

**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

September 20, 2021

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**ITEM NO: 1.a.**

**SUBJECT:** Approval of 1<sup>st</sup> Amendment to Lease Agreement with Selma Business Park, LLC for Central Valley Training Center facility.

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**RECOMMENDATION:** Staff recommends Council authorize the Interim City Manager to execute the 1<sup>st</sup> Amendment to the Lease Agreement extending the lease term through October 31, 2022.

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**BACKGROUND:**

The Central Valley Training Center continues to successfully train Central Valley residents for in-demand industrial jobs. The CA High Speed Rail Authority has agreed to continue to fund the program through at least 2023, which requires an extension of the City's existing lease with Selma Business Park, LLC (the owner of the training facility).

The terms of the extension/amendment are the same as the original agreement, with the exception of the expiration date. Per the terms of the original agreement, the City can extend the lease up to three (3) times for an additional one (1) year per extended option term. This would be the first extension.

**FISCAL IMPACT:**

The cost of the Central Valley Training Center, including the lease, is paid for through funding from the California High Speed Rail Authority. The amount of the monthly lease is \$8,305.92 per month.

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<u>/s/</u>	<u>09/16/2021</u>
Fernando Santillan, Community Development Director	Date

<u>/s/</u>	<u>09/16/2021</u>
Ralph Jimenez, Interim City Manager	Date

## FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement (“**First Amendment**”) is entered into as of September 2, 2021, for reference purposes only, by and between, SELMA BUSINESS PARK, LLC, a Delaware limited liability company (“**Landlord**”) and CITY OF SELMA, CA, a municipal government of the State of California (“**Tenant**”).

### RECITALS:

A. Landlord and Tenant entered into that certain Lease Agreement dated as of September 1, 2020 (the “**Lease**”), for approximately 28,800 square feet of space (“**Premises**”) at 1775 Park Street, Selma, California (the “**Property**”);

B. Tenant has three (3) Options to Extend the Term for one (1) year each and Tenant has elected to exercise its first Option to Extend.

C. Landlord and Tenant mutually desire to amend the Lease in accordance with the terms and conditions hereto.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** All capitalized terms in this First Amendment shall have the same meaning ascribed thereto in the Lease, unless otherwise provided herein.

2. **Extended Term.** The term for Premises shall be extended for one (1) year commencing November 1, 2021 and continue through October 31, 2022 (“**Extended Term**”).

3. **Base Rent.** During the Extended Term, Base Rent for the Premises shall be \$8,305.92 per month.

4. **Notice Addresses.** Landlord’s notice addresses set forth in Paragraph 28 of the Lease shall be deleted in its entirety and replaced with the following:

c/o IRG Realty Advisors, LLC  
4020 Kinross Lakes Parkway, Suite 200  
Richfield, Ohio 44286  
Attention: Katherine J. Himmilwright, Lease Administration  
Email: khimmil@irgra.com  
Telephone: (330) 659-4060, ext. 1107  
FAX: (330) 659-3237

with a copy to:

Fainsbert Mase Brown & Sussman, LLP  
11111 Santa Monica Boulevard, Suite 810  
Los Angeles, California 90025  
Attention: Jerry A. Brown, Jr., Esq.  
Email: jbrown@fms-law.com  
Telephone: (310) 473-6400  
FAX: (310) 473-8702

5. **Lease Status.** Tenant (i) accepts the Premises in its current ‘as-is’ condition and (ii) agrees that Landlord is not in default or violation of any covenant, provision, obligation, agreement or condition contained in the Lease.

6. **Effect of First Amendment.** Except as specifically amended in this First Amendment, all of the terms and conditions of the Lease continue in full force and effect. In the event of any conflict between the terms of this First Amendment and the terms of the Lease, the terms of this First Amendment shall prevail.

7. **Counterparts and Electronic Signatures.** This First Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same First Amendment. The parties shall be entitled to sign and transmit an electronic signature of this First Amendment (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed First Amendment, upon request.

8. **Entire Agreement.** This First Amendment contains the entire understanding and agreement between the parties relating to the matters covered hereby and supersedes all prior or contemporaneous negotiations, arrangements, agreements, understandings, representations, and statements, whether oral or written, with respect to the matters covered hereby, all of which are merged herein and shall be of no further force or effect.

*[Signatures appear on the following page]*

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Lease Agreement as of the date first written above.

