft Transfer Agreement subject to the City Attorney's final form.

As of Friday, March 31, 2017, the date the State established as the final day for property owners to complete the registration process to participate in the State-funded connection program opportunity, of the 1,017 eligible developed residential properties identified by the State for connection, 722 completed the required Extra-Territorial Services Agreement, leaving 295 developed residential properties non-responsive to this unique connection program, twenty-three (23) of which were reported as having either dry or diminishing capacity wells. On February 6, 2018, the final residential connection was made of the approximate eligible eight hundred (800) residences in East Porterville to the City's water system.

City staff continues to coordinate with Self-Help Enterprises and State representatives toward the extension of water mains to serve all residential properties within City limits and the city's periphery that are currently participating in the County's Household Tank Program. The two main areas of focus are N. Cobb Street (northwest of State Route 65 and Pioneer Avenue), and S. Cloverleaf Street (southeast of State Route 65 and Olive Avenue). The State has maintained its commitment to grant-fund the necessary infrastructure and connection fees, providing an official funding letter to the City on January 18, 2018, which commits up to \$2.81 million in funding until December 31, 2019. The authorization to advertise for bids for the water connection project was approved by the Council at its July 17th meeting, after which DWR reviewed the bid package for compliance and approved in December the package for advertisement. Council authorized award of the construction contract for approximately \$1.82 million at its meeting on January 15, 2019.

City staff conducted a pre-construction public outreach meeting with the affected residents on the status of the project on Thursday, April 4, 2019.

Council authorized the agreement with Self-Help Enterprises Inc. to provide the private residential connections at its meeting on July 2, 2019, and construction work began on the project. At its meeting on October 1, 2019, the Council accepted the public works segment of the project in the installation of water mains as complete, with Self-Help and CSET continuing to collaborate on the completion of the individual private connections and abandonment of private wells. City staff has recently been made aware that there may be a couple of additional residences whose wells are dry that are located along existing City water mains or may require further extension of water mains.

Staff is coordinating with State staff on addressing these new isolated needs.

County OES and the State Division of Drinking Water (DDW) have reported to the City that the Central Mutual Water Company, located south of the city and south of Gibbons Avenue, has had its well run dry and desires an immediate emergency connection to the City's water system to serve the forty-one (41) connections currently without water. DDW is wishing to support a financial application to upgrade the small water system to City standards (new water lines, meters ,etc.), and to sponsor an Urban Development Boundary (UDB) Amendment application to Tulare County Local Agency Formation Commission (LAFCO), given this area is currently outside the City's UDB but within the City's Urban Area Boundary (UAB). Given several private wells have run dry in this area, DDW is also attempting to sponsor their connection to the City's water system. For source water capacity for the connections, DWR will include these new connections within the East Porterville water connection capacity development projects. At its Special meeting on August 30, 2019, the City Council directed staff to proceed with the immediate emergency connection of the Central water system, with the permanent connection of the system contingent upon an Agreement with DDW to the sponsorship conditions they have offered. At its meeting on October 1, 2019, the Council directed staff to proceed with the amendment of the UDB to facilitate annexation, which a public meeting with the affected residents was conducted on Wednesday, October 9, 2019. At its meeting on April 21, 2020, the Council conducted a Public Hearing and approved Resolutions of approval of the environmental determination and amendment to the UDB to facilitate annexation. At its meeting on June 1, 2021, the Council approved the State Water Board funding agreement for the development of a City-owned production well, distribution mains and water meters to serve each customer, as well as fire hydrants. On July 20, 2021, the City received notification from the State Water Board that the Akin/Central Water Consolidation Project funding agreement had been formally approved and executed.

DDW has also reported to the City that the Del Oro East Plano water system, located on Paul Street (southeast of the intersection of Plano Street and Worth Avenue), is experiencing problems with its existing well and have implemented severe water restrictions. The East Plano water system serves fourteen (14) residences and approximately forty-five (45) people. DDW is wishing to provide financial support to upgrade the small water system to City standards (new water lines, meters ,etc.), and for source water capacity for the connections, DDW would need to either pay appropriate fees and/or develop a capacity development project. The Council is aware that the Del Oro Grandview Gardens water system (north of W. North Grand Avenue) is also experiencing significant issues, and DDW may seek their future consolidation with the City's water system as well.

DDW has further reported to the City that the Beverly Grand Mutual Water Company water system, located north of West North Grand Avenue, is experiencing problems with its existing well and water quality issues, and desires its connection to the City's system to serve the thirty-one (31) residences the system serves. DDW is wishing to provide financial support to upgrade the

small water system to City standards (new water lines, meters ,etc.), and for source water capacity for the connections, DDW has agreed to pay appropriate fees toward developing a capacity development project, which at its meeting of October 3, 2017, the Council approved a purchase agreement with Smee Homes, Inc. for the acquisition of property along the Tule River for the development of a new municipal well. At its meeting of October 1, 2019, the Council approved proceeding with the consolidation of the Beverly Grand water system.

RECOMMENDATION: That the City Council receive the report of status and review of the Declaration of Local Emergency and determine the need exists to continue said Declaration.

ATTACHMENTS:

1. City of Porterville Resolution Declaring Local Drought Emergency: May 5, 2015
2. United States Department of Agriculture Drought Natural Disaster Area Designation: March 5, 2021
3. State of California State of Emergency Proclamation: April 21, 2021
4. County of Tulare Drought Local Emergency Resolution: April 27, 2021
5. State Water Resources Control Board: Emergency Regulation - Water Conservation; January 4, 2022
6. Governor Newsom Executive Order N-7-22: March 28, 2022
7. State Water Resources Control Board: Emergency Regulation - Water Conservation; June 10, 2022
8. State Water Resources Control Board Funding Agreement: Akin/Central Water Consolidation Project

Appropriated/Funded:

Review By:

Department Director:  
John Lollis, City Manager

Final Approver: John Lollis, City Manager



RESOLUTION NO. 49-2015

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF PORTERVILLE DECLARING A DROUGHT EMERGENCY  
WITHIN THE CITY OF PORTERVILLE

WHEREAS: in response to the ongoing severe drought, the State Water Resources Control Board approved an emergency regulation to ensure water agencies, their customers, and state residents increase water conservation in urban settings or face possible fines or other enforcement; and

WHEREAS: as we enter the fourth year of severe drought, long-term forecasts indicate no relief of the current drought conditions, and suggest a warmer-than-average summer, resulting in increased domestic demand for water; and

WHEREAS: public and private potable water supplies continue to be threatened due to decreasing supplies of groundwater caused by the precipitation deficit and an extended state of groundwater overdraft; and

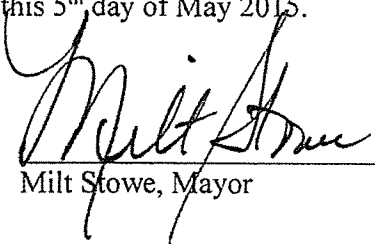
WHEREAS: the long-term ramifications of the current drought will have a significant impact on the city of Porterville and potentially pose a danger to the health and welfare of its residents; and

NOW, THEREFORE, BE IT RESOLVED: that the City Council of the City of Porterville does hereby proclaim that, due to drought conditions, a Local Emergency now exists in the city of Porterville and shall remain in effect for the duration of the emergency; and

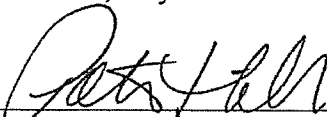
BE IT FURTHER RESOLVED: that the City Council of the City of Porterville requests the Governor and California Department of Water Resources make available California Disaster Assistance Act funding for the State of Local Emergency proclaimed on May 5, 2015, and seek all available forms of Federal assistance, to include a Presidential Declaration of Emergency and Individual Assistance and Public Assistance programs as applicable; and

BE IT FURTHER RESOLVED: that a copy of this resolution be forwarded to the State Director of the Office of Emergency Services.

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May 2015.

  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

  
By: Patrice Hildreth, Chief Deputy City Clerk



United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

March 5, 2021

The Honorable Gavin Newsom  
Governor  
State of California  
Sacramento, California 95814

Dear Governor Newsom:

In accordance with 7 CFR 759.5(a), I am designating 50 California counties as primary natural disaster areas due to a recent drought.

According to the U.S. Drought Monitor (see <http://droughtmonitor.unl.edu/>), these counties suffered from a drought intensity value during the growing season of 1) D2 Drought-Severe for 8 or more consecutive weeks or 2) D3 Drought-Extreme or D4 Drought-Exceptional.

In accordance with section 321(a) of the Consolidated Farm and Rural Development Act, additional areas of your state and adjacent states are named as contiguous disaster counties. Enclosed you will find documentation that provides a detailed list of all primary and contiguous counties impacted by this disaster.

A Secretarial disaster designation makes farm operators in primary counties and those counties contiguous to such primary counties eligible to be considered for certain assistance from the Farm Service Agency (FSA), provided eligibility requirements are met. This assistance includes FSA emergency loans. Farmers in eligible counties have 8 months from the date of a Secretarial disaster declaration to apply for emergency loans. FSA considers each emergency loan application on its own merits, taking into account the extent of production losses on the farm and the security and repayment ability of the operator.

Local FSA offices can provide affected farmers with further information.

Sincerely,

A handwritten signature in blue ink, reading "Tom J. Vilsack", is positioned above the printed name of the Secretary.

Thomas J. Vilsack  
Secretary

Enclosure

## Disaster Designation Areas for California and Contiguous States

### Primary Counties:

<b>California</b>	<b>(50)</b>			
Alameda	Glenn	Marin	Riverside	Solano
Alpine	Humboldt	Mariposa	Sacramento	Sonoma
Amador	Imperial	Mendocino	San Bernardino	Stanislaus
Butte	Inyo	Merced	San Francisco	Sutter
Calaveras	Kern	Modoc	San Joaquin	Tehama
Colusa	Kings	Mono	San Mateo	Trinity
Contra Costa	Lake	Napa	Santa Clara	Tulare
Del Norte	Lassen	Nevada	Shasta	Tuolumne
El Dorado	Los Angeles	Placer	Sierra	Yolo
Fresno	Madera	Plumas	Siskiyou	Yuba

### Contiguous Counties:

<b>California</b>	<b>(8)</b>		
Monterey	San Benito	San Luis Obispo	Santa Cruz
Orange	San Diego	Santa Barbara	Ventura

In addition, in accordance with section 321(a) of the Consolidated Farm and Rural Development Act, counties in adjacent states are named as contiguous disaster areas. Those states, counties, and numbers are:

### Contiguous Counties in Adjacent States:

<b>Arizona</b>	<b>(3)</b>		
La Paz	Mohave	Yuma	
<b>Nevada</b>	<b>(8)</b>		
Clark	Esmeralda	Mineral	Washoe
Douglas	Lyon	Nye	Carson City
<b>Oregon</b>	<b>(5)</b>		
Curry	Josephine	Lake	
Jackson	Klamath		

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

**State of Emergency Proclamation**

**WHEREAS** climate change is intensifying the impacts of droughts on our communities, environment and economy, and California must therefore improve drought resiliency and prepare to respond to more frequent, prolonged, and intense dry periods; and

**WHEREAS** much of the West is experiencing severe to exceptional drought and California is in a second consecutive year of dry conditions, resulting in drought or near-drought throughout many portions of the State; and

**WHEREAS** these drought conditions can result in degraded water quality, fallowing of productive farmland, setbacks to vulnerable and rural communities through job losses and longer-lasting recoveries, significant impacts to tribal, commercial, and recreational salmon fisheries, constraints on access to traditional lifeways, loss of aquatic and terrestrial biodiversity, and ecosystem impacts; and

**WHEREAS** drought conditions vary across the State and some watersheds, including the Russian River and Klamath Basin, are extremely dry and are facing substantial water supply and ecosystem challenges; and

**WHEREAS** it is necessary to expeditiously mitigate the effects of the drought conditions within the Russian River Watershed, located within Mendocino and Sonoma counties, to ensure the protection of health, safety, and the environment; and

**WHEREAS** experience in the last drought has demonstrated the value of preparing earlier for potential sustained dry conditions, the need to improve our monitoring and forecasting capabilities, and many other lessons that are captured in the Administration's *Report to the Legislature on the 2012-2016 Drought*; and

**WHEREAS** the State and its many partners have strengthened drought resilience since the last drought including state investments in water management systems, implementation of the Sustainable Groundwater Management Act, establishment of the Safe and Affordable Fund for Equity and Resilience Program, development of the Administration's *Water Resilience Portfolio*, and continued water conservation by Californians whose current statewide urban water use is 16% lower than at the beginning of the last drought; and

**WHEREAS** state agencies have been actively responding to current drought conditions and preparing for the possibility of a third dry year including through convenings of the interagency drought team, which was established at my direction, to organize, focus, and track changing conditions, coordinate state agency responses, and work closely with partners across the State; and

**WHEREAS** under the provisions of Government Code section 8558(b), I find that the conditions caused by the drought conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to appropriately respond; and



**WHEREAS** under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the drought conditions; and

**WHEREAS** to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of, the drought conditions within the Russian River Watershed, and under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Proclamation would prevent, hinder, or delay the mitigation of the effects of the drought conditions of the Russian River Watershed, located within Mendocino and Sonoma counties.

**NOW THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in Mendocino and Sonoma counties due to drought conditions in the Russian River Watershed.

**IT IS HEREBY ORDERED THAT:**

1. To further the success of California's water conservation efforts and increase our drought preparedness, state agencies shall partner with local water districts and utilities to make all Californians aware of drought, and encourage actions to reduce water usage by promoting the Department of Water Resources' Save Our Water campaign (<https://saveourwater.com>) and other water conservation programs.
2. To continue coordination with partners across the State for the potential of prolonged drought impacts, the Department of Water Resources, the State Water Resources Control Board (Water Board), the Department of Fish and Wildlife, and the Department of Food and Agriculture shall work with regional and local governments, including groundwater sustainability agencies, to identify watersheds, communities, public water systems, and ecosystems that may require coordinated state and local actions to address issues stemming from continued dry conditions, to ensure that we can respond to water shortages and protect people, natural resources and economic activity.
3. To continue partnership and coordination with Californian Native American tribes, state agencies shall engage in consultation, collaboration, and communication with California Native American tribes to assist them in necessary preparation and response to drought conditions on tribal lands and potential impacts to cultural and traditional resources within ancestral lands.
4. To prioritize drought response and preparedness resources, the Department of Water Resources, the Water Board, the Department of Fish and Wildlife and the Department of Food and Agriculture, in consultation with the Department of Finance, shall:
  - a. Accelerate funding for water supply enhancement, water conservation, or species conservation projects.
  - b. Identify unspent funds that can be repurposed to enable projects to address drought impacts to people, ecosystems, and economic activities.
  - c. Recommend additional financial support for water resilience infrastructure projects and actions for potential inclusion in the upcoming May Revision.



5. To increase resilience of our water supplies during drought conditions, the Department of Water Resources shall:
  - a. Work with counties to encourage reporting of household water shortages, such as dry residential wells, on the website the Department maintains for that purpose, to enable tracking of drought impacts.
  - b. Work with counties, and groundwater sustainability agencies as appropriate, to help ensure that well drillers submit required groundwater well logs for newly constructed and deepened wells in a timely manner.
  - c. Work with agricultural water suppliers and agricultural water users to provide technical assistance, including implementation of efficient water management practices and use of technology such as the California Irrigation Management Information System.
  - d. Work with urban and agricultural water suppliers to encourage timely submittal by water districts and public posting of urban water management and water shortage contingency plans and agricultural water management and drought plans.
  - e. Accelerate updating the land subsidence data it is providing to support implementation of the Sustainable Groundwater Management Act.
6. To increase resilience of our water systems during drought conditions, the Water Board shall:
  - a. Use its authority, provide technical assistance, and where feasible provide financial assistance, to support regular reporting of drinking water supply well levels and reservoir water levels where the Water Board determines that there is risk of supply failure because of lowering groundwater levels or reservoir levels that may fall below public water system intakes.
  - b. Prioritize the permitting of public water systems that anticipate the need to activate additional supply wells where water quality is a concern and treatment installation needs to proceed to relieve a system's potential supply concerns.
  - c. Provide annual water demand data, information on water right priority, and other communications on water availability on its website.
  - d. Identify watersheds where current diversion data is insufficient to evaluate supply impacts caused by dry conditions, and take actions to ensure prompt submittal of missing data in those watersheds.
7. To address the acutely dry conditions in the Russian River Watershed, the Water Board shall consider:
  - a. Modifying requirements for reservoir releases or diversion limitations in that watershed to ensure adequate, minimal water supplies for critical purposes.
  - b. Adopting emergency regulations to curtail water diversions when water is not available at water rights holders' priority of right or to protect releases of stored water.

For purposes of carrying out this directive, Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are suspended in the counties of Mendocino and Sonoma to the extent necessary to address the impacts of the drought in the Russian River Watershed. The Water Board shall identify the projects

eligible for the suspensions pursuant to this paragraph and maintain on its websites a list of the activities or approvals for which these provisions are suspended.

8. To ensure that equipment and services necessary for drought response in the Russian River Watershed can be procured quickly, the provisions of the Government Code and the Public Contract Code applicable to procurement, state contracts, and fleet assets, including, but not limited to, advertising and competitive bidding requirements, are hereby suspended to the extent necessary to address the effects of the drought in the Russian River Watershed, located within Mendocino and Sonoma counties. Approval of the Department of Finance is required prior to the execution of any contract entered into pursuant to this provision.
9. To increase the resilience of our natural habitats to protect vulnerable species during drought conditions, the Department of Fish and Wildlife shall:
  - a. Evaluate and take actions to protect terrestrial and aquatic species and, wherever possible, work with water users and other parties on voluntary measures to protect species.
  - b. Work to improve State hatcheries and increase water use efficiency on State wildlife areas and ecological reserves to maintain habitat for vulnerable species.
  - c. Respond to human-wildlife interactions related to ongoing dry conditions and increase public messaging and awareness.
  - d. Work with commercial and recreational salmon fishing and tribal representatives to anticipate and develop strategies to mitigate and respond to salmon fishery impacts, with particular emphasis on addressing impacts to salmon fisheries in the Klamath Basin.
10. To support our agricultural economy and food security during drought conditions, the Department of Food and Agriculture shall:
  - a. Provide technical assistance to support conservation planning, on-farm water and energy conservation practices and technologies, including augmenting the State Water Efficiency and Enhancement Program.
  - b. Conduct an economic analysis of drought impacts to agriculture, including land use, jobs, and rural food economies, expanding on existing research done in the last drought to include thorough regional analysis especially in the Central Valley, and in the implementation of the Sustainable Groundwater Management Act and alternative land uses for fallowed land.
  - c. Maintain a web page with drought resources for farmers and ranchers, including the United States Department of Agriculture and other federal and state resources.
  - d. Work with federal agencies to assist Klamath Basin farmers and ranchers contending with reduced water supplies.
11. To ensure the potential impacts of drought on communities are anticipated and proactively addressed, the Department of Water Resources, in coordination with the Water Board, shall develop groundwater management principles and strategies to monitor, analyze, and minimize impacts to drinking water wells.
12. To provide critical information on the different drought conditions across the State, the Department of Water Resources, in consultation with the Department of Fish and Wildlife, the Department of Food and Agriculture,



and the Water Board, shall develop a California Drought Monitor by December 31, 2021, as recommended in the Administration's Report to the Legislature on the 2012-2016 Drought.

13. To prepare for potential salinity issues in the Delta, the Department of Water Resources, in consultation with the Water Board, the Department of Fish and Wildlife, the Delta Stewardship Council, and the Central Valley Flood Protection Board, shall initiate actions necessary to prepare for and address potential Delta salinity issues during prolonged drought conditions.

14. To prepare for potential impacts of drought conditions on species, the Water Board and the Department of Fish and Wildlife shall work with federal agency partners to manage temperature conditions for the preservation of fish in the Sacramento River downstream of Shasta Dam while balancing water supply needs.