**LANDLORD:**

**SELMA BUSINESS PARK, LLC,**  
a Delaware limited liability company

By: Holdings SPE Manager, LLC,  
a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
John A. Mase  
Chief Executive Officer

**TENANT:**

**CITY OF SELMA, CA,**  
a municipal government of the State of California

By: \_\_\_\_\_  
Ralph Jimenez  
Interim City Manager





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C I T Y O F S E L M A

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1710 TUCKER STREET • SELMA, CALIFORNIA 93662

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September 2, 2021

Tom Messmer  
Vice President Special Projects  
Corporate Headquarters  
11111 Santa Monica Blvd Suite 800  
Los Angeles, CA 90025

Dear Mr. Messmer,

This letter is in regards to the lease for the property at 1775 Park Street building 79P. The City of Selma is interested in executing the option for an additional year to continue our training program at your facility.

This letter services at notice and authorization to extend the lease executed on September 3, 2020. If you have any questions or need any further information please let me know.

Sincerely,

Isaac Moreno  
Assistant City Manager  
City of Selma

**LEASE AGREEMENT**

**by and between**

**SELMA BUSINESS PARK, LLC,  
a Delaware limited liability company,**

**Landlord**

**and**

**CITY OF SELMA, CA,  
a municipal government of the State of California,**

**Tenant**

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Exhibit "A"	Premises
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## LEASE SUMMARY

Set forth below is a summary of certain terms and conditions of the Lease Agreement between SELMA BUSINESS PARK, LLC, a Delaware limited liability company, as Landlord, and CITY OF SELMA, CA, a municipal government of the State of California, as Tenant, solely for the convenience of the parties. In the event there is a conflict between this Lease Summary and the terms and conditions of the Lease Agreement, the terms and conditions of the Lease Agreement shall prevail.

- A. **Building(s)** mean one or more of those certain buildings containing approximately 314,890 total rentable square feet and having the street address of 1775 Park Street, Selma, California. See Paragraph 1.
- B. **Premises** means approximately 28,800 rentable square feet of building 79P, as outlined on the site plan attached as Exhibit "A". See Paragraph 1.
- C. **Term** means thirteen (13) months from the Commencement Date, unless extended or terminated earlier by law or any provision of the Lease. See Paragraph 2.1.
- D. **Commencement Date** means October 1, 2020. See Paragraph 2.2.
- E. **Base Rent** initially means \$8,064.00 per month for the Premises beginning on November 1, 2020. All rent is due on the first day of each month and shall be paid to Landlord at 4020 Kinross Lakes Parkway, Suite 200, Richfield, Ohio 44286. See Paragraph 3.
- F. **Security Deposit** [Intentionally Deleted]. See Paragraph 4.
- G. **Additional Rent** means Tenant's Share of the Project Expenses, payable monthly in advance together with Base Rent. See Paragraph 5.1.A.
- H. **Project Expenses** means the sum of Taxes, Insurance Expenses and Common Expenses, related to the Property. See Paragraph 5.1.F.
- I. **Tenant's Share** for the Premises means 9.15%, determined by dividing 28,800 rentable square feet of the Premises by 314,890 rentable square feet of the Buildings. See Paragraph 5.1.K.
- J. **Permitted Use** means light manufacturing, shop, and office purposes and uses customarily associated therewith. See Paragraph 7.
- K. **Utilities**. Tenant shall pay the cost of its Utilities. See Paragraph 9.
- L. **Options to Extend**. Tenant shall have three (3) options to extend the Term for one (1) additional year per each extension. The Base Rent for the Premises during the first extended Term shall be \$8,305.92 per month. See Paragraph 34.
- M. **Intentionally Deleted**
- N. **Taxpayer Identification Number** for Tenant is 94-6000431.

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), dated as of September 1, 2020, is made by and between SELMA BUSINESS PARK, a Delaware limited liability company ("Landlord"), and CITY OF SELMA, CA, a municipal government of the State of California ("Tenant").

### WITNESSETH

#### 1. PREMISES

1.1. **Property.** Landlord owns that certain real property improved with one or more multi-tenant buildings ("Buildings") located at 1775 Park Street, Selma, California ("Land"). The Buildings and the Land are collectively referred to as the "Property".

1.2. **Premises.** Landlord, for and in consideration of the rents, covenants, agreements, and stipulations contained herein, to be paid, kept and performed by Tenant, leases to Tenant, and Tenant hereby leases and takes from Landlord upon the terms and conditions contained herein, approximately 28,800 square feet of office/warehouse/industrial space located within building 79P at the Property, as outlined in the site plan attached as Exhibit "A" ("Premises").