This Proclamation is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**I FURTHER DIRECT** that as soon as hereafter possible, this Proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 21st day of April 2021



GAVIN NEWSOM  
Governor of California

**ATTEST:**

DR. SHIRLEY WEBER  
Secretary of State

# RESOLUTION PROCLAIMING A LOCAL EMERGENCY BY THE BOARD OF SUPERVISORS COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF A )  
LOCAL EMERGENCY DUE TO )  
SEVERE DROUGHT CONDITIONS )

RESOLUTION NO. 2021-0290

**WHEREAS**, California's most recent drought spanning from approximately 2012 to 2018 required the proclamation of a Local Emergency by the County of Tulare from February 2014 to November 2019, as well as a Governor's State of Emergency and the combined resources of multiple local, state, and federal agencies, commercial entities, and non-profit organizations to mitigate; and

**WHEREAS**, over 3,000 failed or dry wells – including private domestic, community, and agricultural wells – were reported to Tulare County from 2014 to 2017 as a result of the prior drought, causing significant health, safety, and economic issues for Tulare County residents and businesses; and

**WHEREAS**, well over \$100 million in emergency relief and permanent infrastructure projects were expended to mitigate the effects of the prior drought; and

**WHEREAS**, a hydrological year ("water year") runs from October 1 to September 30 of the following year; and

**WHEREAS**, the current water year beginning October 1, 2020 is, to date, the third-driest on record, with potential to become the driest on record without significant additional precipitation which is unlikely to occur during the traditionally dry months; and

**WHEREAS**, the United States Drought Monitor shows that 94.51% of Tulare County is currently experiencing "Extreme Drought" (D3) conditions and the remaining 5.49% is in "Severe Drought" (D2) conditions, and the County of Tulare anticipates that these conditions will progress to "Exceptional Drought" (D4) conditions as occurred in the prior drought based on the current Southern Sierra snowpack measured at only 15% of historical average for April 1<sup>st</sup>, drastically reduced surface water allocations on the State Water Project and Central Valley Project, and correspondingly low water levels in local reservoirs; and

**WHEREAS**, surface water supply constraints create a demonstrable and unsustainable increase in demand for groundwater which is likely to cause additional dry wells for community water systems, private domestic wells, and agricultural wells, creating economic hardships and conditions of extreme peril to the health and safety of individuals within Tulare County requiring the combined forces of all levels of government to mitigate; and

**WHEREAS**, California Government Code section 8630 empowers the Board of Supervisors to proclaim the existence or threatened existence of a local emergency; and

**WHEREAS**, Section 1-15-1005 of the Tulare County Ordinance Code defines "emergency" to include "the actual or threatened existence of conditions of disaster or of

extreme peril to the safety of persons and property within [Tulare] County caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, earthquake, or other conditions, ... which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of [Tulare] County, requiring the combined forces of other political subdivisions to combat"; and

**NOW, THEREFORE, IT IS HEREBY PROCLAIMED** that a local emergency now exists throughout said Tulare County due to drought which has created conditions of disaster and extreme peril to the safety of persons and property within the County, and that such conditions are or are likely to be beyond the control of the services, personnel, equipment, and/or facilities of this County, thus requiring the combined forces of other political subdivisions to combat; and

**IT IS FURTHER PROCLAIMED** that this local emergency is proclaimed pursuant to the California Emergency Services Act, California Government Code §8550 et seq.; and

**IT IS REQUESTED** that the Governor of the State of California find and proclaim Tulare County to be in a State of Emergency, and make available any and all material and financial support and resources necessary to combat the conditions of disaster, including but not limited to California Disaster Assistance Act funding for emergency protective measures and increased funding to relevant programs of the State Water Resources Control Board and Department of Water Resources; and

**IT IS FURTHER REQUESTED** that the Governor waive and all regulations and statutes that may hinder response to this emergency; and

**IT IS PROCLAIMED AND ORDERED** that during the existence of said local emergency, the powers, functions, and duties of the emergency organization of Tulare County shall be those prescribed by State law, by ordinances and resolutions of Tulare County, and by the Tulare County Operational Area Emergency Operations Plan, as approved by the Board of Supervisors.

UPON MOTION OF SUPERVISOR MICARI, SECONDED BY SUPERVISOR TOWNSEND, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD APRIL 27, 2021, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS MICARI, VANDER POEL, SHUKLIAN, VALERO AND TOWNSEND

NOES: NONE

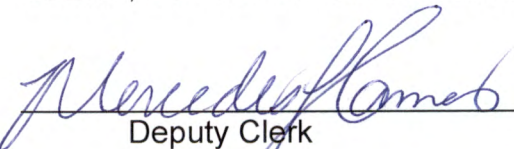
ABSTAIN: NONE

ABSENT: NONE

ATTEST: JASON T. BRITT  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS



BY:

  
Deputy Clerk



**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2022-0002**

**TO ADOPT AN EMERGENCY REGULATION  
TO SUPPLEMENT VOLUNTARY WATER CONSERVATION**

**WHEREAS:**

1. On April 21, May 10, and July 8, 2021, Governor Newsom issued proclamations that a state of emergency exists in a total of 50 counties due to severe drought conditions and directed state agencies to take immediate action to preserve critical water supplies and mitigate the effects of drought and ensure the protection of health, safety, and the environment.
2. On October 19, 2021, Governor Newsom signed a proclamation extending the drought emergency statewide and further urging Californians to reduce their water use.
3. There is no guarantee that winter precipitation will alleviate the current drought conditions.
4. Many Californians have taken bold steps over the years to reduce water use; nevertheless, the severity of the current drought and uncertainty about Water Year 2022 require additional conservation actions from residents and businesses.
5. Water conservation is the easiest, most efficient, and most cost-effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances or that water rationing will be required.
6. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water.

7. Public information and awareness are critical to achieving conservation goals, and the Save Our Water campaign ([SaveOurWater.com](https://www.SaveOurWater.com)), run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response.
8. [SaveWater.CA.Gov](https://www.SaveWater.CA.Gov) is an online tool designed to help save water in communities. This website lets anyone easily report water waste from their phone, tablet, or computer by simply selecting the type of water waste they see, typing in the address where the waste is occurring, and clicking send. These reports are filed directly with the State Water Resources Control Board (State Water Board or Board) and relevant local water supplier.
9. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated.
10. On October 19, 2021, the Governor suspended the environmental review required by the California Environmental Quality Act to allow State Water Board-adopted drought conservation emergency regulations and other actions to take place quickly to respond to emergency conditions.
11. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”
12. On November 30, 2021, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board’s regularly scheduled January 4, 2022 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations.
13. The emergency regulation sets a minimum standard that many communities are already doing more but not everyone is taking these low-cost, easy to implement actions that can save significant amounts of water during a drought emergency.

14. Disadvantaged communities may require assistance in increasing water conservation, and state and local agencies should look for opportunities to provide assistance in promoting water conservation, including but not limited to translation of regulation text and dissemination of water conservation announcements into languages spoken by at least 10 percent of the people who reside in a water supplier's service area, such as in newspaper advertisements, bill inserts, website homepage, social media, and notices in public libraries.
15. The Board directs staff to consider the following in pursuing any enforcement of section 995, subdivision (b)(1)(A)-(F): before imposing monetary penalties, staff shall provide one or more warnings; monetary penalties must be based on an ability to pay determination, consider allowing a payment plan of at least 12 months, and shall not result in a tax lien; and Board enforcement shall not result in shutoff.
16. The Board encourages entities other than Board staff that consider any enforcement of this regulation to apply these same factors identified in resolved paragraph 15. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulation adopted by this resolution, and local agencies retain their enforcement discretion in enforcing the regulation, to the extent authorized, and may develop their own progressive enforcement practices to encourage conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 995, as appended to this resolution as an emergency regulation.
2. State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval.
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or designee may make such changes.

4. This regulation shall remain in effect for one year after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions or unless the State Water Board renews the regulation due to continued drought conditions, as described in Water Code section 1058.5.
5. The State Water Board directs State Water Board staff to work with the Department of Water Resources and the Save Our Water campaign to disseminate information regarding the emergency regulations.
6. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation.

### **CERTIFICATION**

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 4, 2022.

AYE: Vice Chair Dorene D'Adamo  
Board Member Sean Maguire  
Board Member Laurel Firestone  
Board Member Nichole Morgan

NAY: None

ABSENT: Chair E. Joaquin Esquivel

ABSTAIN: None

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board

## ADOPTED TEXT OF EMERGENCY REGULATION

### **Title 23. Waters**

#### **Division 3. State Water Resources Control Board and Regional Water Quality Control Boards**

#### **Chapter 3.5. Urban Water Use Efficiency and Conservation**

#### **Article 2. Prevention of Drought Wasteful Water Uses**

##### § 995. Wasteful and Unreasonable Water Uses.

(a) As used in this section:

(1) "Turf" has the same meaning as in section 491.

(2) "Incidental runoff" means unintended amounts (volume) of runoff, such as unintended, minimal overspray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility or system design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.

(b)(1) To prevent the unreasonable use of water and to promote water conservation, the use of water is prohibited as identified in this subdivision for the following actions:

(A) The application of potable water to outdoor landscapes in a manner that causes more than incidental runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(B) The use of a hose that dispenses water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(C) The use of potable water for washing sidewalks, driveways, buildings, structures, patios, parking lots, or other hard surfaced areas, except in cases where health and safety are at risk;

(D) The use of potable water for street cleaning or construction site preparation purposes, unless no other method can be used or as needed to protect the health and safety of the public;

(E) The use of potable water for decorative fountains or the filling or topping-off of decorative lakes or ponds, with exceptions for those decorative fountains, lakes, or ponds that use pumps to recirculate water and only require refilling to replace evaporative losses;

(F) The application of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall of at least one fourth of one inch of rain. In determining whether measurable rainfall of at least fourth of one inch of rain occurred in a given area, enforcement may be based on records of the National Weather Service, the closest CIMIS station to the parcel, or any other reliable source of rainfall data available to the entity undertaking enforcement of this subdivision; and

(G) The use of potable water for irrigation of ornamental turf on public street medians.



(2) Notwithstanding subdivision (b)(1), the use of water is not prohibited by this section to the extent necessary to address an immediate health and safety need. This may include, but is not limited to, the use of potable water in a fountain or water feature when required to be potable because human contact is expected to occur.

(c)(1) To prevent the unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

(A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivisions (a) and (b) of the Civil Code;

(B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code; or

(C) Requiring an owner of a separate interest upon which water-efficient landscaping measures have been installed in response to a declared drought emergency, as described in section 4735, subdivisions (c) and (d) of the Civil Code, to reverse or remove the water-efficient landscaping measures upon the conclusion of the state of emergency.

(2) As used in this subdivision:

(A) "Architectural or landscaping guidelines or policies" includes any formal or informal rules other than the governing documents of a common interest development.

(B) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.

(C) "Common interest development" has the same meaning as in section 4100 of the Civil Code.

(D) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.

(E) "Governing documents" has the same meaning as in section 4150 of the Civil Code.

(F) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (c)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

(d) To prevent the unreasonable use of water and to promote water conservation, any city, county, or city and county is prohibited from imposing a fine under any local maintenance ordinance or other relevant ordinance as prohibited by section 8627.7 of the Government Code.

(e) The taking of any action prohibited in subdivision (b), (c) or (d) is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) A decision or order issued under this section by the Board or an officer or employee of the Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, 4150, 4185, and 4735, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 491, and 1122, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

EXECUTIVE ORDER N-7-22

**WHEREAS** on April 12, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, I proclaimed states of emergency that continue today and exist across all the counties of California, due to extreme and expanding drought conditions; and

**WHEREAS** climate change continues to intensify the impacts of droughts on our communities, environment, and economy, and California is in a third consecutive year of dry conditions, resulting in continuing drought in all parts of the State; and

**WHEREAS** the 21st century to date has been characterized by record warmth and predominantly dry conditions, and the 2021 meteorological summer in California and the rest of the western United States was the hottest on record; and

**WHEREAS** since my October 19, 2021 Proclamation, early rains in October and December 2021 gave way to the driest January and February in recorded history for the watersheds that provide much of California's water supply; and

**WHEREAS** the ongoing drought will have significant, immediate impacts on communities with vulnerable water supplies, farms that rely on irrigation to grow food and fiber, and fish and wildlife that rely on stream flows and cool water; and

**WHEREAS** the two largest reservoirs of the Central Valley Project, which supplies water to farms and communities in the Central Valley and the Santa Clara Valley and provides critical cold-water habitat for salmon and other anadromous fish, have water storage levels that are approximately 1.1 million acre-feet below last year's low levels on this date; and

**WHEREAS** the record-breaking dry period in January and February and the absence of significant rains in March have required the Department of Water Resources to reduce anticipated deliveries from the State Water Project to 5 percent of requested supplies; and

**WHEREAS** delivery of water by bottle or truck is necessary to protect human safety and public health in those places where water supplies are disrupted; and

**WHEREAS** groundwater use accounts for 41 percent of the State's total water supply on an average annual basis but as much as 58 percent in a critically dry year, and approximately 85 percent of public water systems rely on groundwater as their primary supply; and

**WHEREAS** coordination between local entities that approve permits for new groundwater wells and local groundwater sustainability agencies is important to achieving sustainable levels of groundwater in critically overdrafted basins; and

**WHEREAS** the duration of the drought, especially following a multiyear drought that abated only five years ago, underscores the need for California to redouble near-, medium-, and long-term efforts to adapt its water management and delivery systems to a changing climate, shifting precipitation patterns, and water scarcity; and

**WHEREAS** the most consequential, immediate action Californians can take to extend available supplies is to voluntarily reduce their water use by 15 percent from their 2020 levels by implementing the commonsense measures identified in operative paragraph 1 of Executive Order N-10-21 (July 8, 2021); and

**WHEREAS** to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of the drought conditions, and under Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Proclamation would prevent, hinder, or delay the mitigation of the effects of the drought conditions.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

1. The orders and provisions contained in my April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021 Proclamations remain in full force and effect, except as modified by those Proclamations and herein. State agencies shall continue to implement all directions from those Proclamations and accelerate implementation where feasible.
2. To help the State achieve its conservation goals and ensure sufficient water for essential indoor and outdoor use, I call on all Californians to strive to limit summertime water use and to use water more efficiently indoors and out. The statewide Save Our Water conservation campaign at [SaveOurWater.com](https://www.SaveOurWater.com) provides simple ways for Californians to reduce water use in their everyday lives. Furthermore, I encourage Californians to understand and track the amount of water they use and measure their progress toward their conservation goals.
3. By May 25, 2022, the State Water Resources Control Board (Water Board) shall consider adopting emergency regulations that include all of the following:
  - a. A requirement that each urban water supplier, as defined in section 10617 of the Water Code, shall submit to the Department of Water Resources a preliminary annual water supply and demand assessment consistent with section 10632.1 of the Water Code no later than June 1, 2022, and submit a final annual water



supply and demand assessment to the Department of Water Resources no later than the deadline set by section 10632.1 of the Water Code;

- b. A requirement that each urban water supplier that has submitted a water shortage contingency plan to the Department of Water Resources implement, at a minimum, the shortage response actions adopted under section 10632 of the Water Code for a shortage level of up to twenty percent (Level 2), by a date to be set by the Water Board; and
- c. A requirement that each urban water supplier that has not submitted a water shortage contingency plan to the Department of Water Resources implement, at a minimum, shortage response actions established by the Water Board, which shall take into consideration model actions that the Department of Water Resources shall develop for urban water supplier water shortage contingency planning for Level 2, by a date to be set by the Water Board.

To further conserve water and improve drought resiliency if the drought lasts beyond this year, I encourage urban water suppliers to conserve more than required by the emergency regulations described in this paragraph and to voluntarily activate more stringent local requirements based on a shortage level of up to thirty percent (Level 3).

- 4. To promote water conservation, the Department of Water Resources shall consult with leaders in the commercial, industrial, and institutional sectors to develop strategies for improving water conservation, including direct technical assistance, financial assistance, and other approaches. By May 25, 2022, the Water Board shall consider adopting emergency regulations defining "non-functional turf" (that is, a definition of turf that is ornamental and not otherwise used for human recreation purposes such as school fields, sports fields, and parks) and banning irrigation of non-functional turf in the commercial, industrial, and institutional sectors except as it may be required to ensure the health of trees and other perennial non-turf plantings.
- 5. In order to maximize the efficient use of water and to preserve water supplies critical to human health and safety and the environment, Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are hereby suspended, with respect to the directives in paragraphs 3 and 4 of this Order and any other projects and activities for the purpose of water conservation to the extent necessary to address the impacts of the drought, and any permits necessary to carry out such projects or activities. Entities that desire to conduct activities under this suspension, other than the directives in paragraphs 3 and 4 of this Order, shall first request that the Secretary of the Natural Resources Agency make a determination that the proposed activities are eligible to be conducted under this suspension. The Secretary shall use sound discretion in applying this Executive Order to ensure that the suspension serves the purpose of accelerating conservation projects that are necessary to address impacts of the drought, while at the same time



protecting public health and the environment. The entities implementing these directives or conducting activities under this suspension shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.

6. To support voluntary approaches to improve fish habitat that would require change petitions under Water Code section 1707 and either Water Code sections 1425 through 1432 or Water Code sections 1725 through 1732, and where the primary purpose is to improve conditions for fish, the Water Board shall expeditiously consider petitions that add a fish and wildlife beneficial use or point of diversion and place of storage to improve conditions for anadromous fish. California Code of Regulations, title 23, section 1064, subdivisions (a)(1)(A)(i)-(ii) are suspended with respect to any petition that is subject to this paragraph.
7. To facilitate the hauling of water for domestic use by local communities and domestic water users threatened with the loss of water supply or degraded water quality resulting from drought, any ordinance, regulation, prohibition, policy, or requirement of any kind adopted by a public agency that prohibits the hauling of water out of the water's basin of origin or a public agency's jurisdiction is hereby suspended. The suspension authorized pursuant to this paragraph shall be limited to the hauling of water by truck or bottle to be used for human consumption, cooking, or sanitation in communities or residences threatened with the loss of affordable safe drinking water. Nothing in this paragraph limits any public health or safety requirement to ensure the safety of hauled water.
8. The Water Board shall expand inspections to determine whether illegal diversions or wasteful or unreasonable use of water are occurring and bring enforcement actions against illegal diverters and those engaging in the wasteful and unreasonable use of water. When access is not granted by a property owner, the Water Board may obtain an inspection warrant pursuant to the procedures set forth in Title 13 (commencing with section 1822.50) of Part 3 of the Code of Civil Procedure for the purposes of conducting an inspection pursuant to this directive.
9. To protect health, safety, and the environment during this drought emergency, a county, city, or other public agency shall not:
  - a. Approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act and classified as medium- or high-priority without first obtaining written verification from a Groundwater Sustainability Agency managing the basin or area of the basin where the well is proposed to be located that groundwater extraction by the proposed well would not be inconsistent with any sustainable groundwater management program established in any applicable Groundwater Sustainability Plan adopted by that Groundwater Sustainability

Agency and would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan; or

- b. Issue a permit for a new groundwater well or for alteration of an existing well without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure.

This paragraph shall not apply to permits for wells that will provide less than two acre-feet per year of groundwater for individual domestic users, or that will exclusively provide groundwater to public water supply systems as defined in section 116275 of the Health and Safety Code.

10. To address household or small community drinking water shortages dependent upon groundwater wells that have failed due to drought conditions, the Department of Water Resources shall work with other state agencies to investigate expedited regulatory pathways to modify, repair, or reconstruct failed household or small community or public supply wells, while recognizing the need to ensure the sustainability of such wells as provided for in paragraph 9.
11. State agencies shall collaborate with tribes and federal, regional, and local agencies on actions related to promoting groundwater recharge and increasing storage.
12. To help advance groundwater recharge projects, and to demonstrate the feasibility of projects that can use available high water flows to recharge local groundwater while minimizing flood risks, the Water Board and Regional Water Quality Control Boards shall prioritize water right permits, water quality certifications, waste discharge requirements, and conditional waivers of waste discharge requirements to accelerate approvals for projects that enhance the ability of a local or state agency to capture high precipitation events for local storage or recharge, consistent with water right priorities and protections for fish and wildlife. For the purposes of carrying out this paragraph, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division, and Chapter 3 (commencing with section 85225) of Part 3 of Division 35 of the Water Code and regulations adopted pursuant thereto are hereby suspended to the extent necessary to address the impacts of the drought. This suspension applies to (a) any actions taken by state agencies, (b) any actions taken by local agencies where the state agency with primary responsibility for the implementation of the directives concurs that local action is required, and (c) permits necessary to carry out actions under (a) or (b). The entities implementing these directives shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.
13. With respect to recharge projects under either Flood-Managed Aquifer Recharge or the Department of Water Resources Sustainable



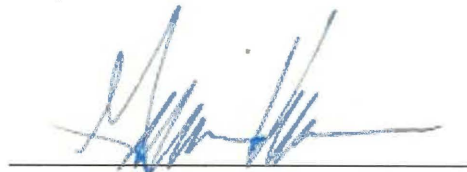
Groundwater Management Grant Program occurring on open and working lands to replenish and store water in groundwater basins that will help mitigate groundwater conditions impacted by drought, for any (a) actions taken by state agencies, (b) actions taken by a local agency where the Department of Water Resources concurs that local action is required, and (c) permits necessary to carry out actions under (a) or (b), Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are hereby suspended to the extent necessary to address the impacts of the drought. The entities implementing these directives shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.

14. To increase resilience of state water supplies during prolonged drought conditions, the Department of Water Resources shall prepare for the potential creation and implementation of a multi-year transfer program pilot project for the purpose of acquiring water from willing partners and storing and conveying water to areas of need.
15. By April 15, 2022, state agencies shall submit to the Department of Finance for my consideration proposals to mitigate the worsening effects of severe drought, including emergency assistance to communities and households and others facing water shortages as a result of the drought, facilitation of groundwater recharge and wastewater recycling, improvements in water use efficiency, protection of fish and wildlife, mitigation of drought-related economic or water-supply disruption, and other potential investments to support short- and long-term drought response.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 28th day of March 2022.



GAVIN NEWSOM  
Governor of California

**ATTEST:**

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SHIRLEY N. WEBER, PH.D.  
Secretary of State

**State of California  
Office of Administrative Law**

In re:  
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 996

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

Government Code Sections 11346.1 and  
11349.6

OAL Matter Number: 2022-0606-03

OAL Matter Type: Emergency (E)

This emergency action by the State Water Resources Control Board adopts a new regulation which requires urban water suppliers to submit preliminary supply and demand assessments to the Department of Water Resources and to implement Level 2 demand reduction actions (actions intended to result in a 10 to 20 percent savings). The regulation bans the irrigation of non-functional turf with potable water in commercial, industrial, and institutional sectors and establishes that such irrigation is an infraction punishable by a fine of up to five hundred dollars for each day in which the violation occurs pursuant to Water Code section 1058.5(d).