1.3. **Common Areas.** In addition to the Premises, Tenant shall have the use of those certain common areas to be designated by Landlord from time to time on the Property; such areas shall include, but not be limited to, parking areas, access roads and facilities, interior corridors, sidewalks, driveways and landscaped and open areas (collectively, "Common Areas"). The use of the Common Areas shall be for the non-exclusive use of Tenant and Tenant's employees, agents, suppliers, customers and patrons, in common with Landlord and all other tenants of the Property and all such other persons to whom Landlord has previously granted, or may hereinafter grant, rights of usage; provided that such nonexclusive use shall be expressly subject to such reasonable rules and regulations which may be adopted by Landlord from time to time. Tenant shall not be entitled to use the Common Areas for storage of goods, vehicles, refuse or any other items. Landlord reserves the right to alter, modify, enlarge, diminish, reduce or eliminate the Common Areas from time to time in its sole discretion; provided, however, it does not unreasonably and materially interfere with Tenant's use and occupancy of the Premises. Landlord shall have the right to modify the Common Areas, and if necessary, parts of the Premises, in order to implement new, necessary security measures and Landlord shall endeavor to minimize any adverse effect on Tenant's use of the Premises. If Tenant shall use any of the Common Areas for storage of any items, Tenant shall pay all fines imposed upon either Landlord or Tenant by any fire, building or other regulatory body, and Tenant shall pay all costs incurred by Landlord to clear and clean the Common Areas and dispose of such items, including but not limited to, a disposal fee of twenty-five dollars (\$25.00) for each pallet or other container and fifty dollars (\$50.00) for each drum, together with any additional costs for testing and special disposal, if required.

#### 2. TERM

2.1. **Term.** The term of the Lease shall be for thirteen (13) months beginning on the Commencement Date ("Term"), unless extended or sooner terminated pursuant to the terms of this Lease. The term "Lease Year" as used herein shall mean any 365-consecutive-day period beginning on the Commencement Date, or first day of the calendar month immediately following the Commencement Date if the Commencement Date falls on other than the first day of a calendar month, or any anniversary thereafter.

2.2. **Commencement Date.** The term "Commencement Date" as used herein shall mean October 1, 2020.

#### 3. RENT

3.1. **Rent.** Rent shall be due and payable in lawful money of the United States in advance on the first day of each month after the Commencement Date. Tenant shall pay to Landlord as base rent ("**Base Rent**") for the Premises, without notice or demand and without abatement, deduction, offset or set off, the following sums:

- A. \$0.00 per month beginning on October 1, 2020 and continuing through October 31, 2020;
- B. \$8,064.00 per month beginning on November 1, 2020 and continuing through October 31, 2021.

**First Option Term:**

- C. \$8,305.92 per month beginning on November 1, 2021 and continuing through October 31, 2022;

**Second Option Term:**

- D. \$8,555.10 per month beginning on November 1, 2022 and continuing through October 31, 2023; and

**Third Option Term:**

- E. \$8,811.75 per month beginning on November 1, 2023 and continuing through October 31, 2024.

Rent for any period during the Term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of the calendar month involved. Tenant shall pay the first full month's Base Rent and any other charges upon execution of this Lease.

3.2. **Place of Payment.** All payments under this Lease to be made by Tenant to Landlord shall be made payable to, and mailed or personally delivered to Landlord at the following address or such other address(es) which Landlord may notify Tenant from time to time: c/o IRG Realty Advisors, LLC, 4020 Kinross Lakes Parkway, Suite 200, Richfield, Ohio 44286.

3.3. **Late Payment.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent (as defined in Paragraph 5.1.G. herein) pursuant to this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of Rent or other payment under this Lease is not received by Landlord, on or before the fifth (5th) day of the month in which such Rent or other payment is due, Tenant shall pay a late charge equal to five percent (5%) of such overdue amounts. Tenant shall also be responsible for a service fee equal to fifty dollars (\$50.00) for any check returned for insufficient funds together with such other costs and expenses as may be imposed by Landlord's bank. The payment to and acceptance by Landlord of such late charge shall in no event constitute a waiver by Landlord of Tenant's default with respect to such overdue amounts, nor prevent Landlord from exercising any of the other rights and remedies granted at law or equity or pursuant to this Lease.

3.4. **Payment on Account.** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent actually due hereunder shall be deemed to be other than a payment on account. No restrictive endorsement or statement on any check or any letter accompanying any check or payment shall be deemed to effect an accord and satisfaction or have any effect whatsoever. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or at law or in equity provided.

4. **SECURITY DEPOSIT**

Intentionally Deleted.