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code. Pursuant to Water Code section 1058.5(b), the Finding of Emergency in this matter was exempt from Office of Administrative Law Review.

This emergency regulatory action is effective on 6/10/2022 and, pursuant to Water Code section 1058.5(c), will expire on 6/10/2023. The Certificate of Compliance for this action is due no later than 6/9/2023.

Date: June 10, 2022

  
Dale Mentink  
Assistant Chief Counsel

For: Kenneth J. Pogue  
Director

Original: Eileen Sobeck, Executive  
Director

Copy: Garrett Lenahan

## EMERGENCY

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2022</b>	EMERGENCY NUMBER <b>-0606-03E</b>
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For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW  
2022 JUN 6 PM 3:18

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

State Water Resources Control Board

AGENCY FILE NUMBER (If any)

ENDORSED - FILED  
in the office of the Secretary of State  
of the State of California

JUN 10 2022

2:06 PM

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE	

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Water Demand Reduction Emergency Regulation	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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## 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 996
	AMEND
TITLE(S) 23	REPEAL

## 3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Water Code Section 1058.5</u>	

## 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

## 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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## 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Garrett Lenahan	TELEPHONE NUMBER (916) 341-5179	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Eric Oppenheimer

Digitally signed by Eric Oppenheimer  
Date: 2022.06.06 14:24:44 -0700

DATE

6/6/2022

TYPED NAME AND TITLE OF SIGNATORY

Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board

For use by Office of Administrative Law (OAL) only

AUTHORIZED FOR FILING AND PRINTING

JUN 10 2022

Office of Administrative Law



## ADOPTED EMERGENCY REGULATION TEXT

### Title 23. Waters

#### Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

#### Chapter 3.5. Urban Water Use Efficiency and Conservation

#### Article 2. Prevention of Drought Wasteful Water Uses

### § 996. Urban Drought Response Actions

#### (a) As used in this section:

(1) "Commercial, industrial and institutional" refers to commercial water users, industrial water users, and institutional water users as respectively defined in Water Code, section 10608.12, subdivisions (e), (i), and (j), and includes homeowners' associations, common interest developments, community service organizations, and other similar entities but does not include the residences of these entities' members or separate interests.

(2) "Common interest development" has the same meaning as in section 4100 of the Civil Code.

(3) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.

(4) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.

(5) "Non-functional turf" means turf that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. Non-functional turf does not include sports fields and turf that is regularly used for human recreational purposes or for civic or community events.

(6) "Plant factor" has the same meaning as in section 491.

(7) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(8) "Turf" has the same meaning as in section 491.

(9) "Urban water supplier" has the same meaning as Water Code section 10617.

(10) "Water shortage contingency plan" means the plan required by Water Code section 10632.

(b) Each urban water supplier shall submit to the Department of Water Resources a preliminary annual water supply and demand assessment consistent with section 10632.1

of the Water Code no later than June 1, 2022 or the effective date of this section, whichever comes later, and submit a final annual water supply and demand assessment to the Department of Water Resources no later than the deadline set by section 10632.1 of the Water Code.

(c) (1) Each urban water supplier that has submitted a water shortage contingency plan to the Department of Water Resources shall implement by June 10, 2022, at a minimum, all demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2).

(2) Notwithstanding subdivision (c)(1), urban water suppliers shall not be required to implement new residential connection moratoria pursuant to this section.

(3) Notwithstanding subdivision (c)(1), an urban water supplier may implement the actions identified in subdivision (d) in lieu of implementing the demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code section 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2), provided the supplier meets all of the following:

(i) The supplier's annual water supply and demand assessment submitted to the Department of Water Resources demonstrates an ability to maintain reliable supply until September 30, 2023.

(ii) The supplier does not rely on, for any part of its supply, the Colorado River, State Water Project, or Central Valley Project, and no more than ten (10) percent of its supply comes from critically overdrafted groundwater basins as designated by the Department of Water Resources.

(iii) The supplier's average number of gallons of water used per person per day by residential customers for the year 2020 is below 55 gallons, as reported to the Board in the Electronic Annual Report.

(d) Each urban water supplier that has not submitted a water shortage contingency plan to the Department of Water Resources shall, by June 10, 2022, and continuing until the supplier has implemented all demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2), implement at a minimum the following actions:

(1) Initiate a public information and outreach campaign for water conservation and promptly and effectively reach the supplier's customers, using efforts such as email, paper mail, bill inserts, customer app notifications, news articles, websites, community events, radio and television, billboards, and social media.

(2) Implement and enforce a rule or ordinance limiting landscape irrigation with potable water to no more than two (2) days per week and prohibiting landscape irrigation with potable water between the hours of 10:00 a.m. and 6:00 p.m.

(3) Implement and enforce a rule or ordinance banning, at a minimum, the water uses prohibited by section 995. Adoption of a rule or ordinance is not required if the supplier has authority to enforce, as infractions, the prohibitions in section 995 and takes enforcement against violations.

(e) (1) To prevent the unreasonable use of water and to promote water conservation, the use of potable water is prohibited for the irrigation of non-functional turf at commercial, industrial, and institutional sites.

(2) Notwithstanding subdivision (e)(1), the use of water is not prohibited by this section to the extent necessary to ensure the health of trees and other perennial non-turf plantings or to the extent necessary to address an immediate health and safety need.

(3) Notwithstanding subdivision (e)(1), an urban water supplier may approve a request for continued irrigation of non-functional turf where the user certifies that the turf is a low water use plant with a plant factor of 0.3 or less, and demonstrates the actual use is less than 40% of reference evapotranspiration.

(f) The taking of any action prohibited in subdivision (e) is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(g) A decision or order issued under this section by the Board, or an officer or employee of the Board, is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, and 4185, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 377, 491, 1058.5, 1122, 10608.12, 10617, 10632, and 10632.1, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976



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## DRINKING WATER CONSTRUCTION LOAN

AGREEMENT NO. SWRCB0000000000D2002017

by and between

CITY OF PORTERVILLE ("Recipient")

and

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD ("State Water Board")



for the purpose of the

AKIN/CENTRAL WATER CONSOLIDATION PROJECT  
5410010-018C AND 5400655-001C ("Project")

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- Section 116760 et seq. of the Health and Safety Code and Resolution Nos. 2019-0065 and 2020-0022.

PROJECT FUNDING AMOUNT: \$4,787,664  
PRINCIPAL FORGIVENESS COMPONENT: \$4,787,664

ESTIMATED REASONABLE PROJECT COST: \$4,787,664  
ELIGIBLE WORK START DATE: JULY 1, 2016  
ELIGIBLE CONSTRUCTION START DATE: SEPTEMBER 22, 2020  
CONSTRUCTION COMPLETION DATE: OCTOBER 1, 2023  
FINAL REIMBURSEMENT REQUEST DATE: APRIL 1, 2024  
RECORDS RETENTION END DATE: OCTOBER 1, 2059

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1. The State Water Board and the Recipient mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement, including the following Exhibits, which are attached hereto or are incorporated by reference:
  - Exhibit A – Scope of Work and Schedule
  - Exhibit B – Specific Funding Provisions
  - Exhibit C – GENERAL TERMS AND CONDITIONS 2019-NOV
  - Exhibit D – Special Conditions
2. The following documents are also incorporated by reference:
  - the Drinking Water System Permit No. 03-12-06P-004;
  - the Davis-Bacon requirements found at:  
[https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/docs/davisbacon/2020\\_dwsrf\\_governmental\\_entities.pdf](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/davisbacon/2020_dwsrf_governmental_entities.pdf)
3. Party Contacts during the term of this Agreement are:

State Water Board		City of Porterville	
Section:	Division of Financial Assistance		
Name:	Pete Stamas, Project Manager	Name:	Monte Reyes, Mayor
Address:	1001 I Street, 16th Floor	Address:	291 North Main Street
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Porterville, CA 93257
Phone:	(916) 552-9983	Phone:	(559) 782-7499
Fax:		Fax:	
Email:	Pete.Stamas@waterboards.ca.gov	Email:	montereyes@portervilleca.gov

Each party may change its contact upon written notice to the other party. While Party Contacts are contacts for day-to-day communications regarding Project work, the Recipient must provide official communications and notices to the Division's Deputy Director.

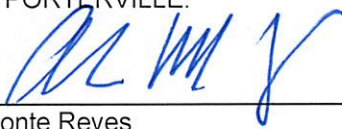
4. Conditions precedent to this Agreement are set forth as follows:
  - (a) The Recipient must deliver an opinion of general counsel satisfactory to the State Water Board's counsel dated on or after the date that the Recipient signs this Agreement.
  - (b) The Recipient must deliver to the Division a resolution authorizing this Agreement and identifying its authorized representative by title.
  - (c) The Recipient must deliver to the Division a resolution certifying that its decision-making body reviewed and considered the Mitigated Negative Declaration filed by the State Water Board for the Akin Water Company Water Supply Project together with the Mitigation Monitoring and Reporting Program and reached its own conclusions on whether and how to approve the Project, pursuant to Section 15050 (b) of the CEQA Guidelines.
5. The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement, which shall be at least until the Records Retention End Date:
  - (a) The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.
  - (b) The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.



- (c) None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.
- (d) The Recipient is in compliance with all State Water Board funding agreements to which it is a party.

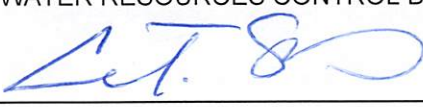
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CITY OF PORTERVILLE:

By:   
Name: Monte Reyes  
Title: Mayor

Date: 6/1/2021

STATE WATER RESOURCES CONTROL BOARD:

By:   
Name: Leslie Laudon  
Title: Deputy Director *for*  
Division of Financial Assistance

Date: 7/15/21

## EXHIBIT A – SCOPE OF WORK AND SCHEDULE

### A.1. PROJECT PURPOSE AND DESCRIPTION.

The Project is for the benefit of the Recipient and has a Useful Life of at least 40 years. The funding under this Agreement shall be used to provide the residents of two small disadvantaged communities currently served by Akin Water Company (Akin WC) and Central Mutual Water Company (Central MWC) with a sustainable source of safe drinking water.

### A.2. SCOPE OF WORK.

The Recipient agrees to do the following: consolidate with Akin WC and Central MWC. Recipient also agrees to construct a new production well, estimated to produce between 1,300 and 1,800 gallons per minute, to provide the needed source capacity for the consolidation of Akin WC, the consolidation of Central MWC, as well as satisfy the remainder of East Porterville residents' capacity needs.

The Recipient agrees to do the following for the Akin WC service area: construct approximately 1,500 feet of 8-inch waterline to provide water service to each customer currently served by Akin WC; install approximately three new fire hydrants and twenty-six new service laterals and meters; and destroy Akin WC's two existing wells.

The Recipient agrees to do the following for the Central MWC service area: construct approximately 1,400 feet of 6-inch waterline to provide water service to each customer currently served by Central MWC; install approximately four new fire hydrants and thirty-four new service laterals and meters; and destroy Central MWC's existing well.

Upon Completion of Construction, the Recipient must expeditiously initiate Project operations.

### A.3 SIGNAGE

The Recipient must place a professionally prepared sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and must maintain the sign in good condition for the duration of Project implementation. The sign may include another agency's required information and must include, prominently displayed, the following disclosure statement and color logos (available from the Division):



"Funding for this project has been provided in full or in part under the Drinking Water State Revolving Fund, which may include capitalization funding from the United States Environmental Protection Agency through an agreement with the State Water Resources Control Board."

### A.4 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Project Manager may adjust the dates in the "Estimated Due Date" column of this table, but Critical Due Date adjustments will require an amendment to this Agreement. The Recipient

must complete and submit all work in time to be approved by the Division prior to the Project Completion Date. As applicable for specific submittals, the Recipient must plan adequate time to solicit, receive, and address comments prior to submitting the final submittal. The Recipient must submit the final Reimbursement Request prior to the Final Reimbursement Request Date set forth on the Cover Page.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
<b>EXHIBIT A – SCOPE OF WORK</b>			
A.	ADDITIONAL SUBMITTAL(S) TO DIVISION		
1.	Final Plans and Specifications		September 1, 2021
2.	Final Budget Approval Package		February 1, 2022
3.	Completion of Construction	October 1, 2023	
B.	REPORTS		
1.	Progress Reports		Quarterly
2.	Final Inspection and Certification		October 1, 2023
3.	Project Completion Report		December 1, 2023
4.	As Needed Reports		TBD
<b>EXHIBIT B – REIMBURSEMENTS, BUDGET DETAIL, AND REPORTING PROVISIONS</b>			
A.	REIMBURSEMENTS		
1.	Reimbursement Requests		Quarterly
2.	Final Reimbursement Request	April 1, 2024	

The Recipient must award the prime construction contract and begin construction timely. The Recipient must deliver any request for extension of the Completion of Construction Date no less than 90 days prior to the Completion of Construction Date.

#### A.5 PROGRESS REPORTS.

The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement. The Recipient must provide a progress report with each Reimbursement Request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibit B. A progress report must contain the following information:

- 1) A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
- 2) A description of compliance with environmental requirements;
- 3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
- 4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

**A.6 SPECIAL REPORTS.**

(a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate District Office on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must include the following:

- i. Description of the Project,
- ii. Description of the water quality problem the Project sought to address,
- iii. Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

(b) If the Recipient fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold reimbursements under this Agreement or other agreements, and begin administrative proceedings.

(c) The Recipient must report Disadvantaged Business Enterprise (DBE) utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10) calendar days following October 1 until such time as the "Notice of Completion" is issued. The Recipient must comply with 40 CFR § 33.301 and require its contractors and subcontractors on the Project to comply.

**A.7 FINAL PROJECT INSPECTION AND CERTIFICATION.**

Upon completion of the Project, the Recipient must provide for a final inspection and must certify that the Project has been completed in accordance with this Agreement, any final plans and specifications submitted to the State Water Board, and any amendments or modifications thereto. If the Project involves the planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, or other professionals, the final inspection and certification must be conducted by a California Registered Civil Engineer or other appropriate California registered professional. The results of the final inspection and certification must be submitted to the Project Manager.



## EXHIBIT B – FUNDING AMOUNTS

### B.1 ESTIMATED REASONABLE COST AND PROJECT FUNDS.

The estimated reasonable cost of the total Project is set forth on the Cover Page of this Agreement and is greater than or equal to the funding anticipated to be provided by the State Water Board under this Agreement. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

### B.2 RECIPIENT CONTRIBUTIONS.

(a) The loan component of this Agreement is forgiven. The estimated amount of principal that will be due to the State Water Board from the Recipient under this Agreement is Zero dollars and no cents (\$0.00).

(b) The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

(c) If the Recipient recovers funds from any responsible parties, the Recipient shall immediately notify the Division. The amount of this Agreement may be reduced to reflect the recovered funds.

### B.3 VERIFIABLE DATA.

Upon request by the Division, the Recipient must submit verifiable data to support deliverables specified in the Scope of Work. The Recipient's failure to comply with this requirement may be construed as a material breach of this Agreement.

### B.4 BUDGET COSTS

Budget costs are contained in the Summary Project Cost Table below:

LINE ITEM	TOTAL ESTIMATED COST	PROJECT FUNDING AMOUNT
Construction	\$3,194,720	\$3,194,720
Pre-Purchased Material/Equipment	\$0	\$0
Purchase of Land	\$0	\$0
Contingency	\$638,944	\$638,944
Allowances (Soft Costs)	\$954,000	\$954,000
TOTAL	\$4,787,664	\$4,787,664

The Division's Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts.

The Recipient is prohibited from requesting disbursement amounts that represent Recipient's mark-ups to costs invoiced or otherwise requested by consultants or contractors.

Reasonable indirect costs may be allowable upon approval by the Division.

### B.5 LINE ITEM ADJUSTMENTS.

Upon written request by the Recipient, the Division may adjust the line items of the Summary Project Cost Table at the time of Division's Final Budget Approval. Upon written request by the Recipient, the Division may also adjust the line items of the Summary Project Cost Table as well as the detailed budget at the time of Recipient's submittal of its final claim. Any line item adjustments to the Summary Project Cost Table that are due to a change in scope of work will require an Agreement amendment. The sum of adjusted line items in both the Summary

Project Cost Table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

Under no circumstances may the sum of line items in the budget approved through the Final Budget Approval process exceed the Project Funding Amount. Any increase in the Project Funding Amount will require an Agreement amendment.

#### B.6 REIMBURSEMENT PROCEDURE.

(a) Except as may be otherwise provided in this Agreement, reimbursements will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate reimbursement of any eligible incurred costs as specified below through submission to the State Water Board of the Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed.
2. The Recipient must submit a Reimbursement Request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late Reimbursement Requests may not be honored.
3. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under Exhibit A.
4. The Recipient must not request reimbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of reimbursement. Supporting documentation (e.g., receipts) must be submitted with each Reimbursement Request. The amount requested for Recipient's administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Reimbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Reimbursement Request. Upon request by the Division, supporting documents for professional and administrative services must include the employees' names, classifications, labor rates, hours worked, and descriptions of the tasks performed. Reimbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
5. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future reimbursements.
6. The Recipient shall not request a reimbursement unless that Project Cost is allowable, reasonable, and allocable.
7. Notwithstanding any other provision of this Agreement, no reimbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.

(b) Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Project Funding Amount until Project Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.

(c) Except as follows, construction costs and disbursements are not available until after the Division has approved the final budget form submitted by the Recipient. The Deputy Director of the Division may authorize the disbursement of up to ten percent (10%) of Project Funds for the reimbursement of eligible construction costs and pre-purchased materials prior to Division approval of the final budget form submitted by the Recipient. All other construction costs are not eligible for reimbursement until after this the Division has approved the final budget form submitted by the Recipient. Construction costs incurred prior to the Eligible Construction Start Date are not eligible for reimbursement.

#### B.7 REVERTING FUNDS AND DISENCUMBRANCE.

In the event the Recipient does not submit Reimbursement Requests for all funds encumbered under this Agreement by the Final Reimbursement Request Date, any remaining funds revert to the State. The State Water Board may notify the Recipient that the project file is closed, and any remaining balance will be disencumbered and unavailable for further use under the Agreement.

EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV

GENERAL TERMS AND CONDITIONS 2019-NOV is incorporated by reference and is posted at  
[https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/general\\_terms.html](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/general_terms.html)

## EXHIBIT D – SPECIAL CONDITIONS

1. Notwithstanding Exhibit C, the following terms have no meaning for the purposes of this Agreement:
  - Work Completion
  - Work Completion Date
2. Each capitalized term used in this Agreement has the following meaning:
  - "Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.
  - "Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.
  - "Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete, and is established on the Cover Page of this Agreement.
  - "District Office" means District Office of the Division of Drinking Water of the State Water Board.
  - "Division of Drinking Water" means the Division of Drinking Water of the State Water Board.
  - "Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.
  - "Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.
  - "Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.
  - "Event of Default" means, in addition to the meanings set forth in Exhibit C, the occurrence of any of the following events:
    - a) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
    - b) Failure to operate the System or the Project without the Division's approval;
  - "Final Budget Approval" means the Division-approved final budget for the Project, as set forth in Exhibit B.
  - "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.
  - "Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.
  - "Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.
  - "Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all



reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

- "Reimbursement Request" means the Recipient's request for Project Funds from the State Water Board as set forth in Exhibit B.
- "Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.
- "System" means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the City of Porterville, or its successor agency, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.
- "Useful Life" means the economically useful life of the Project beginning at Project Completion and is set forth in Exhibit A.

3. Acknowledgements.

The Recipient must include the following acknowledgement in any document, written report, or brochure to be shared with the general public prepared in whole or in part pursuant to this Agreement:

"Funding for this project has been provided in full or in part under the Drinking Water State Revolving Fund, which may include capitalization funding from the United States Environmental Protection Agency through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

4. Rates and Charges. The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are in an amount necessary to meet its obligations under this Agreement. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.
5. [RESERVED]
6. [RESERVED].

7. Environmental/Technical Special Conditions

Technical:

1. The Recipient shall submit its professional engineering services contract to the Division prior to disbursement of funds for costs incurred under such contract.
2. The Recipient shall not solicit bids, award a contract, or commence construction activities until final plans and specifications are approved by the Division of Drinking Water Tulare District Office Engineer and the Project Manager.
3. The Recipient must submit final consolidation agreements with Akin WC and Central MWC, in a form satisfactory to the Division, and receive written approval from the Project Manager to proceed before Project Funds may be disbursed for any Project Costs under the Agreement.
4. Upon completion of the Project the Recipient shall submit a water supply permit amendment request for review to the Division of Drinking Water Tulare District Office.

Environmental:

1. The documents identified below are incorporated by reference and the Recipient shall comply with the conditions and recommendations therein:
  - a. The Mitigation Monitoring and Reporting Program adopted by the State Water Board on June 16, 2016 for the Project. The Recipient shall implement all mitigation measures therein.
  - b. The letter dated February 12, 2020, from Patricia Cole of the United States Fish and Wildlife Service, San Joaquin Valley Division to Douglas E. Eberhardt of the United States Environmental Protection Agency, including, but not limited to, the following:
    - i. Implement Avoidance and Minimization Measures and Best Management Practices prior to and during construction activities to minimize and avoid effects to the San Joaquin kit fox.
  - c. The Mitigation Monitoring and Reporting Program adopted by the City of Porterville on April 21, 2020 for the Central Mutual Water Company Consolidation Project. The Recipient shall implement all mitigation measures therein.
2. In the Recipient's Quarterly Reports submitted pursuant to this Agreement, the Recipient shall include a discussion of the status of its compliance with environmental measures identified in this Exhibit D, with separate sections clearly labeled and titled, discussing the status of Recipient's compliance.
3. In the Recipient's Project Completion Report submitted pursuant to this Agreement, the Recipient shall include a discussion of its compliance with environmental measures identified in this Exhibit D, with separate sections clearly labeled and titled, discussing the status of Recipient's compliance.
8. [RESERVED].
9. Appointment of Receiver/Custodian. Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the State Water Board under this Agreement, the State Water Board may make application for the appointment of a receiver or custodian of the Revenues, pending such proceeding, with such power as the court making such appointment may confer.
10. [RESERVED].
11. Damages for Breach of Federal Conditions. In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

12. [RESERVED].

13. Operation and Maintenance. The Recipient shall sufficiently and properly staff, operate, and maintain the facility and structures constructed or improved as part of the project throughout the term of this Agreement, consistent with the purposes of this Agreement. The Recipient assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation.

14. Insurance. The Recipient will procure and maintain or cause to be maintained insurance on the System and Project with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System or Project) as are usually covered in connection with systems similar to the System or Project. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program. In the event of any damage to or destruction of the System or Project caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System or Project. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System and Project must be free and clear of all claims and liens. Recipient agrees that for any policy of insurance concerning or covering the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional insured; and must provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

15. Notice Events. Upon the occurrence of any of the following events, the Recipient must notify the Division's Deputy Director and Party Contacts by phone and email within the time specified below:

- a. The Recipient must notify the Division within 24 hours by phone at (916) 327-9978 and by email to [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov) of any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division.
- b. The Recipient must notify the Division promptly of the occurrence of any of the following events:
  - i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
  - ii. Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
  - iii. Loss, theft, damage, or impairment to Project;
  - iv. Events of Default, except as otherwise set forth in this section;

- v. A proceeding or action by a public entity to acquire the Project by power of eminent domain.
- vi. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity or the Recipient's continued existence;
- vii. Consideration of dissolution, or disincorporation;
- viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
- ix. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this funding, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
- x. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
- xi. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more;
- xii. Any Project monitoring, demonstration, or other implementation activities required in this Agreement;
- xiii. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
- xiv. Any event requiring notice to the Division pursuant to any other provision of this Agreement.
- xv. Completion of work on the Project.
- xvi. The Recipient must promptly notify the Division and Party Contacts of cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- xvii. The Recipient must promptly notify the Division and Party Contacts of the discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during implementation of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- xviii. The Recipient must promptly notify the Division and Party Contacts of Completion of Construction, and Project Completion;
- xix. The Recipient must promptly notify the Division and Party Contacts of the award of the prime construction contract for the Project; and the Recipient must promptly notify the Division and Party Contacts of Initiation of construction of the Project.

xx. The occurrence of a material breach or event of default under any Recipient obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption.

xxi. [RESERVED].

16. Continuous Use of Project; No Lease, Sale, Transfer of Ownership, or Disposal of Project. The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the Useful Life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.
17. State Cross-Cutters. Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following for the term of the Agreement:
- a) The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
  - b) Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
  - c) Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
  - d) Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
  - e) Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
  - f) Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
  - g) Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
  - h) Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
  - i) Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
  - j) Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.
  - k) The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.
18. Financial Management Systems. The Recipient must comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been



used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act of 1984 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

19. Access and Inspection. In addition to the obligations set forth in section 2 of the General Terms and Conditions incorporated in Exhibit C of this Agreement, the Recipient must ensure that the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during the term of the Agreement.
20. Fraud, Waste, and Abuse. The Recipient shall prevent fraud, waste, and the abuse of Project Funds, and shall cooperate in any investigation of such activities that are suspected in connection with this Agreement. The Recipient understands that discovery of any evidence of misrepresentation or fraud related to reimbursement requests, invoices, proof of payment of invoices, or other supporting information, including but not limited to double or multiple billing for time, services, or any other eligible cost, may result in referral to the Attorney General's Office or the applicable District Attorney's Office for appropriate action. The Recipient further understands that any suspected occurrences of false claims, misrepresentation, fraud, forgery, theft or any other misuse of Project Funds may result in withholding of reimbursements and/or the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder.
21. Disputes. The Recipient must continue with the responsibilities under this Agreement during any dispute. The Recipient may, in writing, appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute. This provision does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law. This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.
22. Additional Representations and Warranties. The Recipient makes the following representations and warranties:
  - a. [RESERVED].
  - b. The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application, a material fact that makes the statements in its application not misleading.
  - c. The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.
  - d. The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the Cover Page.

- e. Except as set forth in this paragraph, there are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the Revenues, and/or the Project.
  - f. There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain any of the real or personal property related to or necessary for the Project.
  - g. The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.
  - h. Any financial statements or other financial documentation of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements or other financial documentation: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements or other financial documentation, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements or other financial documentation been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.
  - i. The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.
  - j. The Recipient has no conflicting or material obligations, except as set forth in this paragraph.
  - k. The Recipient legally possesses all real property rights necessary for the purposes of this Agreement, not subject to third party revocation, which rights extend at least to the Records Retention End Date of this Agreement, except as set forth in this paragraph.
  - l. The Recipient and its principals, to the best of the Recipient's knowledge and belief, are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized; nor have they engaged or permitted the performance of services covered by this Agreement from parties that are debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized.
  - m. The Recipient possesses all water rights necessary for this Project.
23. Federal SRF Requirements. The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions for the Useful Life of the Project:
- a. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the

Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

- b. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in Section 2 of this Agreement in all construction contracts and subcontracts.
- c. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- d. The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>.
- e. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
- f. [RESERVED]
- g. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- h. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- i. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- j. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://Edison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.

- k. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Disclosure statement set forth in Exhibit A.
- l. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- m. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.
- n. The Recipient certifies to the best of its knowledge and belief that:
  - i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, 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 the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - ii. 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 in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.
  - iii. The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks disbursements under this Agreement.
- o. The Recipient must comply with the following federal non-discrimination requirements:
  - i. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
  - ii. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
  - iii. The Age Discrimination Act of 1975, which prohibits age discrimination.
  - iv. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
  - v. 40 CFR Part 7, as it relates to the foregoing.
  - vi. Executive Order 13798, including, to the greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech
  - vii. All applicable federal civil rights regulations, including statutory and national policy requirements (2 CFR section 200.300).

- p. Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

*"During the performance of this contract, the contractor agrees as follows:"(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.*

*"(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.*

*"(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*

*"(d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.*

*"(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*

*"(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.*

*"(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."*



- q. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises as set forth in this Agreement.
- r. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/>.
- s. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- t. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- u. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).
- v. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- w. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- x. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- y. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, EPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.
- z. The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the EPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and

disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.

- aa. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.
- bb. The Recipient certifies that no Project Funds will be used on:
  - i. Video surveillance or telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
  - ii. Telecommunications or video surveillance services produced by such entities;
  - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
  - iv. Other telecommunications or video surveillance services or equipment in violation of [2 CFR 200.216](#).



## CITY COUNCIL AGENDA – JANUARY 17, 2023

**SUBJECT:** Zone Change from RM-3 (High Density Residential) to CG (General and Service Commercial) for Panaderia La Cosecha located at 23 North F Street

**SOURCE:** Community Development

**BACKGROUND:** In June 2022, City staff received an application for the development of a new Bakery, “Panaderia La Cosecha”, to be located at 23 North F Street.

**COMMENT:** The Project Review Committee reviewed the project on June 22, 2022. The project proposes to construct a new 1,640 square foot bakery on a vacant lot. The Land Use Diagram of the Porterville 2030 General Plan designates the site as General and Service Commercial, while the site is zoned RM-3 (High Density Residential). Prior to development of the site, the zoning must be brought into conformity with the General Plan. The property has been vacant since 1998, when a demolition permit (B11-98-13) was issued to authorize demolition of an existing dwelling.

**ANALYSIS:** Project Location: The project is located on a 0.17± acre parcel (APN 260-204-009) on the west side of “F” Street just north of Olive Avenue.

Specific Request: The project proposes a zone change for a 0.17± acre parcel from RM-3 (High Density Residential) to CG (General and Service Commercial).

General Plan: The General Plan Land Use diagram identifies the site as General and Service Commercial.

Current Zoning: RM-3 (High Density Residential).

Proposed Zoning: CG (General and Service Commercial).

Present Use: The subject site is currently a vacant lot.

Surrounding Land Use and Zoning:

North: Residential Use (Single Family Residential), zoned RM-3

South: Commercial Use (Retail, Office), zoned CG

East: Commercial Use (Restaurant/Bakery), zoned CG

West: Residential Use (Single Family Residential), zoned RM-3  
Commercial Use (Restaurant), zoned CG

The proposed zone change to CG (General and Service Commercial) is consistent with the development standards for the CG zoning District. The CG zone is intended to accommodate retail and service uses that meet local and regional demand, will advance the goals and objectives of, and is consistent with the policies of the General Plan. The future development will be required to adhere to current applicable development standards. It is not anticipated that this zone change or the associated development would have a negative impact on the surrounding properties or the environment.

ENVIRONMENTAL REVIEW: Because the proposed rezoning is intended to provide consistency with the General Plan and would facilitate development of an exempt facility, the proposed project is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303, New Construction or Conversion of Small Structures, subdivision (c). A Notice of Exemption will be filed with the Tulare County Clerk if the City Council approves the project.

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing structures from one use to another where only minor modifications are made in the exterior of the structure. The number of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

c. A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

RECOMMENDATION: That the City Council:

1. Conduct a Public Hearing to receive input regarding the proposed zone change; and
2. Approve the draft Ordinance, give first reading and order the Ordinance to print.

ATTACHMENTS:

1. Draft Ordinance
2. Locator Map
3. Zoning Map
4. General Plan Land Use Diagram
5. Site Plan

Appropriated/Funded:

Review By:

Department Director:

Jason Ridenour, Assistant City Manager

Final Approver: John Lollis, City Manager



ORDINANCE NO. \_\_\_\_-2023

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF ZONE CHANGE (PRC  
2022-012-Z), FROM RM-3 (HIGH DENSITY RESIDENTIAL) TO CG (GENERAL AND  
SERVICE COMMERCIAL) FOR THE DEVELOPMENT OF A FUTURE BAKERY

WHEREAS: The City Council of the City of Porterville, at its regular scheduled meeting of January 17, 2023, conducted a public hearing to consider findings in support of Zone Change PRC 2022-012-Z, being a change from RM-3 (High Density Residential) to CG (General and Service Commercial) for the parcel located at APN 260-204-009; and

WHEREAS: on January 7, 2023, a notice was published in *The Porterville Recorder* setting the date, and place of a public hearing for January 17, 2023 and similar notices were sent to owners of property within 300 feet of the Site and posted at City Hall and the City's website announcing the same; and

WHEREAS The City Council of the City of Porterville received testimony from all interested parties related to said Zone Change; and

WHEREAS: The Environmental Coordinator made a preliminary determination that the project is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15303(c), New Construction or Conversion of Small Structures, said preliminary determination based on the requisite criteria and substantiated in the record:

1. Class 3 consists of construction and location of limited number of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing structures from one use to another where only minor modification are made in the exterior of the structure. The number of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to
  - c. A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial building not exceeding 10,000 square feet on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding;

WHEREAS: The City Council made the following findings that the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable plan that the City has adopted.

- a. The project supports and complies with the following General plan guiding policies:
  - LU-G-1: Promote a sustainable balanced land use pattern that responds to existing needs and future needs of the city.

- LU-G-3: Promote sustainability in the design and development of public and private development projects.
- LU-G-5: Ensure that new development pays for the public pays for the public facilities and infrastructure improvements required to meet the demands resulting from that growth.
- ED-G-2: Retain, improve, and promote existing businesses in Porterville.
- ED-G-5: Retain existing local businesses and foster local start-ups.
- ED-G-7: Create an image for Porterville that will attract and retain economic activity.

- b. The location of the proposed building and proposed zoning of General and Service Commercial will not be detrimental to the public health, safety welfare, or materially injurious to properties or improvements in the vicinity.

WHEREAS: The City Council of the City of Porterville received testimony from all interested parties related to said Zone Change; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville as follows:

1. That the following described property in the City of Porterville, County of Tulare, State of California, known as Zone Change PRC 2022-012-Z, is hereby rezoned from RM-3 (High Density Residential) to CG (General and Service Commercial), pursuant to Number 2 below, for the parcel described herein as Assessor Parcel Number 260-204-009; and
2. It is further ordained that all record of the City of Porterville, together with the official zoning map of the City of Porterville, shall be changed to show the above-described real property is rezoned from RM-3 (High Density Residential) to CG (General and Service Commercial) for the parcel described above, more particularly shown on the attached map as Exhibit "A".
3. This ordinance shall be in full force and effect not sooner than thirty (30) days from and after the ordinance's publication and passage.
4. Future development of site shall comply with the Porterville Development Ordinance and all applicable codes.

PASSED, APPROVED AND ADOPTED on the 17th day of January, 2023.

\_\_\_\_\_  
Martha A. Flores, Mayor

ATTEST:  
John D. Lollis, City Clerk

By \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

**Locator Map  
PRC 2022-012**



**Panaderia La Cosecha  
@ F Street**

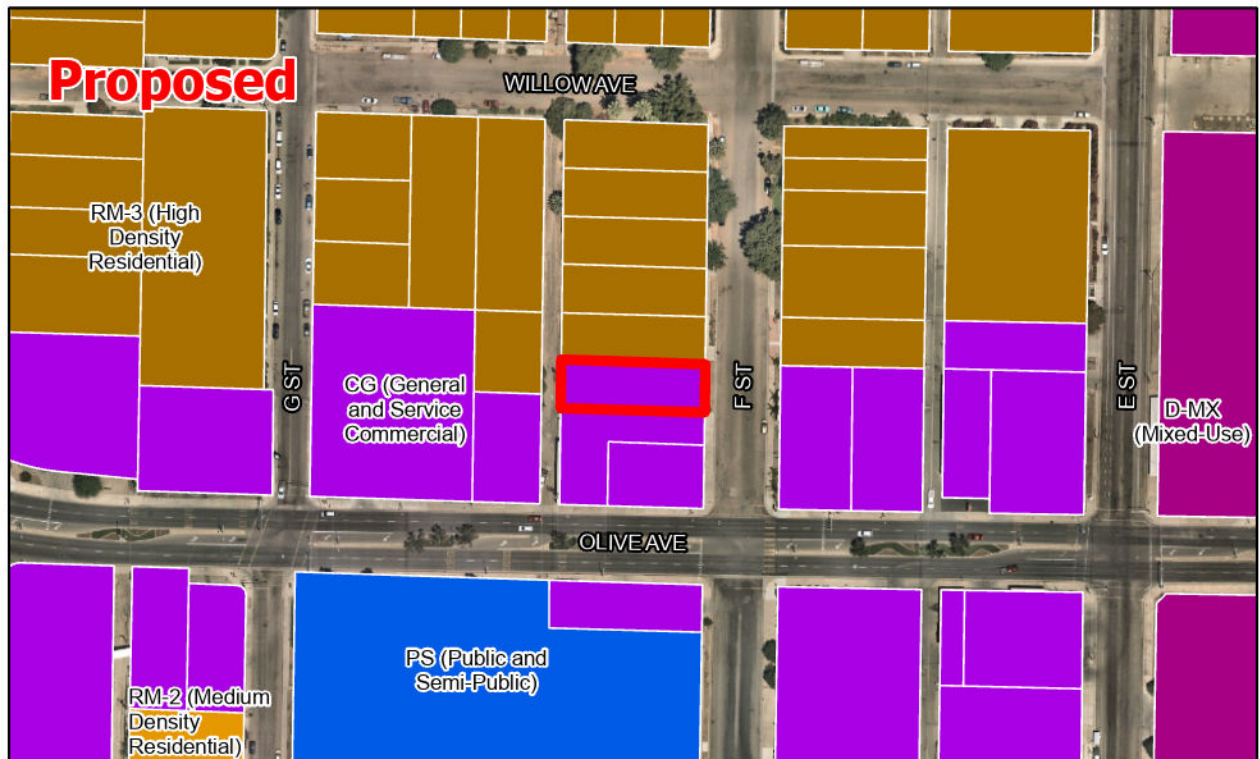
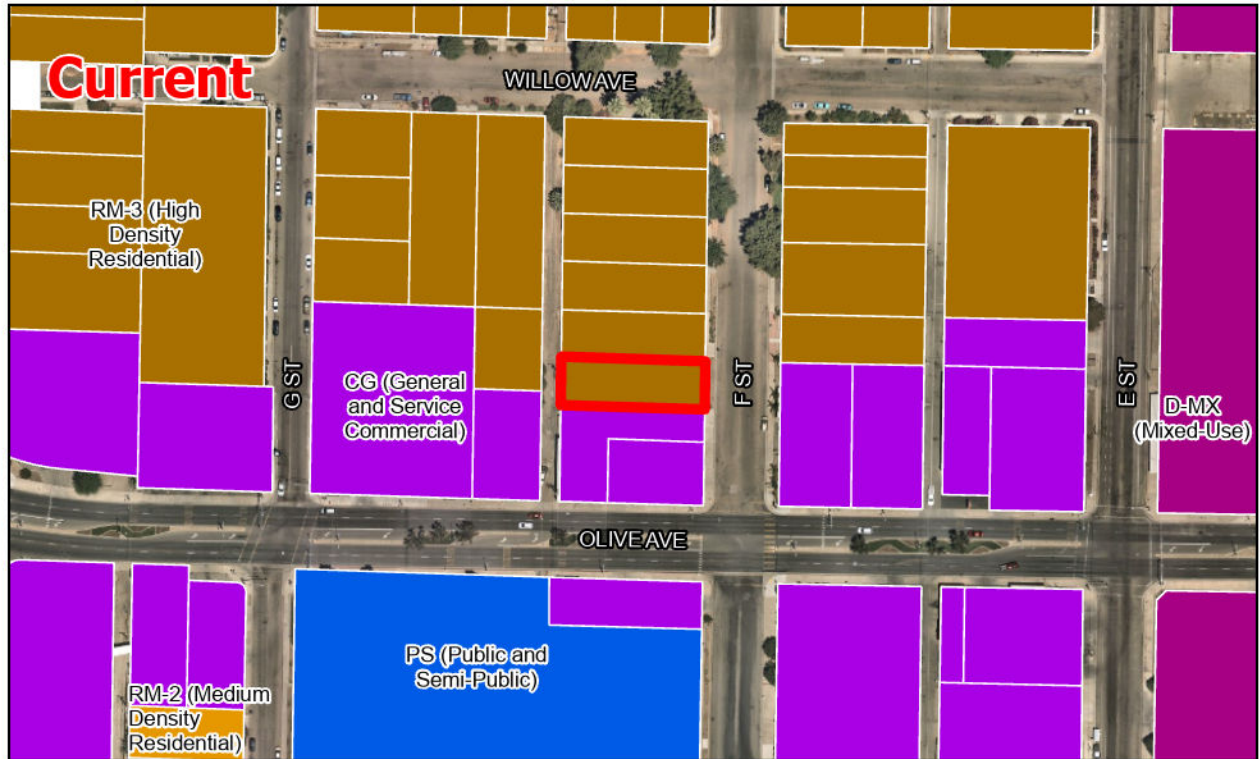
 Project Location