5. **ADDITIONAL RENT**

5.1. **Definitions.**

A. **"Additional Rent"** shall mean Tenant's Share of the Project Expenses.

B. **"Capital Repair"** shall mean any repair or replacement that is deemed to be a "capital repair" in accordance with generally accepted accounting principles consistently applied, all as reasonably determined by Landlord, but specifically excluding any Structural Repairs for which Landlord is responsible pursuant to Paragraph 10 herein. The costs of all Capital Repairs shall be amortized over the useful life of such Capital Repair at an interest rate of eight percent (8%) and with a useful life not to exceed ten (10) years.

C. **"Common Expenses"** shall mean the aggregate amount of the total costs and expenses paid or incurred by Landlord, including any Capital Repair, in any way connected with or related to (i) the operation, repair and maintenance of the Common Areas, the Buildings and the Property, including, without limitation, electricity, gas, water, sewer and other utilities, trash removal, security, snow plowing, sanding, salting and shoveling snow, landscaping, mowing and weed removal, sweeping and janitorial services, on-site manager and employees and related expenses, office expenses, the roof membrane and decking, electrical, plumbing, sprinkler and HVAC repair and maintenance, alarm and sprinkler system testing, maintenance and repair, repair, resurfacing and restriping of all parking areas, loading and unloading areas, trash areas, roadways, driveways, walkways, common signage, painting of the Buildings and Property, fence and gate repair and maintenance, repair and replacement of all lighting facilities, and any and all other repairs and maintenance, and (ii) the furnishing of or contracting for any service generally provided to the tenants of the Property by Landlord, including, without limitation, managerial fees (not to exceed 5% of the gross receipts from the Property), administrative expenses related to the Property (not to exceed 10% of the Common Expenses) and professional fees. Costs and expenses related to Capital Repairs shall only be included as part of Common Expenses in each Computation Year to the extent of the total amortized costs of such Capital Repairs for such Computation Year determined in accordance with Paragraph 5.1.B above. Notwithstanding anything to the contrary herein, Landlord shall have the right, from time to time, to equitably allocate and prorate some or all of the Common Expenses among different tenants and/or different Buildings of the Property and/or on a building-by-building basis, adjusting Tenant's Share as to each of the separately allocated costs based on the ratio of the Rentable Area of the Premises to the Rentable Area of all of the premises to which such costs are allocated. In the event that, during all or any portion of any calendar year, the Buildings are not fully rented and occupied, Landlord may make any appropriate adjustment in occupancy-related Common Expenses for such year by determining, on a commercially reasonable basis, the Common Expenses that would have been paid or incurred by Landlord had the Buildings been fully rented and occupied, and the amount so determined shall be deemed to have been Common Expenses for such year; provided, however, in no event will Landlord adjustments permit Landlord to collect more than the actual amount of the Common Expenses incurred by Landlord. Common Expenses shall not include any Insurance Expenses or Taxes, or any items expressly excluded from the definitions of such terms.

D. **"Computation Year"** shall mean each twelve (12) consecutive month period commencing January 1 of each year during the Term, provided that Landlord, upon notice to Tenant, may change the Computation Year from time to time to any other twelve (12) consecutive month period and, in the event of any such change, Tenant's Share of Project Expenses shall be equitably adjusted for the Computation Years involved in any such change.

E. **"Insurance Expenses"** shall mean the aggregate amount of the cost of fire, extended coverage, boiler, sprinkler, commercial general liability, property damage, rent, earthquake, terrorism and other insurance obtained by Landlord in connection with the Property, including insurance required pursuant to Paragraph 14.1 hereof, and the deductible portion of any insured loss otherwise covered by such insurance.

F. **"Project Expenses"** shall mean and include Taxes, Insurance Expenses and Common Expenses.

G. **"Rent"** or **"rent"** shall mean the total of all sums due to Landlord from Tenant hereunder, including but not limited to Base Rent, Additional Rent, Utilities, and all other fees and charges owed to Landlord as well as all damages, costs, expenses, and sums that Landlord may suffer or incur, or that may become due, by reason of any default of Tenant or failure by Tenant to comply with the terms and conditions of this Lease.