1 in = 300 feet





# Zoning PRC 2022-012



**Panaderia La Cosecha  
@ F Street**

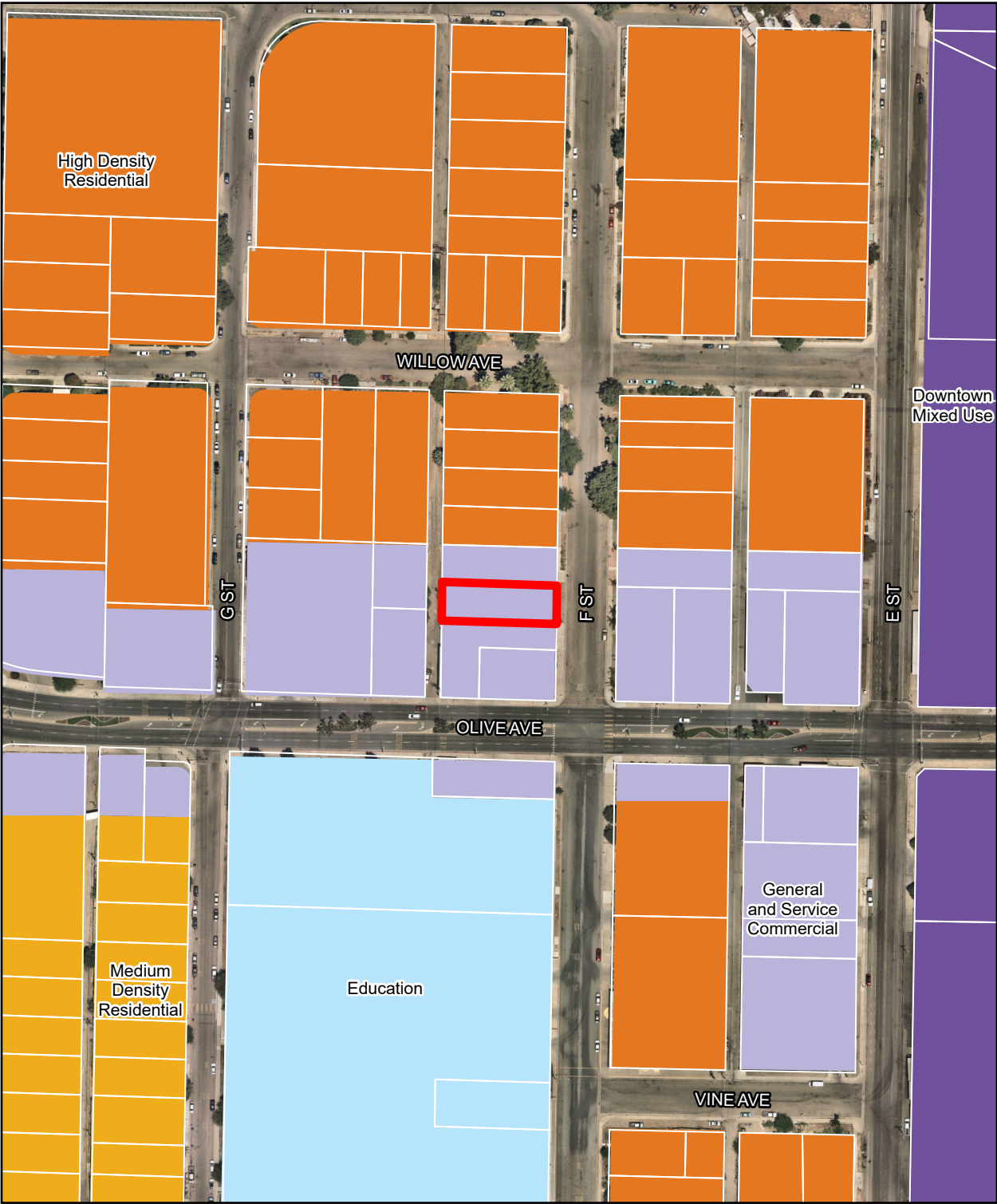
 Project Location

1 in = 200 feet



Date Printed: 1/9/2023 by the Community Development Department

**GPLU**  
**PRC 2022-012**



**Panaderia La Cosecha**  
**@ F Street**

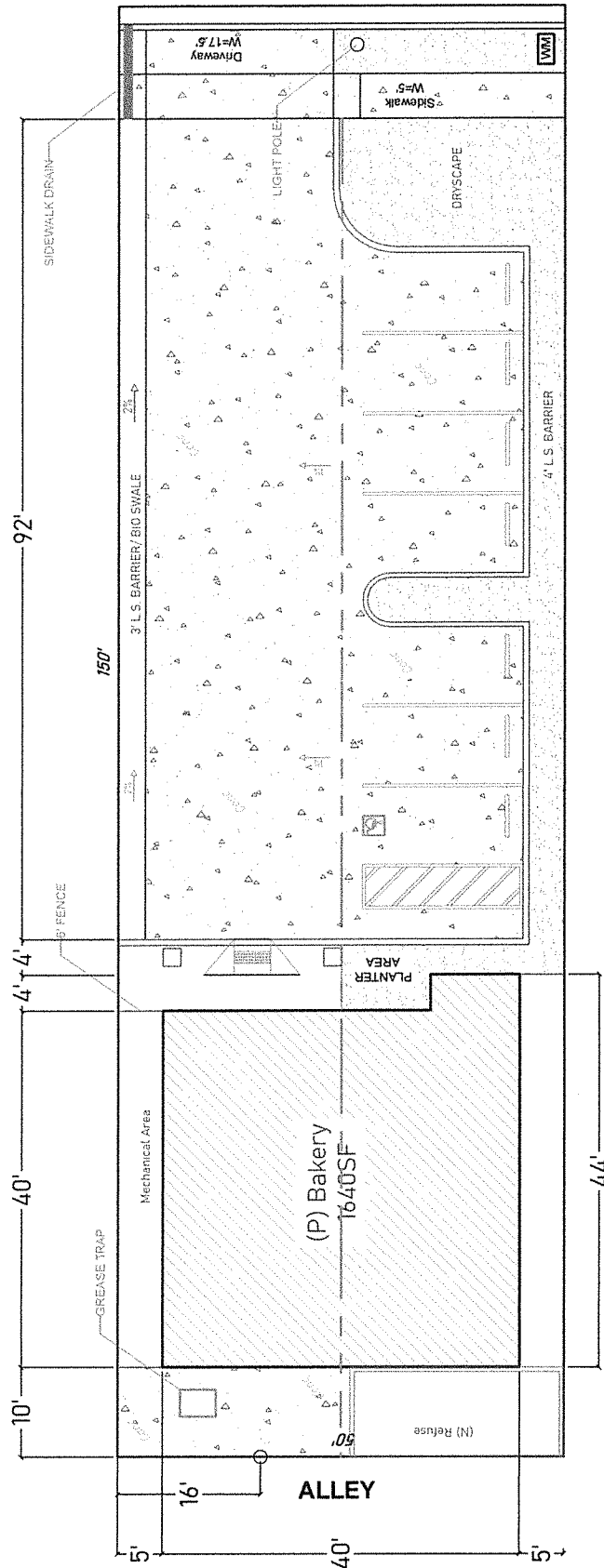
 Project Location

1 in = 200 feet





North F ST.



PROVIDE AND INSTALL STREET TREES TO CITY STANDARDS IN PARKWAY WITH ROOT BARRIER

Provide one 3000K LED streetlight on a Marbelite pole following Southern California Edison Company specifications, as approved by the City Engineer.



**Project:** North F St Bakery  
**APN:** 260-204-009  
**LOT SIZE:** 7,500 SF  
**Coverage:** 21.87%  
**SCALE:** 1"=20'



## CITY COUNCIL AGENDA – JANUARY 17, 2023

**SUBJECT:** Villas at Sierra Meadows 4 & 5 Development Project

**SOURCE:** Community Development

**COMMENT:** The City's Project Review committee began its assessment of PRC 2020-48 on January 6, 2021. As City comments were incorporated into the project, it was subsequently discussed at PRC meetings on May 26, 2021 and September 29, 2021. Formal project submittal was on December 17, 2021. The proposed project consists of several development entitlements: an amendment to the General Plan Land Use Diagram, a conditional use permit, a tentative subdivision map, and annexation. The project would result in the annexation and development of APN 269-060-020, consisting of approximately 20.23 acres located at the southwest corner of W. Gibbons Avenue and S. Jaye Street. Development would generally include subdivision of the project site into eighty (80) lots for single-family use, construction of a 0.86-acre park, construction of interior local streets and necessary onsite infrastructure, and improvements within abutting major street rights-of-way.

Upon completion of the draft Initial Study/Mitigated Negative Declaration (IS/MND), notices of intent and completion were filed in accordance with CEQA. The IS/MND was sent to the State Clearinghouse (SCH No. 2022120369) and circulated for a period of thirty (30) days starting on December 16, 2022. The City published a public hearing notice and provided a public hearing notice to property owners within 300 feet of the proposed project on January 7, 2023, notifying the public of the Public Hearing scheduled for January 17, 2023. On January 10, 2023, the City received a comment letter from the Department of Toxic Substances Control requesting additional environmental site assessment based on the current agricultural use. After consultation with CEQA specialists, a determination was made to recommend continuing the Public Hearing to February 21, 2023, to allow time for additional environmental site assessment to be conducted in accordance with the comments received.

**RECOMMENDATION:** That the City Council continue the Public Hearing scheduled to consider the entitlements for PRC 2020-48 to February 21, 2023.

**ATTACHMENTS:**

1. Locator Map
2. Department of Toxic Substances Control Comment Letter dated January 10, 2023

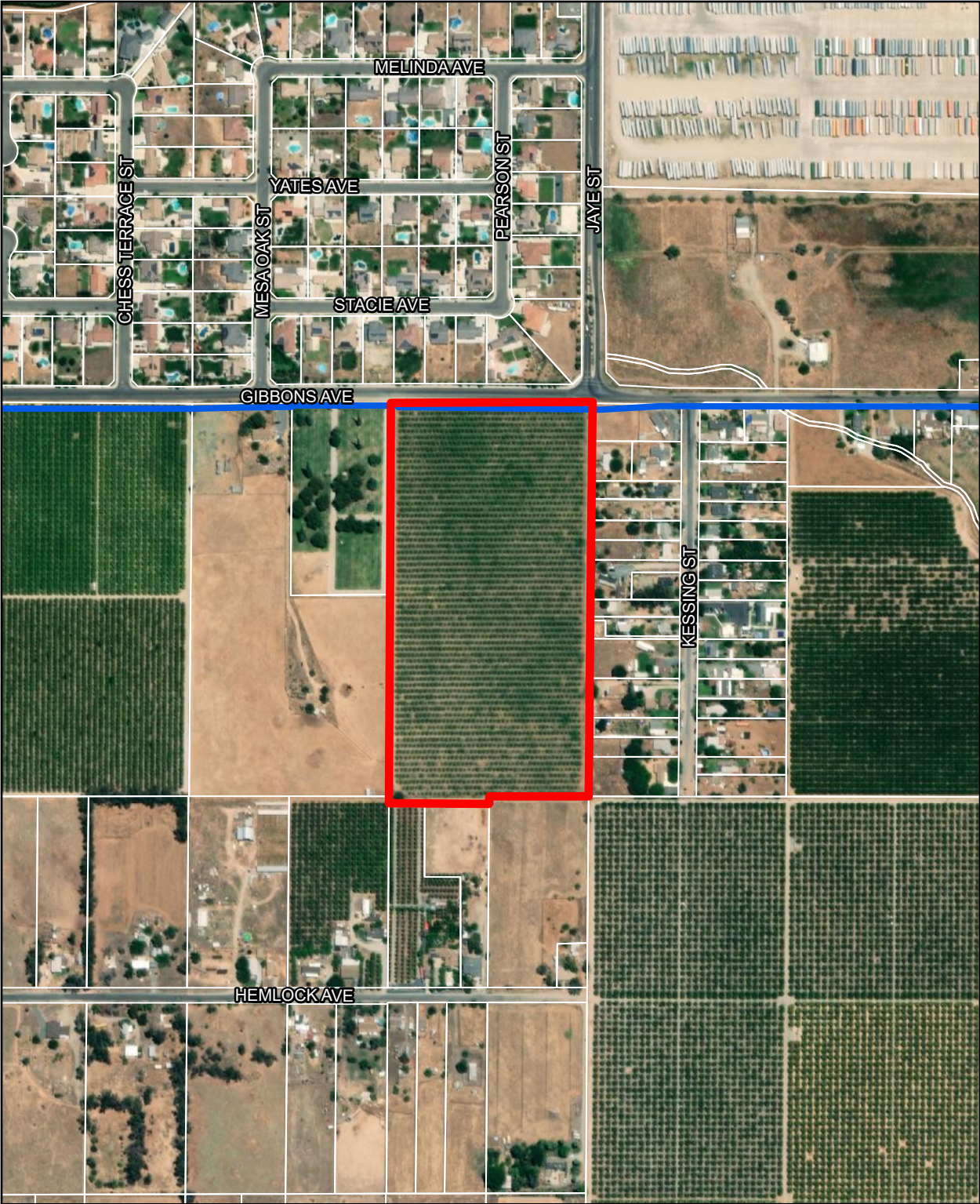
**Appropriated/Funded:**

Review By:



Department Director:  
Jason Ridenour, Assistant City Manager

Final Approver: John Lollis, City Manager

**Locator Map**  
**PRC 2020-048**



**Smee TSM**  
**Gibbons & Jaye**

-  Project Location
-  City Limits

1 in = 500 feet







**Yana Garcia**  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Meredith Williams, Ph.D.  
Director  
8800 Cal Center Drive  
Sacramento, California 95826-3200



**Gavin Newsom**  
Governor

### SENT VIA ELECTRONIC MAIL

January 10, 2023

Mr. Jason Ridenour  
City of Porterville  
291 N. Main Street  
Porterville, CA 93257  
[JRidenour@ci.porterville.ca.us](mailto:JRidenour@ci.porterville.ca.us)

MITIGATED NEGATIVE DECLARATION FOR VILLAS AT SIERRA MEADOWS 4 & 5  
RESIDENTIAL PROJECT – DATED DECEMBER 2022 (STATE CLEARINGHOUSE  
NUMBER: 2022120369)

Dear Mr. Ridenour:

The Department of Toxic Substances Control (DTSC) received a Mitigated Negative Declaration (MND) for the Villas at Sierra Meadows 4 & 5 Residential Project (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, importation of backfill soil, and/or work on or in close proximity to an agricultural or former agricultural site.

The MND references the listing compiled in accordance with California Government Code Section 65962.5, commonly known as the Cortese List. Not all sites impacted by hazardous waste or hazardous materials will be found on the Cortese List. DTSC recommends that the Hazards and Hazardous Materials section of the MND address actions to be taken for any sites impacted by hazardous waste or hazardous materials within the Project area, not just those found on the Cortese List. DTSC recommends consulting with other agencies that may provide oversight to hazardous waste facilities and sites in order to determine a comprehensive listing of all sites impacted by hazardous waste or hazardous materials within the Project area. DTSC hazardous waste facilities and sites with known or suspected contamination issues can be found on DTSC's [EnviroStor](#) data management system. The [EnviroStor Map](#) feature can be used to locate hazardous waste facilities and sites for a county, city, or a specific



address. A search within EnviroStor indicates that numerous hazardous waste facilities and sites are present within the Project's region.

DTSC recommends that the following issues be evaluated in the Hazards and Hazardous Materials section of the MND:

1. A State of California environmental regulatory agency such as DTSC, a Regional Water Quality Control Board (RWQCB), or a local agency that meets the requirements of [Health and Safety Code section 101480](#) should provide regulatory concurrence that the project site is safe for construction and the proposed use.
2. The MND should acknowledge the potential for historic or future activities on or near the Project site to result in the release of hazardous wastes/substances on the Project site. In instances in which releases have occurred or may occur, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. The MND should also identify the mechanism(s) to initiate any required investigation and/or remediation and the government agency who will be responsible for providing appropriate regulatory oversight.
3. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil, DTSC recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the Project described in the MND.
4. If any projects initiated as part of the proposed Project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to DTSC's 2001 [Information Advisory Clean Imported Fill Material](#).
5. If any sites included as part of the proposed Project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the MND. DTSC

recommends the current and former agricultural lands be evaluated in accordance with DTSC's 2008 [Interim Guidance for Sampling Agricultural Properties \(Third Revision\)](#).

DTSC appreciates the opportunity to comment on the MND. Should you choose DTSC to provide oversight for any environmental investigations, please visit DTSC's [Site Mitigation and Restoration Program](#) page to apply for lead agency oversight. Additional information regarding voluntary agreements with DTSC can be found at [DTSC's Brownfield website](#).

If you have any questions, please contact me at (916) 255-3710 or via email at [Gavin.McCreary@dtsc.ca.gov](mailto:Gavin.McCreary@dtsc.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Gavin McCreary". The signature is fluid and cursive, with the first name "Gavin" being more prominent than the last name "McCreary".

Gavin McCreary, M.S.  
Project Manager  
Site Evaluation and Remediation Unit  
Site Mitigation and Restoration Program  
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and Research  
State Clearinghouse  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

Mr. Dave Kereazis  
Office of Planning & Environmental Analysis  
Department of Toxic Substances Control  
[Dave.Kereazis@dtsc.ca.gov](mailto:Dave.Kereazis@dtsc.ca.gov)



## CITY COUNCIL AGENDA – JANUARY 17, 2023

**SUBJECT:** Consideration of Amendments to the City Council Procedural Handbook

**SOURCE:** City Manager's Office

**COMMENT:** With the seating of the new City Council, it is appropriate for the Council to consider its Procedural Handbook for ratification or potential amendments that the new Council may desire. The prior City Council last considered and approved revisions to the City Council Handbook at its meeting on December 17, 2019 (please see attached).

In its preliminary consideration at its meeting on December 20, 2022, Mayor Flores recommended that the Order of Business for Council meetings be modified by the moving of Council AB 1234 from prior to the Consent Calendar to after Scheduled Matters. A draft resolution has been drafted for Council's consideration in revising the Order of Business on the Agenda. In addition, with inquiries from the Council and new legal requirements, City Attorney Lew has prepared a draft policy concerning use of social media to be considered for inclusion in the Handbook (please see attached). The Council continued its consideration of amendments to the Handbook until its meeting of January 17, 2023, and that members of Council could submit additional recommended modifications. Council Member Weyhrauch has recommended several amendments to the Handbook, which are also attached for the Council's consideration.

**RECOMMENDATION:** That the City Council consider amendments to its Procedural Handbook and provide direction to staff as determined.

**ATTACHMENTS:**

1. City Council Procedural Handbook
2. Draft Resolution re Order of Business
3. Draft Policy Concerning Use of Social Media
4. Council Member Weyhrauch Recommended Handbook Amendments

**Appropriated/Funded:**

**Review By:**  
Department Director:  
John Lollis, City Manager

Final Approver: John Lollis, City Manager

# CITY COUNCIL PROCEDURAL HANDBOOK



The Office of City Clerk  
291 North Main Street  
Porterville, CA 93257  
Tel: (559) 782-7464  
Fax: (559) 782-7452  
[www.ci.porterville.ca.us](http://www.ci.porterville.ca.us)

*As Authorized by the City Council on December 17, 2019*



## **TABLE OF CONTENTS**

<b>I.</b>	<b>PREAMBLE</b>	<b>4</b>
<b>II.</b>	<b>MEETINGS OF COUNCIL</b>	<b>5</b>
	A. Regular Meetings	5
	B. Adjourned Meetings/Study Sessions	5
	C. Special Meetings	6
	D. Order of Business	6
	E. Consent Items	7
<b>III.</b>	<b>MEETING PROCEDURES</b>	<b>8</b>
	A. Presiding Officer	8
	B. Quorum	8
	C. Discussion Rules	8
<b>IV.</b>	<b>COUNCIL REQUESTS FROM THE PUBLIC</b>	<b>10</b>
	A. Response to Letters from the Public	10
	B. Referrals to Council Agenda	10
	C. Telephone Calls	11
	D. Personal Meetings	11
	E. Personal Correspondence	12
	F. Out-of-District Requests	12
	G. Proclamation Approval Process	12
<b>V.</b>	<b>COUNCIL MEMBER REQUESTS TO STAFF</b>	<b>13</b>
	A. General Information	13
	B. Research	13
	C. Items for Inclusion in Council Agenda	13
<b>VI.</b>	<b>COUNCIL AGENDA</b>	<b>15</b>
	A. Preparation	15
	B. Deadlines	15
	C. Delivery	15
<b>VII.</b>	<b>THE BROWN ACT</b>	<b>16</b>
<b>VIII.</b>	<b>TRAVEL, MEETINGS &amp; EXPENSES</b>	<b>17</b>
	A. Requests for Reservations	17
	B. Travel and Expense Form	18
	C. Receipts	18
	D. Eligibility	18
	E. Event Tickets	19
	F. Council Member Meetings with District Constituents	19

<b>IX.</b>	<b>CONFLICT OF INTEREST</b>	<b>20</b>
	A. City Council Members' Filing Requirements	20
	B. Other Agencies	22
	C. Redevelopment Agency Filing Requirements	22
	D. City of Porterville Conflict of Interest Code	22
<b>X.</b>	<b>GENERAL ITEMS</b>	<b>23</b>
	A. Different Hats	23
	B. Compensation	23
	C. Issuance of Laptop Computers to Council Members	23
	D. Directions to Support Staff	23
	E. City Attorney	24
	F. Annual City Manager/City Attorney Evaluations	24
	G. Response to President/Governor Directives	24
	<b>APPENDICES</b>	<b>25</b>
	A. Resolution 100-2019, Order of Business	
	B. Resolution 99-2012, Ticket Policy	
	C. Annual City Manager/City Attorney Evaluation Forms	
	D. Electronic Device, Internet and Email Policy	
	E. Email Retention Policy	



## PREAMBLE

The residents and businesses of the City of Porterville are entitled to have fair, ethical, and accountable local government. Such a government requires that:

- Public Officials comply with both the letter and spirit of the laws and policies affecting operations of the government;
- Public Officials be independent, impartial, and fair in their judgment and actions;
- Public office be used for the public good, not for personal gain; and
- Deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

No part of this Handbook shall be interpreted so as to violate any federal or state law; a Council Member's Oath of Office; a Council Member's moral or ethical responsibilities; or the exercise of a Council Member's individual rights afforded him/her by the U.S. Constitution.

To this end, the City Council of the City of Porterville hereby approves of and affirms the above to encourage public confidence in the integrity of local government and its operations.

*(Minute Order 21-070511, July 5, 2011.)*



## II. MEETINGS OF COUNCIL

The Council shall provide by ordinance the time and place of holding regular meetings and the manner in which special meetings may be called. Public interest and convenience shall be primary consideration when decisions are made as to time, location and frequency.

Except as otherwise provided by law, all meetings of the Council shall be open to the public.

### A. REGULAR MEETINGS

1. Pursuant to Section 10 of the City Charter, Regular Meetings of the Porterville City Council shall be held on the first and third Tuesday of each month in the Council Chambers at City Hall, 291 North Main Street, in the City. The Regular Meetings will commence at five thirty o'clock (5:30) P.M., with Closed Sessions commencing at five thirty o'clock (5:30) P.M., and Open Session commencing at six thirty o'clock (6:30) P.M. In the event that a regular meeting of the Council shall fall on a legal holiday, that regular meeting shall be held at the same place and time on the next succeeding working day, or as determined by Council. (*Ordinance 1766, August 17, 2010; M.O. 15-09181, September 18, 2012.*)
2. Following the mid-meeting break (around 9:00 p.m.) the Mayor, with assistance from the City Manager, will review the balance of the agenda with Council to discuss how it can be handled in the allowed time. If it is necessary to continue any items, it will be announced at that time.

### B. ADJOURNED MEETINGS/STUDY SESSIONS (Open to the public)

1. The purpose of these meetings shall be for informal discussions between staff, advisory bodies or consultants and the City Council regarding specific programs, projects or policies. If noticed, formal action may be taken at such a meeting.
2. Adjourned Meetings/Study Sessions will be held at a time and place convenient to Council and advantageous for public participation.
3. Participation of the public shall be at the discretion of the Presiding Officer, upon consensus of the Council.

C. SPECIAL MEETINGS

1. Special meetings may be called by the Mayor or three members of the City Council. (*Gov. Code Section 54956*) Written notice of each special meeting must be given not less than twenty-four (24) hours before such meeting to each member of the City Council not joining the call.
2. Written notice must be given to the City Council and to the media 24 hours prior to each meeting. (*Gov. Code Section 54956*)
3. A supplemental telephone call shall be made if necessary to notify each Council Member.
4. No business other than that announced shall be discussed.
5. Any special meeting held at a place other than City Hall shall be open to the public. Notice requirements of the Brown Act shall be complied with for any such meetings; regular minutes shall be taken by the City Clerk and shall be available for public inspection.

D. ORDER OF BUSINESS:

Meeting called to Order  
Roll Call  
Oral Communications (closed session items only)  
Closed Session(s)  
Reconvene Open Session  
Report on Action taken in Closed Session  
Pledge of Allegiance  
Invocation  
Presentations  
Oral Communications (on any matter of interest)  
AB 1234 Reports  
Committee and Commission Reports  
Staff Informational Reports  
Consent Calendar – to include:  
    Approval of Minutes  
    Claims Against the City  
    Payment of Bills  
    Payments on Public Works Projects  
    Authorization to Purchase  
    Authorization to Call for Bids  
    Award of Bids  
    Acceptance of Projects



Acceptance of Dedications/Property  
Approval of Final Tract Maps  
Annexations  
Requests for City Services  
Reports  
Other Routine Matters  
Public Hearings  
Second Readings of Ordinances  
Scheduled Matters  
Oral Communications (on any matter of interest)  
Council Comments  
Adjournment  
(Resolution 100-2019, December 17, 2019, *attached as Appendix A.*)

E. CONSENT ITEMS

1. Consent items are the first items on the open session portion of the agenda (items that are routine, have been discussed before, relate to implementation of approved budget items, or to City operations or item to be later set for public hearing).
2. Any item removed from the Consent Calendar shall be considered immediately after the last Scheduled Matter on the agenda and immediately before the Second Oral Communications. (*M.O. 16-091812, September 18, 2012.*)



### III. MEETING PROCEDURES

#### A. PRESIDING OFFICER

1. The Mayor is the Presiding Officer and acts as Chair at Council meetings.
2. In the absence or incapacity of the Mayor, the Vice Mayor as Mayor Pro Tempore will serve as Presiding Officer. In the absence of both the Mayor and Vice Mayor, the Council Members present shall select one of their number to serve as Presiding Officer for that meeting. (*Amended via Minute Order 08-071911, July 19, 2011.*)
3. Seating arrangement of the Council:

Seating arrangements shall be at Council discretion with preference being given to health conditions, seniority, individual Council Member preferences, and the Mayor's preference, in that order. (*Amended via Minute Order 08-071911, July 19, 2011.*)

4. Signing of City Documents:

The Mayor, unless unavailable, shall sign all ordinances, resolutions, contracts and other documents which have been adopted by the City Council and require an official signature; except when the City Manager, or his or her designee, has been authorized by Council action to sign documents. In the event the Mayor is unavailable, the Vice Mayor may sign the required documents. (*Amended via Minute Order 08-071911, July 19, 2011.*)

#### B. QUORUM

A majority of the Council Members shall constitute a quorum for the transaction of business. (*City Charter*)

#### C. DISCUSSION RULES

1. Obtaining the floor:
  - a. A member of the City Council, staff, or public shall first address the Presiding Officer and gain recognition.

- b. Comments and questions shall be limited to the issue before Council except when members of the public are addressing the Council under Oral Communications.
  - c. Cross-exchange between Council Members, staff or public shall be avoided.
  - d. Any citizen may arise and address the City Council on any business especially concerning them or affecting their interests during Oral Communications, but preference will be given to those who have first presented matters in the form of a written communication or who have personally notified the presiding officer of their desire to speak.
  - e. Any member or other person using profane, vulgar, loud or boisterous language at any meeting, or otherwise interrupting the proceedings, who refuses to be seated or keep quiet when ordered to do so by the Mayor or Mayor Pro Tem of the City Council, shall be guilty of a misdemeanor. It shall be the duty of the Chief of Police, upon order of the presiding officer, to eject any such member or person from the council room.  
(Ordinance 1537)
2. Questions to staff:
- A Council Member shall, after recognition by the Presiding Officer, address questions to duly designated staff members through the City Manager.
3. Interruptions:
- a. Once recognized, a Council Member shall not be interrupted while speaking except to make a point of order or personal privilege.
  - b. If a Council Member is called to order while speaking, the individual shall cease speaking until the question of order is determined.
  - c. Upon being recognized by the Presiding Officer, members of staff shall hold the floor until completion of their remarks or until recognition is withdrawn by the Presiding Officer.



## IV. COUNCIL REQUESTS FROM THE PUBLIC

### A. Response to Letters from the Public

Periodically Council Members receive letters requesting their response. If a Council Member wishes to answer the letter, the matter can be handled in either of three ways:

1. The Council Member can give the letter to the City Manager's Secretary along with direction on how they wish their response to be worded. The City Manager's staff will then prepare the letter on City Council stationery and forward it to the appropriate Council Member for approval and signature. Copies of both letters are kept on file in the City Manager's Office, and copies are available upon request.
2. If the letter requires specific information or details only available from another City Department, the City Manager may refer the letter to the appropriate Department Head for response by them or their designee. Copies of the letters will then be forwarded to the City Manager's Office for filing.
3. If the Council Member wishes to answer their own correspondence, City stationery is available upon request from the City Manager's secretary. Copies of all such letters on City Letterhead shall be provided to all other Council members, and the letter shall include a provision clearly defining that the correspondence represents the views and/or feelings of the specific Council member signing the letter. If the Council Member wishes to have a copy of the letters in their file, they should submit a copy to the City Manager's staff for filing.

If a Council Member receives an informational item and wants a copy to be given to the other Council Members and the City Manager or other Directors, the item should be given to the City Manager's staff and copies will be made and sent out.

### B. Referrals to Council agenda

Periodically Council Members receive correspondence or verbal requests for items to be acted upon, or considered, by the City Council. If a Council Member wishes to respond to the request, the matter should be referred to the City Manager. The request can then be handled as follows:

1. The Council Member may request the City Manager to place the item on the Council agenda as a written communication (however, the request must be stated on the agenda face sheet for Council to be able to act on it at the meeting); or
2. Upon research, the request may be determined to be a violation of City, State or Federal law, policy, or previous Council determination, in which case an appropriate response as to why the matter can not be heard will be provided to the requesting party.

Correspondence requesting that an item be acted upon, or considered, by the City Council, which is received directly by the City Manager, is handled in either of two ways:

1. The City Manager shall place any routine and/or legitimate written request under written communications\*, or have a staff report prepared if time permits, for the next City Council agenda; or
2. The City Manager shall place any request which has already been acted upon by Council, cannot legally be accomplished, or which has a potential for litigation, in an Administrative Memorandum.

C. Telephone Calls

Citizens attempting to communicate with the City Council often call the offices at City Hall. Such calls are referred to the City Manager's Office. The City Manager's staff will take a message and refer it to the appropriate Council Member, or give the caller the telephone number of the City Council Member so they may call them directly, according to instructions given by the Council Member [see X-D (3)].

D. Personal Meetings

Council Members who wish to meet with their constituents may use various rooms at City Hall. The Council Member should call the City Manager's Secretary as soon as they know a room is needed so that it can be reserved for their use. No more than two Council Members may attend a meeting to discuss City matters without the meeting becoming a public meeting and therefore falling under the requirements of the Brown Act Open Meeting Laws.



E. Personal Correspondence

Council Members who wish to send their own correspondence using City stationery shall include a provision clearly defining that the correspondence represents the views and/or feelings of the specific Council member signing the letter. Copies of all such letters on City Letterhead shall be provided to all other Council members. Letterhead stationery is available upon request from the City Manager's secretary, and if the Council Member wishes to have a copy of their letter in their file, they should submit a copy to the City Manager's staff for filing.

F. Out-of-District Requests

On occasion, Council Members will be contacted by citizens residing outside of their respective districts. When this occurs, City Council Members agree to advise the appropriate Council Member of the contact and matter of concern.

G. Requests for Proclamations

The City routinely receives requests for proclamations. Proclamations are ceremonial statements of Council Members which do not convey legislative action or policy of the Council. Each individual Council Member has the authority to grant and sign proclamations. Within one business day of receipt of a Request for Proclamation, staff shall scan and email the request to all City Council Members. If a Council Member is interested in granting the request, they shall notify staff of their interest. If more than one Council Member responds, the first responsive notification received by staff shall be the grantor. Upon receipt of the affirmative response, staff shall advise the remaining Council Members, and inquire whether they would also like to sign the proclamation. The Council Members shall have one business day to reply, after which the proclamation will be drafted with the appropriate number of signature blocks, and the grantor and signers shall be notified of its availability for signature.

Upon finalization of the proclamation, staff shall notify the requestor and arrange for its delivery, pick up, or presentation at an event, as requested. Proclamations shall not be included on the Council Agenda nor presented at a Council Meeting unless so approved by a majority of the Council. Staff shall provide a monthly informational report identifying the proclamations granted for the preceding month.



## V. COUNCIL MEMBER REQUESTS TO STAFF

### A. General Information

All City Council Member requests for information or documents shall be referred through the City Manager. Any Department Head who receives a direct request from a Council Member shall submit the request, including the name of the requesting Council Member, to the City Manager.

### B. Research

All City Council Member requests for information or documents which require extensive research, in the opinion of the City Manager, shall be referred through the City Manager to the Council for direction. The City Manager will discuss the matter with the appropriate department and relay the approximate time table for completion to the City Council for discussion and action at the next available meeting of the City Council. If the request is approved by the Council, upon completion of the research, the information or documents will be forwarded to the City Council Members by the City Manager. *(Amended via Minute Order 08-071911, July 19, 2011.)*

### C. Items for inclusion in Council Agenda

The City Manager shall compile the agenda for each meeting and shall include as agenda items, business in the normal course of City affairs, including but not limited to staff proposals to improve services, support the economy and land use, and enhance the efficiency and effectiveness of the City organization, items relating to current, past, and proposed City contracts, leases, franchises, agreements and similar documents, and matters affecting future or proposed City equipment and property, items relating to City employees, agents and contractors, and such other matters as are defined in this handbook or otherwise directed by the City Council.

All City Council Member requests for an item to be placed on the Council agenda shall be made in writing to the City Manager. Such request shall be submitted prior to Wednesday noon of the week before the Council meeting in order to be placed on the next regularly scheduled meeting. *(Amended via M.O. 13-111814, November 18, 2014, and via M.O. 13-052119, May 21, 2019.)*

The City Manager shall place any Council Member request for an agenda item on the next available agenda as a Consent Calendar item for Council approval to be included as a Scheduled Matter on the next available agenda. This does not prevent any Council Member from moving to place an item on the next available agenda during Other Matters of the current agenda. *(Amended via Minute Order 08-071911, July 19, 2011.)*



## VI. COUNCIL AGENDA

### A. Preparation:

Each Department Head submits their departmental agenda items to the City Manager for approval utilizing the City's electronic agenda management system. (*Amended via M.O. 11-111814, November 18, 2014.*)

The City Council meeting agendas are prepared on the Thursday prior to the Tuesday meeting. Any questions regarding whether items have been scheduled for consideration at a particular meeting may be directed to the Chief Deputy City Clerk and/or Deputy City Clerk.

### B. Deadlines:

The deadlines for the agenda are the Monday preceding the Thursday preparation day. Public hearing items, scheduled matter items, Consent calendar items, and written communications must be submitted by the Monday deadline. The deadline for a Council member request for any item shall be Wednesday noon preceding the Thursday preparation day. (*Amended via M.O. 13-111814, November 18, 2014.*)

### C. Delivery:

Agendas will be delivered to Council on the Thursday prior to the Tuesday meeting via an emailed link to the electronic agenda packet posted on the City's website. No items, or additional materials, shall be delivered after the initial delivery to Council on Thursday, except in the instance of a designated emergency item.

Once the Agenda is made available to the City Council, it is available to the public. (*Amended via M.O. 11-111814, November 18, 2014.*)



## VII. THE RALPH M. BROWN ACT

The Ralph M. Brown Act (California Government Code Section 54950 et seq.) governs meetings conducted by local legislative bodies such as city councils, boards of supervisors, special districts, and school boards. The Act represents the State Legislature's determination of how the balance should be struck between the public access to meetings of multi-member public bodies on one hand, and the need for confidential candor, debate, and information gathering on the other.

The Act contains specific exceptions from the open meeting requirements where government has a demonstrated need for confidentiality. Where matters are not subject to a closed meeting exception, the Act has been interpreted to mean that all of the deliberative processes by legislative bodies, including discussion, debate and the acquisition of information, be open and available for public scrutiny.

Meetings are defined as any gathering of a quorum of a legislative body (which includes newly elected but unsworn members of the body) to discuss or transact business under the body's jurisdiction and serial meetings are prohibited. Exemptions are individual contacts between board members and others which do not constitute serial meetings, attendance at conferences and meetings which are open to the public so long as legislative bodies do not discuss amongst themselves business of a specific nature under the body's jurisdiction, and attendance at social or ceremonial events where no business of the body is discussed.

The Act requires that notices of regular meetings must be posted at least seventy-two (72) hours prior to the meeting, and twenty-four (24) hour notice must be provided to members of the legislative body and media outlets for special meetings.

A user's guide to the Ralph M. Brown Act is provided to Council Members for their information. If a Council Member has a specific question which does not seem to be covered in the guide, the Council Member should contact the City Attorney for a legal opinion.





## VIII. TRAVEL, MEETINGS AND EXPENSES

This policy would satisfy the requirements of California Government Code §§ 53232.2 and 53233.3 in the event such requirements could be constitutionally applied to charter cities.

The City Manager, or his staff, will notify the City Council Members about any League of California Cities' Conferences, Committee meetings, and/or local meetings that may be of interest to the Council. If a Council Member is interested in attending any such meeting, the following procedures should be followed:

### A. Requests for Reservations:

When a City Council Member wishes to attend a conference or meeting, he/she should contact the City Manager's office and indicate the following:

1. The date(s) of the conference or meeting;
2. If the Council Member will be accompanied by anyone else, i.e. spouse, child;
3. Any personal preferences for hotel reservations, such as smoking or non-smoking, king or double beds, etc.; and
4. Whether special travel arrangements need to be made, i.e. airplane tickets, ride-sharing, etc.

A disbursement will then be prepared and the payment for the conference or meeting will be forwarded, and, if applicable, the hotel will be contacted to make the appropriate reservations. When making hotel reservations to attend a conference or meeting, a request for a room sales tax waiver shall be made on behalf of the applicable Council member. If a prior room reservation request is not made, the Council member shall request a room sales tax waiver prior to payment for a room.

For lodging in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question, if such rates are available at the time of booking. If the group rate is not available, government rates must be used when available. Lodging rates that are equal or less than the government rates are presumed to be reasonable and allowed per this policy. In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence allowed.

B. Travel and Expense Form:

A Travel and Expense Form will then be prepared for the Council Member which indicates the following:

1. The amount of money to be issued to the traveler as per diem\*; and
2. Mileage expense\* (if a personal vehicle is used for travel and cost is paid in advance).

*\* Amount set in Administrative Policy Manual Sec. II-E-1, Travel & Conference Expenses. In regard to the per diem amount, if payments for expenses are made in advance pursuant to the specified per diem amounts, the disbursement shall not be considered to be reimbursable expense under AB 1234.*

The Council Member will then be issued a packet of materials several days prior to the meeting which contains the following:

1. A check for per diem and mileage;
2. Confirmation notification and informational materials regarding the conference;
3. Confirmation notification for any hotel reservations; and
4. A City credit card to pay for the room charges at the end of the meeting.

C. Receipts:

The Council Member shall then bring the receipt for the hotel charges to the City Manager's staff upon his/her return, together with the credit card, and any refund due the City. The Council Member shall sign the original Travel and Expense Form at that time, which shall then be filed with the Finance Department for final processing.

If a refund is due the Council Member, a check will be issued by the Finance Department and then distributed to the Council Member.

D. Eligibility:

The City shall pay for any Council Member to attend any meetings or conferences of their choice. City Council approval shall not be required unless it is required by AB 1234. A Council Member may request mileage and other expenses associated with attending meetings of boards, commissions, committees, or other groups to which the Council Member has been elected, appointed, or designated to attend by the City Council without further approval or ratification. When accompanied by a spouse, significant other, and/or one or more children, the Council Member shall pay for expenses incurred above that which would otherwise have been paid for the Council Member. Any charge placed on a City credit card for someone other than a Council

Member shall also be considered a refund due the City, payable within 10 days of the receipt of the charges. (*Amended via Minute Order 18-091812, September 18, 2012.*)

E. Event Tickets :

1. City and City-Sponsored Events:

A Council Member may accept no more than two (2) tickets issued by the City to a City event or a City-sponsored event. Any tickets in excess of two (2) accepted by a Council Member shall be paid for by the Council Member from non-City funds at the time of acceptance of the tickets. (*Resolution No. 97-2019, December 3, 2019, attached as Appendix B*)

2. Non-City Sponsored Events:

A Council Member may accept one (1) ticket issued by the event sponsor if attending the event in his/her capacity as a City Council Member. Any additional tickets shall be paid for by the Council Member from non-City funds at the time of acceptance of the tickets. (*Resolution No. 97-2019, December 3, 2019, attached as Appendix B*)

F. Council Member Meetings with District Constituents:

No City funds or resources shall be used to pay for expenses related to meetings held by individual Council Members with their constituents, unless prior approval is received from the Council. This does not pertain to City Council Members holding meetings in designated conference rooms at City Hall. Under no circumstances shall City funds or resources be used for campaign purposes. (*Via M.O. 13-052119, May 21, 2019.*)



## IX. CONFLICT OF INTEREST

### A. City Council Members Filing Requirements

City Council Members are under the provisions of the Political Reform Act (Gov. Code, Section 81000 et seq. known as "the Act") as enforced by the Fair Political Practices Commission. The Act applies to campaign contributions requirements, as well as matters of conflict of interest while in office.

#### 1. Disclosure of Economic Interests:

City Council Members must file assuming office and leaving office statements, as well as annual statements while in office. The statements basically require the disclosure of the following information:

- Investments or interests in real property and its fair market value;
- Income, and the name and address of each source of income aggregating five hundred dollars (\$500) or more, or fifty (\$50) or more if a gift, and a general description of the business activity, if any of each source;
- Interests in real property held by a business entity or trust;
- Loans, and its annual interest rate and the security, if any, given for the loan;

#### 2. Disqualification of Participation (Conflict of Interest):

A Council Member shall not make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. This might include decisions which affect property within up to 500 feet of the subject property in which the Council Member has an interest.

A financial interest in a decision, within the meaning of Section 87100 of the Act, is if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the Council Member or:

- A member of his or her immediate family;

- A business entity in which the Council Member has a direct or indirect investment worth \$2000 or more;
- Any real property in which the Council Member has a direct or indirect interest worth \$2,000 or more;
- Any source of income, other than gifts or commercial lending institutes loans, aggregating \$500 or more received or promised to the City Council Member within twelve months prior to the time when the decision is made;
- Any business entity in which the City Council Member is a director, partner, trustee, employee, or holds any position of management;
- Any donor, or any intermediary or agent for a donor, or a gift or gifts aggregating \$420 or more in value provided to, received by, or promised to the City Council Member within 12 months prior to the time when the decision is made.

Indirect investment or interest means any investments or interest owned by the spouse or dependent child of a City Council Member, by an agent on behalf of a Council Member, or by a business entity or trust in which the Council Member, the Council Member's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10% interest or greater.

Section 87100 of the Act does not prevent any Council Member from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. The fact that a Council Member's vote is needed to break a tie does not make his participation legally required for purposes of this section.

Pursuant to Section 87105 of the Act, a public official who holds an office specified in Section 87200 who has a financial interest in a decision within the meaning of Section 87100 shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, do all of the following:

- a. Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.



- b. Recuse himself or herself from discussing and voting on the matter, or otherwise acting in violation of Section 87100.
- c. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.
- d. Notwithstanding paragraph (3), a public official may speak on the issue during the time that the general public speaks on the issue.

B. Other Agencies:

Whenever a Council Member is required to file a Statement of Economic Interest for an outside agency, the Deputy City Clerk will provide the correct form, and using the Statement of Economic Interest Form 700 filed in the City Clerk's Office for the City of Porterville, prepare a duplicate statement for signature, and forward the appropriate form to the requesting agency.

D. City of Porterville Conflict of Interest Code:

Certain designated City employees are also required to file conflict of interest forms under the provisions of the Political Reform Act Code, Sections 87100-87500 et seq. The City of Porterville Conflict of Interest Code was adopted by the City Council and is reviewed biennially to make sure it is kept current.

If Council Members have a question on whether an interest they have is sufficient for disqualification, they should contact the Fair Political Practices Commission at (866) 275-3772, or <http://www.fppc.ca.gov>, for a ruling or opinion.



## X. GENERAL ITEMS

### A. Different Hats

Members of the City Council also serve as the governing bodies for the following local agencies:

1. Successor Agency to the Porterville Redevelopment Agency
2. Industrial Development Authority
3. Public Financing Authority
4. Public Improvement Corporation
5. Planning Commission
6. Conflicts and Disclosure Monitor Agency

### B. Compensation

As stated in the City Charter, Section 9, City Council Members shall receive \$20 per Council meeting, \$25 per Council meeting for the Mayor, with a maximum of seven paid Council meetings per month.

### C. Issuance of Electronic Devices to Council Members

An Electronic Device, Internet, and Email Policy has been developed as set forth in Minute Order 14-090605. (*See Appendix D*)

### D. Direction to Support Staff:

Upon assuming office, Council Members should notify the City Manager's staff regarding the following items:

1. Where to deliver Administrative Reports and Memorandums, i.e. home or business.
2. How to direct citizens who wish to speak to Council Members, i.e. take a message, give out home telephone numbers, give out business telephone numbers, etc.

### E. City Attorney

The City Attorney is the legal advisor of the City Council, and all other City officials. The City Attorney shall prosecute all violations of City ordinances and shall draft all contracts and other legal documents and instruments, required by the Council or the

City Manager. The City Attorney shall perform such other legal services as the Council may direct and shall attend all meetings of the Council unless excused therefrom by three members or by the Mayor.

The types of questions referred to the City Attorney are as follows:

1. Generally whether a conflict of interest exists for a Council Member and whether they should abstain from voting on a specific matter.

Please note: Any advice received from the City Attorney relating to Conflicts of Interests is informal only and not binding; the Council Member must seek and obtain a formal written opinion from the FPPC in order to be afforded any statutory immunities.

2. Whether an issue has a legal standing, and what type of action would be appropriate.
3. Legal recommendations for matters of litigation.

F. Annual City Manager/City Attorney Evaluations

The City Council shall provide for annual evaluations for the City Manager and the City Attorney. A standardized evaluation form shall be used which shall address the areas of importance as set forth by the City Council. (*See Appendix C.*)

G. Response to President/Governor Directives

Directives issued by the President of the United States and/or Governor of the State of California shall not be considered a mandatory directive to the City of Porterville except as authorized and/or approved by the City Council. The one exception to this rule is that flags on City buildings shall be flown at half-staff upon orders by the President, Governor and/or Mayor, or by majority approval of the City Council.



## APPENDICES

- A. Resolution 100-2019, Order of Business
- B. Resolution 97-2019, Ticket Policy
- C. Annual City Manager/City Attorney Evaluation Forms
- D. Electronic Device, Internet, and Email Policy
- E. Email Retention Policy

**RESOLUTION NO. 100-2019**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF PORTERVILLE RESCINDING RESOLUTION 31-2019  
AND ESTABLISHING NEW ORDER OF BUSINESS TO BE FOLLOWED  
AT REGULAR MEETINGS OF THE CITY COUNCIL**

**BE IT RESOLVED** by the City Council of the City of Porterville that Resolution No. 31-2019 is herein rescinded.

**BE IT FURTHER RESOLVED** that the following is the order of business to be followed in conducting the regular meetings of the City Council:

- MEETING CALLED TO ORDER
- ROLL CALL
- ORAL COMMUNICATIONS (closed session items only)
- CLOSED SESSION
- RECONVENE OPEN SESSION
- REPORT ON ACTION TAKEN IN CLOSED SESSION
- PLEDGE OF ALLEGIANCE
- INVOCATION
- PRESENTATIONS
- ORAL COMMUNICATIONS (on any matter of interest)
- REPORTS
- CONSENT CALENDAR – to include:
  - Approval of Minutes
  - Claims Against the City
  - Payment of Bills
  - Payments on Public Works Projects
  - Authorization to Purchase
  - Authorization to Call for Bids
  - Award of Bids
  - Acceptance of Projects
  - Acceptance of Dedications/Property
  - Approval of Final Tract Maps
  - Annexations
  - Requests for City Services
  - Reports
  - Other Routine Matters
- PUBLIC HEARINGS
- SECOND READINGS
- SCHEDULED MATTERS



- ORAL COMMUNICATIONS (on any matter of interest)
- COUNCIL COMMENTS
- ADJOURNMENT

**PASSED, APPROVED AND ADOPTED** this 17<sup>th</sup> day of December, 2019.

  
\_\_\_\_\_  
Martha A. Flores, Mayor

ATTEST:  
John D. Lollis, City Clerk

By:   
\_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk


STATE OF CALIFORNIA     )  
CITY OF PORTERVILLE     )     SS  
COUNTY OF TULARE     )

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 17<sup>th</sup> day of December, 2019.

Said resolution was duly passed, approved, and adopted by the following vote:

Council:	PEÑALOZA	REYES	FLORES	STOWE	GURROLA
AYES:	X	X	X	X	X
NOES:					
ABSTAIN:					
ABSENT:					

JOHN D. LOLLIS, City Clerk



By: Fernando Gabriel-Moraga, Deputy City Clerk

**RESOLUTION NO. 97-2019**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF PORTERVILLE REPEALING AND REPLACING RESOLUTION NO. 99-2012  
TO AMEND THE POLICY CONCERNING THE ACCEPTANCE OF  
TICKETS BY COUNCIL MEMBERS TO CITY SPONSORED AND  
NON-CITY SPONSORED EVENTS**


**WHEREAS**, changes have been made to the City Council's Procedural Handbook, in particular, the policy concerning the acceptance of tickets by Council Members to both City sponsored and non-City sponsored events

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Porterville that Resolution No. 99-2012 shall be repealed and replaced as follows:

**SECTION 1:** A Council Member may accept no more than two (2) tickets issued by the City to a City event or a City-sponsored event. Any tickets in excess of two (2) accepted by a Council Member shall be paid for by the Council Member from non-City funds at the time of acceptance of the tickets.

**SECTION 2:** A Council Member may accept one (1) ticket issued by the event sponsor if attending the event in his/her capacity as a City Council Member. Any additional tickets shall be paid for by the Council Member from non-City funds at the time of acceptance of the tickets.

**PASSED, APPROVED AND ADOPTED** this 3<sup>rd</sup> day of December, 2019.

  
Martha A. Flores, Mayor

ATTEST:  
John Lollis, City Clerk

By:   
Fernando Gabriel-Moraga, Deputy City Clerk

STATE OF CALIFORNIA     )  
CITY OF PORTERVILLE    )       SS  
COUNTY OF TULARE     )

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 3<sup>rd</sup> day of December, 2019.

Said resolution was duly passed, approved, and adopted by the following vote:

Council:	PEÑALOZA	REYES	FLORES	STOWE	GURROLA
AYES:	X	X	X	X	X
NOES:					
ABSTAIN:					
ABSENT:					

JOHN D. LOLLIS, City Clerk

  
By: Fernando Gabriel-Moraga, Deputy City Clerk



## CITY MANAGER PERFORMANCE EVALUATION

	<u>WEAK</u>			<u>STRONG</u>	
<b>A. Providing Information</b>					
1. Does the City Manager keep you informed, in a timely manner, of the things you want to know about?	1	2	3	4	5
2. Do you feel that you receive information on an equal basis with other Council members?	1	2	3	4	5
3. Do reports provide adequate information and analysis to help you make sound decisions?	1	2	3	4	5
4. Are agenda items and supporting documents appropriate and brought to Council in sufficient time for deliberations?	1	2	3	4	5
5. Does the City Manager follow established policy concerning the placement of items on the agenda?	1	2	3	4	5
6. Does the City Manager follow up promptly on Council requests for information or action without having to be reminded?	1	2	3	4	5
7. Are Council packets relatively free of errors and omissions?	1	2	3	4	5

Average score

	<u>WEAK</u>			<u>STRONG</u>	
<b>B. Providing Advice</b>					
1. Does the City Manager have adequate knowledge of municipal affairs?	1	2	3	4	5
2. Does he exercise good judgment?	1	2	3	4	5



3. Do you feel that the City Manager considers alternatives before making recommendations?	1	2	3	4	5
4. Does the City Manager plan ahead, anticipate needs and recognize potential problems?	1	2	3	4	5
5. How do you feel about the quality of analysis that accompanies recommendations?	1	2	3	4	5
6. Does he have a good sense of timing in bringing issues to the Council for action?	1	2	3	4	5

Average score

## **INTERNAL ADMINISTRATION**

### **A. Financial Management**

	<b><u>WEAK</u></b>			<b><u>STRONG</u></b>	
1. Are you comfortable with the City Manager's approach to budget preparation and review?	1	2	3	4	5
2. Is the City Manager effective in controlling costs through economical utilization of manpower, materials, and equipment?	1	2	3	4	5
3. Does the City Manager have sufficient knowledge of financial matters?	1	2	3	4	5
4. Does the City Manager provide you with sufficient information on the financial status of the City government?	1	2	3	4	5
5. Is the budget submitted on time?	1	2	3	4	5

Average score

### **B. Personnel Management**

	<b><u>WEAK</u></b>			<b><u>STRONG</u></b>	
1. Is the City Manager successful in guiding people so that they work together as a team toward common objectives?	1	2	3	4	5

	<u>WEAK</u>			<u>STRONG</u>	
2. Is the City Manager effective in selection and placing personnel?	1	2	3	4	5
3. Does the City Manager develop and motivate personnel so that they are increasingly effective in performing their duties?	1	2	3	4	5
4. Is the City Manager willing to face up to disciplinary problems and take action when warranted?	1	2	3	4	5
5. Is the City Manager effective in promoting positive employer-employee relations?	1	2	3	4	5
6. Is the City Manager effective on assuring that staff makes a positive impression on citizens?	1	2	3	4	5

Average score

	<u>WEAK</u>			<u>STRONG</u>	
<b>C. Getting the Job Done</b>					
1. Do you have the feeling that things the Council decides or directs get done?	1	2	3	4	5
2. Does the City Manager organize or assign work so that it is performed efficiently and effectively?	1	2	3	4	5
3. Does the City Manager pay sufficient attention to detail to avoid error or things “slipping through the cracks”?	1	2	3	4	5
4. Does the City Manager put in sufficient time and effort to perform to your expectations?	1	2	3	4	5
5. Does the City Manager have a good sense of priorities in the way he spends his time on the job?	1	2	3	4	5
6. Is the City Manager able to analyze problems or issues and identify causes, reasons, and implications?	1	2	3	4	5

- |   |   |   |   |   |   |
|---|---|---|---|---|---|
| 7. Does the City Manager develop and carry out short- and long-term action plans? | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|

Average score

## **EXTERNAL RELATIONS**

### **A. Citizen Relations**

- |  | <u>WEAK</u> |   |   |   | <u>STRONG</u> |
|--|-------------|---|---|---|---------------|
| 1. Does the City Manager generally make a positive impression on citizens and is he respected in Porterville?                                | 1           | 2 | 3 | 4 | 5             |
| 2. Is he effective in handling disputes or complaints involving citizens?  | 1           | 2 | 3 | 4 | 5             |
| 3. Does the City Manager have appropriate visibility or identity in the community?   | 1           | 2 | 3 | 4 | 5             |
| 4. Does the City Manager represent Council positions and policies accurately and effectively?  | 1           | 2 | 3 | 4 | 5             |
| 5. Does the City Manager have the insight and knowledge to work with the Council, staff, and citizens to find effective solutions to issues? | 1           | 2 | 3 | 4 | 5             |

Average score

### **B. Intergovernmental Relations**

- |  | <u>WEAK</u> |   |   |   | <u>STRONG</u> |
|--|-------------|---|---|---|---------------|
| 1. Is the City Manager effective representing the City's interests in dealing with other agencies?                 | 1           | 2 | 3 | 4 | 5             |
| 2. Does the City Manager participate in enough intergovernmental activity to have an impact on behalf of the City? | 1           | 2 | 3 | 4 | 5             |

Average score

## **PERSONAL CHARACTERISTICS**

	<b><u>WEAK</u></b>			<b><u>STRONG</u></b>	
<b>A. Personality</b>					
1. Is the City Manager's personality suited to effective performance of his duties?	1	2	3	4	5

Average score

	<b><u>WEAK</u></b>			<b><u>STRONG</u></b>	
<b>B. Communications</b>					
1. Is the City Manager easy to talk to?	1	2	3	4	5
2. Do you feel he is a good listener?	1	2	3	4	5
3. Are communications thoughtful, clear, and to the point?	1	2	3	4	5
4. Does the City Manager show sensitivity to the concerns of others?	1	2	3	4	5

Average score

	<b><u>WEAK</u></b>			<b><u>STRONG</u></b>	
<b>C. Management Style</b>					
1. Does the City Manager demonstrate interest and enthusiasm in performing his duties?	1	2	3	4	5
2. Does he have sufficient leadership characteristics to command respect and good performance from employees?	1	2	3	4	5
3. Does the City Manager show initiative and creativity in dealing with issues, problems, and unusual situations?	1	2	3	4	5
4. Is the City Manager open to new ideas and suggestions for change?	1	2	3	4	5
5. Does the City Manager create an atmosphere in which employees can enjoy working for the City?	1	2	3	4	5

6. Is the City Manager honest and ethical?	1	2	3	4	5
7. Does the City Manager work well under pressure?	1	2	3	4	5
8. Is the City Manager able to change his approach to fit new situations?	1	2	3	4	5
9. Can the City Manager consistently put aside personal views and implement Council policy and direction?	1	2	3	4	5

Average score

### **ACHIEVEMENTS**

List the top three achievements or strong points of the City Manager for the past twelve (12) months:
1.
2.
3.

### **FUTURE DEVELOPMENT**

List three performance objectives for the City Manager that you feel are the most important targets for this year:
1.
2.
3.



### Total Overall Score

## OVERALL RATING

WEAK  
1

2

3

4

STRONG  
5

5

*Date:*

Martha A. Flores, Mayor

Monte Reyes, Vice Mayor

Milt Stowe, Council Member

Daniel Peñaloza, Council Member

Virginia Gurrola, Council Member



## CITY ATTORNEY PERFORMANCE EVALUATION

	WEAK			STRONG	
<b>A. Providing Information</b>					
1. Does the City Attorney keep you informed, in a timely manner, of the legal issues affecting the City?	1	2	3	4	5
2. Does the City Attorney demonstrate initiative and resourcefulness in identifying legal problems, and advising and recommending resolutions?	1	2	3	4	5
3. Do reports/memoranda from the City Attorney provide adequate information and analysis to help you make sound decisions?	1	2	3	4	5
4. Do the legal solutions that are developed appropriately address the issues to be resolved?	1	2	3	4	5
5. Does the City Attorney follow up promptly on Council requests for information or action without having to be reminded?	1	2	3	4	5

Average score

	WEAK			STRONG	
<b>B. Providing Advice</b>					
1. Does the City Attorney have adequate knowledge of municipal legal affairs?	1	2	3	4	5
2. Does he/she exercise good judgment?	1	2	3	4	5
3. Do you feel that the City Attorney considers alternatives before making recommendations?	1	2	3	4	5
4. Does the City Attorney plan ahead, anticipate needs and recognize potential legal problems?	1	2	3	4	5
5. How do you feel about the quality of analysis that accompanies recommendations?	1	2	3	4	5

Average score

	WEAK			STRONG	
<b>C. Getting the Job Done</b>					
1. Do you have the feeling that things the Council decides or directs get done?	1	2	3	4	5
2. Does the City Attorney pay sufficient attention to detail to avoid error or things “slipping through the cracks”?	1	2	3	4	5
3. Does the City Attorney put in sufficient time and effort to perform to your expectations?	1	2	3	4	5
4. Does the City Attorney have a good sense of priorities in the way he/she spends his/her time on the job?	1	2	3	4	5
5. Is the City Attorney able to analyze problems or issues and identify causes, reasons, and implications?	1	2	3	4	5
6. Does the City Attorney perform well under pressure?	1	2	3	4	5
7. When work is delegated to staff/deputy attorneys, is the project/issue handled appropriately?	1	2	3	4	5
Average score					

## **EXTERNAL RELATIONS**

	WEAK			STRONG	
<b>A. Citizen Relations</b>					
1. Does the City Attorney generally make a positive impression on citizens and is he/she respected in Porterville?	1	2	3	4	5
2. Is he/she effective in handling disputes or complaints involving citizens?	1	2	3	4	5
3. Does the City Attorney have appropriate visibility or identity in the community?	1	2	3	4	5
4. Does the City Attorney think and act in a manner reflecting an attitude that client (Council, staff, or citizens) perceptions and satisfactions are key?	1	2	3	4	5
Average score					

	WEAK			STRONG	
<b>B. Intergovernmental Relations</b>					
1. Is the City Attorney effective representing the City's interests in dealing with other agencies?	1	2	3	4	5
Average score					

## **PERSONAL CHARACTERISTICS**

	WEAK			STRONG	
<b>A. Personality</b>					
1. Is the City Attorney's personality suited to effective performance of his/her duties?	1	2	3	4	5
Average score					

	WEAK			STRONG	
<b>B. Communications</b>					
1. Is the City Attorney easy to talk to?	1	2	3	4	5
2. Do you feel he/she is a good listener?	1	2	3	4	5
3. Are communications thoughtful, clear, and to the point?	1	2	3	4	5
4. Does the City Attorney show sensitivity to the concerns of others?	1	2	3	4	5
Average score					

	WEAK			STRONG	
<b>C. Management Style</b>					
1. Does the City Attorney demonstrate interest and enthusiasm in performing his/her duties?	1	2	3	4	5
2. Does the City Attorney show initiative and creativity in dealing with issues, problems, and unusual situations?	1	2	3	4	5
3. Is the City Attorney honest and ethical?	1	2	3	4	5
4. Does the City Attorney work well under pressure?	1	2	3	4	5

	WEAK			STRONG	
5. Is the City Attorney able to change his/her approach to fit new situations?	1	2	3	4	5
6. Can the City Attorney consistently put aside personal views and implement Council policy and direction?	1	2	3	4	5

Average score

**ACHIEVEMENTS**

List the top three achievements or strong points of the City Attorney for the past twelve (12) months:
1.
2.
3.

**FUTURE DEVELOPMENT**

List three performance objectives for the City Attorney that you feel are the most important targets for this year:
1.
2.
3.



## TOTAL OVER ALL SCORE

	<u>WEAK</u>				<u>STRONG</u>
<b>OVERALL RATING</b>	1	2	3	4	5
<i>Date:</i>					

\_\_\_\_\_  
Martha A. Flores, Mayor

\_\_\_\_\_  
Brian Ward, Vice Mayor

\_\_\_\_\_  
Milt Stowe, Council Member

\_\_\_\_\_  
Monte Reyes, Council Member

\_\_\_\_\_  
Daniel Peñaloza, Council Member



## **CITY COUNCIL CITY DEVICE, INTERNET & EMAIL POLICY**

Electronic devices are made available to Council Members upon taking office and assuming Council duties. Access to email and the internet is a resource also made available to City Council Members as a means of communicating with City administration and constituents. The City Council recognizes that access to electronic communications contributes to the efficiency of conducting city business. The City Council has adopted this policy to ensure that all City of Porterville computer and network resources are used for purposes appropriate to City business; to inform Council Members of the applicability of laws and policies to computer and network usage; to establish policies on privacy, confidentiality, and security in electronic communications; and to provide guidance concerning rights and responsibilities with respect to the proper use of City of Porterville computer and network resources.

### **SCOPE**

This policy applies to:

1. All City Council Members, as authorized users, whether elected or appointed;
2. All computer and mobile devices and network resources leased, owned, or managed by the City of Porterville; and
3. All electronic communications records in the possession of the City of Porterville.

### **CONFIDENTIALITY AND SECURITY**

1. All materials sent or received over the Internet on electronic devices and/or network resources leased, owned or managed by the City, shall be considered property of the City. An authorized user does not have privacy rights in any matter created, received or sent. The City reserves the right to monitor access or disclose any message created, received or sent via the Internet or e-mail at any time, without advanced notice.
2. All authorized users shall respect the privacy of other users; for example, users shall not intentionally seek information on, obtain copies of, or modify files or data, belonging to other users, unless explicit permission to do so has been obtained.
3. Authorized users are to safeguard their accounts and passwords. Accounts and passwords are normally assigned to a single user, and are not to be shared with others. Users are responsible for their individual computer accounts and shall take

all reasonable precautions to prevent others from using their accounts. All notebooks and/or tablets should be locked or logged off each time they leave the device unattended. Account owners are ultimately responsible for all activity under their account.

4. Authorized users will not connect, attempt to connect or disconnect any computer or peripheral to, from or within the City of Porterville network without prior authorization from the Information Technology Division.
5. Authorized users will not use or attempt to use on the City of Porterville network any of the following items: any computer operating system media; computer or network utilities; network monitors; unlocking utilities or any software used to repair, change or monitor computer operations, network activity or security without preapproval from the Information Technology Division.
6. Authorized users should not attempt to remove the email disclaimers in their emails.
7. Authorized users shall not write down passwords to City of Porterville resources in an unsecured area.
8. Confidential information should not be downloaded or stored on portable resources unless proper encryption and password protection mechanisms are in place.

## **UNACCEPTABLE USES**

1. Violations of the rights of any person or company protected by copyright, trade secret, patent or other intellectual property, or similar laws or regulations, including, but not limited to, unauthorized digitization and distribution of photographs from magazines, books or other copyrighted sources, copyrighted music, and the installation or distribution of “pirated” or other software products that are not appropriately licensed for use by City of Porterville.
2. Accessing or viewing sexually explicit or pornographic material.
3. Exporting software, technical information, public safety information, or encryption software, in violation of international or regional export control laws. Such use is illegal. The Information Technology Division should be consulted prior to export of any material that is in question.

4. Introduction of malicious programs into the network or servers (e.g., viruses, worms, Trojan horses, e-mail bombs, etc.) that may gain unauthorized access to any computer or computing system and cause intentional disruption.
5. Revealing your account password to others or allowing use of your account by others. This includes family and other household members when work is being done at home.
6. Using a City of Porterville device for profit activities (e.g., consulting for pay, sale of goods such as Avon and Amway products, etc.), or to actively engage in procuring or transmitting material that is in violation of discriminatory, sexual harassment or hostile workplace laws. Use of City devices or networks for political campaign purposes is expressly prohibited.
7. Making fraudulent offers of products, items or services originating from any City of Porterville account.
8. Effecting security incidents or disruptions of network communication. Security incidents include, but are not limited to, accessing data of which the authorized user is not an intended recipient or logging into a server or account that the authorized user is not expressly permitted to access, unless these duties are within the scope of regular duties. For purposes of this section, "disruption" includes, but is not limited to, network sniffing, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes.
9. Port scanning or security scanning. Such use is expressly prohibited.
10. Executing any form of network monitoring which will intercept data not intended for the authorized user's host, unless this activity is part of the employee's normal job/duty.
11. Circumventing user authentication or security of any host, network or account.
12. Using any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, a user's terminal session, via any means, locally or via the Internet/Intranet/Extranet.

13. Unless explicitly authorized, providing information about, or lists of, City of Porterville employees or its affiliates to parties outside City of Porterville.
14. Incurring personal charges through the use of these systems. In the event that an authorized user does incur personal charges through the use of these systems, that user will be responsible for reimbursing the City for all expenses incurred.
15. Removing or disabling the security software (i.e. firewalls, anti-virus, anti-spyware, etc.) for any reason, unless done by or with the authority of the Information Technology staff.
16. The connection of portable or desktop computers to the City of Porterville computer network without approval by the Information Technology Division. Visitors or vendors under your care are not allowed to connect their portables directly to the City's network.

## **CITY'S RESERVATION OF THE RIGHT TO MONITOR**

Pursuant to the Electronic Communications Privacy Act of 1986...notice is hereby given that there are NO facilities provided by the City for sending or receiving private confidential electronic communications. System administrators have access to all mail and user data files, and will monitor messages as necessary to assure efficient performance.

## **PUBLIC RECORDS AND PRIVATE AND PUBLIC DEVICES**

Any temporary and permanent files and data prepared or received on a City owned or controlled device are considered a public record, unless an otherwise valid public records exemption applies.

Temporary and permanent files and data prepared or received on a privately-owned device or electronic system by an authorized user containing information relating to the conduct of the public's business are public records subject to control by the City and compliance with the City's record policies. A writing relates to the conduct of the public's business when it serves, or is intended to serve, a City purpose and involves a matter over which the authorized user has work responsibility. This policy is not intended to modify the definition of a public record as defined by the California Public Records Act.

When notified of a public records request, the authorized user must conduct a reasonable search for, locate, and review writings maintained on his or her privately-owned device or electronic systems that are potentially responsive to a public records request and provide the responsive records to the City Clerk. The authorized user must provide an explanation for a decision to exclude certain writings as not being responsive



public records. If required by the City Attorney, the authorized user must execute an affidavit containing a sufficient factual basis for the City or a court to determine whether a record on a privately-owned electronic systems is not a responsive public record.

## **LOST OR STOLEN**

Authorized users must report to City Administration, within one business day, whenever any personal device used pursuant to this policy is suspected or known to be lost or stolen. Upon notification of loss/theft, the System administrators may issue a remote wipe of affected City-owned or controlled devices to ensure that City-related data is safeguarded. The City is not liable for the potential loss of personal (e.g., contacts, apps, photos, etc.) data, including the potential to restore the device to factory default settings.

<p style="text-align: center;">CITY OF PORTERVILLE ADMINISTRATIVE POLICY</p>	<p>Number <u>V-A-15</u> Date <u>May 2, 2019</u> Revised _____ Authority <u>Administration</u></p>
<p>SUBJECT: EMAIL RETENTION POLICY</p>	<p>_____ City Manager</p>

**PURPOSE:**

To provide a procedure for the retention of e-mails consistent with applicable state and/or federal law and to provide for the efficient maintenance of affected infrastructure.

**PROCEDURE:**

**Managing Agency E-mail**

Agency officials and employees are responsible for the management of their e-mail folders on a regular basis. It is the responsibility of agency officials and employees to determine if an e-mail is an Official Agency Record ("OAR") which must be retained in accordance with the City's Records Retention Policy. An e-mail message and any attachments regardless of format may be considered an OAR.

**Messages that are Generally NOT Considered as Official Agency Records**

Examples of e-mail messages that are not generally considered OARs may include: (1) personal messages; (2) "Spam" emails, advertisements, or other "junk" e-mail; (3) messages not related to public business (e.g., employee birthday celebrations in the lunch room); and (4) newsletters or general information from vendors or other public agencies.

**Preserving E-mails that are Official Agency Records**

Any e-mail message, including any attachments regardless of format that is an OAR should be preserved by one of the following methods:

1. Print the email and consolidate the printed copy in the appropriate file. Generally, the employee who sends the e-mail should be the person responsible for printing and filing the hard copy, but persons responsible for a particular program or project file shall be responsible for retaining all e-mail they send or receive related to that program or project
2. Move the e-mail from your Inbox to the archival folder within your Office 365 account.

**E-mail Box Retention Schedule**

Days	120	120	30	30
Email Folders	Inbox	Sent	Delete	Junk

**Inbox** and **Sent** folders retention period is 120 days. Items that reach 120 days will be automatically moved to archive.

**Deleted** and **Junk** folders retention period is 30 days. Items that reach 30 days will be automatically moved to archive.

This policy does not waive any exemption to disclosure that may apply under the California Public Records Act or other applicable law.

**RESOLUTION NO. \_\_\_\_-2023**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF PORTERVILLE RESCINDING RESOLUTION 100-2019  
AND ESTABLISHING NEW ORDER OF BUSINESS TO BE FOLLOWED  
AT REGULAR MEETINGS OF THE CITY COUNCIL**

**BE IT RESOLVED** by the City Council of the City of Porterville that Resolution No. 100-2019 is herein rescinded.

**BE IT FURTHER RESOLVED** that the following is the order of business to be followed in conducting the regular meetings of the City Council:

- MEETING CALLED TO ORDER
- ROLL CALL
- ORAL COMMUNICATIONS (closed session items only)
- CLOSED SESSION
- RECONVENE OPEN SESSION
- REPORT ON ACTION TAKEN IN CLOSED SESSION
- PLEDGE OF ALLEGIANCE
- INVOCATION
- PRESENTATIONS
- ORAL COMMUNICATIONS (on any matter of interest)
- STAFF INFORMATIONAL REPORTS
- CONSENT CALENDAR – to include:
  - Approval of Minutes
  - Claims Against the City
  - Payment of Bills
  - Payments on Public Works Projects
  - Authorization to Purchase
  - Authorization to Call for Bids
  - Award of Bids
  - Acceptance of Projects
  - Acceptance of Dedications/Property
  - Approval of Final Tract Maps
  - Annexations
  - Requests for City Services
  - Reports
  - Other Routine Matters
- PUBLIC HEARINGS
- SECOND READINGS
- SCHEDULED MATTERS
- AB1234 REPORTS

- ORAL COMMUNICATIONS (on any matter of interest)
- COUNCIL COMMENTS
- ADJOURNMENT

**PASSED, APPROVED AND ADOPTED** this 17<sup>th</sup> day of January, 2023.

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Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

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By: Patrice Hildreth, Chief Deputy City Clerk



## **CITY OF PORTERVILLE CITY COUNCIL POLICY CONCERNING USE OF SOCIAL MEDIA**

The City Council of the City of Porterville recognizes that social media such as Facebook, Twitter, Instagram, You Tube, etc. are popular tools for developing communications with the community. However, use of these tools should be done in a manner consistent with the Public Records Act, Brown Act, and other applicable laws. The City Council has adopted this policy in order to strike an appropriate balance between privacy, liability and public records concerns, and to keep clear distinctions between official and personal accounts.

### **THIRD PARTY SYSTEMS**

Many social media platforms are third party systems that are maintained by other entities. Therefore, storage and control of information by account holders is limited by the terms of agreement with those entities. The account holders do not control the privacy and use policies of the platforms, and it is recognized that platform providers will, from time to time, modify their terms, conditions and usage policies with little to no notification.

### **CITY SOCIAL MEDIA SITES AND INDIVIDUAL SITES**

“City social media sites” means official social media sites that the City establishes. “Individual social media sites” means social media sites established by individual Council Members, whether they reference their status as council members or not on the site.

### **NEW BROWN ACT LAW ADOPTED SEPTEMBER 18, 2020 AFFECTING SOCIAL MEDIA USE**

A majority of the City Council Members are prohibited, outside of an authorized meeting, from using a series of communications of any kind to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the City Council. The new law does not prevent a Council Member from engaging in separate communications outside of an authorized meeting with any other person using an internet-based social media platform, to answer questions, provide information to the public, or to solicit information from the public regarding a City-related matter. That stated, the new law states that a majority of the City Council Members shall not use any internet-based social media platform to discuss among themselves, business of a specific nature that is within the subject matter jurisdiction of the City. FURTHERMORE, A CITY COUNCIL MEMBER SHALL NOT RESPOND DIRECTLY TO ANY COMMUNICATION ON AN INTERNET-BASED SOCIAL MEDIA PLATFORM REGARDING A MATTER THAT IS WITHIN THE SUBJECT MATTER JURISDICTION OF THE CITY COUNCIL THAT IS MADE, POSTED, OR SHARED BY ANY OTHER MEMBER OF THE CITY COUNCIL. The new law specifically includes the use of “digital icons” that express reactions, in addition to electronic comments, within the definition of social media communications that are subject to restriction/prohibition.

### **CONSTITUTIONAL/FIRST AMENDMENT CONCERNS**

There is case law addressing what will be interpreted as an account created or used in the Council Member’s official capacity and considered a public forum created by a public official (therefore prohibiting a public official from removing an individual’s communications or removing/banning users from that account), versus what may be considered a private social media account of a public official. In *Knight First Amendment Institute v. Trump*, 8 F.3d 226 (2<sup>nd</sup> Circuit 2019), the Court found that the First Amendment does not permit a public official who utilizes a social media account for official purposes to exclude persons from an otherwise-open dialogue because they expressed views with which the official disagrees. Such persons cannot be blocked in response to views that person has expressed. The Court noted that President Trump’s account was private prior to his election, and that the account may again become private when he leaves office, but because he had used the account to communicate and interact with the public about his administration, he had converted the account to a public forum. In *Garnier v. O’Connor-Ratcliffe*, 41 F.4<sup>th</sup> 1158 (9<sup>th</sup> Circuit 2022), the Court determined that two school board

candidates, who had campaign social media accounts/pages that were later changed to reflect their positions as elected officials and were used to communicate about school district activities, could not restrict or block specific parents from those pages/accounts.

### **COUNCIL MEMBER USE OF CITY SOCIAL MEDIA SITES**

Members of the City Council shall not engage on City social media sites to “Like,” “Share,” “Retweet” or otherwise respond to any published postings on the City social media sites. Furthermore, members of the City Council shall not use the City social media sites to blog or engage in serial meetings, to engage in communications that violate other provisions of the Brown Act, or to otherwise discuss, deliberate, or express opinions on any issue within the subject matter jurisdiction of the City.

### **COUNCIL MEMBER USE OF INDIVIDUAL SOCIAL MEDIA SITES**

Members of the City Council, as a matter of free speech, may each choose to establish their own social media sites using their personal accounts. City Council Members recognize that for any account they establish, where they communicate regarding concerning the City’s activities or their own activities as a City Council Member, it is recommended that the content and tenor of online comments and information posts model the same decorum displayed during City Council meetings. The members agree to include a statement in their public profiles, or otherwise make clear on those sites that the site is not an official City social media site, that complaints and public records requests must be provided directly to the City Clerk or specific related City department, and that any content posted on the sites by the Council Member is not the official position of the City.

In order to assist with keeping information from individual social media sites from becoming subject to disclosure and retention requirements as a public record, the following precautions are recommended: 1) post disclaimers on personal accounts that identify the account purpose and that the opinions expressed are the individual’s own; 2) limit the account content to personal use; 3) understand and use privacy settings to manage the account; 4) don’t link from your individual accounts to an official city account; and 5) don’t use city devices to maintain your individual account. Notwithstanding these recommended precautions, City Council members shall not delete posts on their accounts used to communicate about activities and issues that come within the City’s subject matter, or comments received by individuals related to any such activities or issues, in order to ensure compliance with City records retention and public records laws.

## **CITY COUNCIL MEMBER WEYHRAUCH**

### **Recommended Amendments to the City Council Procedural Handbook**

**January 17, 2023**

II (D)

Reorder of Agenda

IV (C)

(Consider adding) Council Member should attempt to take notes related to the conversation as it occurs or soon thereafter. Items may include: Date, Time, Caller, Topic(s), Action items (including future follow-on informational sessions, and Resolution. Council Member is advised to convey views and/or feelings of the specific Council Member are just that.

Forward information to City Manager.

Consider Appendix of Call Log (Draft attached).

X (E)(1)

Paragraph 2: Consider adding phone number to FPPC again (866) 275.3772

X (G)

Revise?? What does our City Charter say on this? Have we ever done anything close to this?

Appendices

(A) Resolution NO. 100-2019

Revise Agenda

Public info earlier, followed by

Consider moving staff reports to earlier

(E) Email retention

Revise

Auto back-up maintained by IT department, or

Place archival folder into all CM OUTLOOK file folders and auto transfer rule put in place.

No need to print/file except for personal needs

City business on personal email accounts, CC your city email address

# Council Communication Log

NAME: \_\_\_\_\_ PHONE: \_\_\_\_\_

ITEM: \_\_\_\_\_

Date:	Incoming From:	Outgoing To:
Notes:		
Action Item:		
Resolution:		
Date:	Incoming From:	Outgoing To:
Notes:		
Action Item:		
Resolution:		
Date:	Incoming From:	Outgoing To:
Notes:		
Action Item:		
Resolution:		



## CITY COUNCIL AGENDA – JANUARY 17, 2023

**SUBJECT:** 2023 State Budget and Legislation Interests

**SOURCE:** City Manager's Office

**COMMENT:** City staff has been in communication with the respective staff for both Senator Hurtado and Assemblyman Mathis in regard to prospective State budgetary and legislative interests for the upcoming 2023 California legislative session.

Past budgetary and legislative interests of the City have included: grant funding for the City's transition to tertiary treatment recycled water; grant funding for a new community library and community center; enhanced funding for homeless housing and support services; State determination of reuse of the general treatment area of the Porterville Developmental Center; State maintenance of the Army National Guard Armory facility and/or surplus to the City for community purposes; and State Peace Officer Standards and Training (POST) Program Module 1 at Porterville College.

In the 2021 California legislative session, Senator Hurtado was instrumental in the award of \$3 million in grant funds to the City for the development of the tertiary treatment recycled water facility being constructed in collaboration with the Tule River Tribe in support of the Eagle Mountain Casino relocation project. In the 2022 California legislative session, Senator Hurtado was significantly responsible for the appropriation of \$10 million in State funding for the development of a new Emergency Operations Center and Public Safety Administrative offices at the former library site.

**RECOMMENDATION:** That the City Council consider its State budget and legislative interests for the upcoming 2023 California legislative session.

**ATTACHMENTS:** 1. Draft 2023 State Budget and Legislative Priorities

**Appropriated/Funded:**

**Review By:**

Department Director:  
John Lollis, City Manager

Final Approver: John Lollis, City Manager





# **CITY OF PORTERVILLE**

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## **2023 State Budget and Legislative Priorities**



# 2023 State Budget and Legislative Priorities



- \* New Community Library Facility
- \* New Community Recreation Facility
- \* Homeless Housing and Services Funding
- \* Porterville Developmental Center Reuse
- \* Army National Guard Armory Reuse
- \* Porterville College POST Peace Officer Program Module 1



# 2023 State Budget and Legislative Priorities



New Community Library Facility  
State Budget Request: \$10,000,000

- \* Porterville Library was the “Tulare County’s Library” (SJVLS data)
- \* Historic Library was lost to catastrophic arson fire on February 18, 2020
- \* City fire insurance proceeds being used to develop temporary library
- \* Historic Library was 18,000-square feet; New library needs assessment recommends 40,000-square foot facility
- \* \$750 per square foot is current cost of construction: \$30,000,000
- \* City fire insurance proceeds potentially pay \$13,000,000
- \* City awarded California State Library Grant of \$7,260,000
- \* Requested State funding match of \$10,000,000
- \* Environmental/Design: 2023; Construction: 2024; Open: 2025



# 2023 State Budget and Legislative Priorities




New Community Center Recreation Facility  
State Budget Request: \$5,000,000

- \* City is selling co-located Heritage Community Center to Porterville Unified School District for expanded use of Santa Fe Elementary School for \$1.8 million (federal funds)
- \* City vision for new 20,000-square foot community recreation facility
- \* City awarded State Proposition 68 grant for \$7.5 million
- \* Proposed location is on City property in a significantly disadvantaged census tract, co-located along the City's Rails-to-Trails Pedestrian Corridor (Santa Fe Byway)



# 2023 State Budget and Legislative Priorities



## Homeless Housing and Services Funding Request: Support

- \* City established first and only current homeless navigation center in Tulare County, opening in November 2020 in partnership with contract operator Turning Point of Central California
- \* Porterville Welcome Center provides fifteen (15) emergency shelter beds at fifteen (15) bridge housing beds
- \* City is planning to expand the Porterville Welcome Center with thirty (30) additional emergency shelter beds, bathroom and shower facility, indoor meal area, laundry facility, and more office space for services
- \* State homeless funding for Tulare County is being dedicated by the County of Tulare to exclusively support the Project Homekey projects in Tulare and Visalia
- \* City planning to utilize federal ARPA funding for capital improvements





# 2023 State Budget and Legislative Priorities



Porterville Developmental Center Reuse  
Request: Support

- \* City has received no update since 2016 from the California Department of Developmental Services on the Transition Plan for the Porterville Developmental Center since the General Treatment Area was closed
- \* “Rumors” of potential reuses have included CalFire, Highway Patrol and/or Department of Corrections establishing public safety academies
- \* With no California State University or University of California campuses in Tulare County, potential programs with focus on agriculture, behavioral sciences, criminal science, cultural and biological resources, etc.
- \* Potential Emergency Shelter and Permanent Supportive Housing facility for individuals experiencing homelessness



# 2023 State Budget and Legislative Priorities




Army National Guard Armory Reuse  
Request: Support

- \* California National Guard has closed the Porterville armory in consolidation and expansion of Bakersfield armory
- \* New Porterville armory was being planned adjacent to the Porterville Fairgrounds on City property, with a property swap of the current armory site and the City property for the new armory
- \* With closure of the Porterville armory, the City has expressed interest in the surplus of the facility to the City for enhanced community services
- \* California National Guard is not maintaining the Porterville facility, with frequent community complaints in regard to unkept facility landscaping
- \* City has requested the opportunity to tour the vacated armory facility, but have not been provided such right of entry; California National Guard has estimated up to \$5 million in deferred maintenance needs



# 2023 State Budget and Legislative Priorities



Porterville College POST Peace Officer Program Module 1  
Request: Support

- \* Porterville College currently offers POST Peace Officer Program Modules 2 and 3, but not 1 due to College of the Sequoias offering Module 1
- \* College of the Sequoias Peace Officer Program is offered at its Hanford campus, thus no Module 1 program is offered in Tulare County
- \* City and Porterville College already partner in hosting the Fire Academy at City's Fire Station 72 and Fire Training Facility
- \* City and Porterville College have discussed the potential of hosting the Peace Officer Program at a City facility, including Module 1, but need POST accreditation and support