H. **"Rentable Area of the Buildings"** shall mean 314,890 agreed square feet.

I. **"Rentable Area of the Premises"** shall mean 28,800 agreed square feet.

J. **"Taxes"** shall mean all taxes, assessments and charges levied upon or with respect to the Property or any personal property of Landlord used in the operation thereof, or Landlord's interest in the Property or such personal property. Taxes shall include, without limitation, all general real property taxes and general and special assessments, occupancy taxes, commercial rental taxes, charges, fees or assessments for transit, housing, police, fire or other governmental services or purported benefits to the Property, service payments in lieu of taxes, and any tax, fee or excise on the act of entering into any lease for space in the Property, or on the use or occupancy of the Property or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Property that are now or hereafter levied or assessed against Landlord by the United States of America, the state in which the Property is located, or any political subdivision, public corporation, district or other political or public entity, whether due to increased rate and/or valuation, additional improvements, change of ownership, or any other events or circumstances, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for or as an addition to, as a whole or in part, any other Taxes whether or not now customary or in the contemplation of the parties on the date of this Lease. Taxes shall not include franchise, transfer, inheritance or capital stock taxes or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for or as an addition to, as a whole or in part, any other tax that would otherwise constitute a Tax. Taxes shall also include reasonable legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Taxes. If any Taxes are specially assessed by reason of the occupancy or activities of one or more tenants and not the occupancy or activities of the tenants as a whole, such Taxes shall be allocated by Landlord to the tenant or tenants whose occupancy or activities brought about such assessment.

K. **"Tenant's Share"** shall mean 9.15% computed by dividing the Rentable Area of the Premises by the Rentable Area of the Buildings. In the event that either the Rentable Area of the Premises or the Rentable Area of the Buildings is changed, Tenant's Share will be appropriately adjusted by Landlord. For purposes of the Computation Year in which such change occurs, Tenant's Share shall be determined on the basis of the number of days during such Computation Year at each such percentage.

**5.2. Payments.** In addition to Base Rent, and beginning on the Commencement Date, Tenant shall pay to Landlord, monthly, in advance, one-twelfth (1/12) of the Additional Rent due for each Computation Year, in an amount estimated by Landlord and billed by Landlord to Tenant (**"Estimated Expenses"**). Landlord shall have the right to reasonably revise such estimates from time to time and to adjust Tenant's monthly payments accordingly. If either the Commencement Date or the expiration of the Term shall occur on a date other than the first or last day of a Computation Year respectively, the Additional Rent for such Computation Year shall be in the proportion that the number of days the Lease was in effect during such Computation Year bears to 365. With reasonable promptness after the expiration of each Computation Year, Landlord shall furnish Tenant with a statement of the actual expenses (**"Actual Expenses"**), setting forth in reasonable detail the Project Expenses for such Computation Year, and Tenant's Share of such Project Expenses. If the actual Project Expenses for such Computation Year exceed the estimated Project Expenses paid by Tenant for such Computation Year, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual Project Expenses within thirty (30) days after the receipt of Landlord's Expense Statement. If the total amount paid by Tenant for any such Computation Year shall exceed the actual Project Expenses for such Computation Year, such excess shall be credited against the next installments of Additional Rent due from



Tenant to Landlord hereunder. Neither Landlord's failure to deliver, nor late delivery of, the Estimated or Actual Expenses shall constitute a default by Landlord hereunder or a waiver of Landlord's right to collect any payment provided for herein.

**5.3. Excessive Expenses.** In addition to any other sums payable hereunder, Tenant shall (A) pay to Landlord any excessive or extraordinary operating or insurance costs as Landlord may reasonably determine to be incurred due to Tenant's excessive and extraordinary use of the Premises or other facilities of the Property, as compared to other similar tenants of the Property, including, but not limited to, use beyond the normal business work week, and (B) reimburse Landlord for any maintenance, repair, or restoration of the Common Areas or Parking Facilities (as defined in Paragraph 6) that become necessary as a result of the negligence or willful misconduct of Tenant or any violation by Tenant of the terms of this Lease. Landlord may reasonably estimate the amount of such use and costs, and bill Tenant periodically for the same.

**5.4. Disputes.** If there is any dispute as to any Additional Rent due under this Paragraph 5 for any particular Computation Year, Tenant shall have the right during the six (6) month period following Tenant's receipt of the Actual Expenses for such disputed Computation Year ("**Audit Period**"), upon reasonable notice and at reasonable times, to inspect Landlord's accounting records at Landlord's accounting office. Tenant's failure to provide Landlord with notice of any dispute as to Additional Rent during the Audit Period, shall constitute a waiver by Tenant to dispute or audit the Additional Rent, or any component thereof, for such Computation Year. If after such inspection Tenant still disputes such Additional Rent, upon Tenant's written request therefore, a certification as to the proper amount of Project Expenses and the amount due to or payable by Tenant shall be made by an independent accounting firm selected by Landlord and Tenant. If Landlord and Tenant are unable to agree upon an accounting firm, Landlord and Tenant shall each select an accounting firm and the two (2) firms so selected shall select a third firm which shall make the certification requested hereunder. Tenant agrees to pay all costs and expenses incurred in connection with such certification. Such certification shall be final and conclusive as to all parties. Notwithstanding the foregoing, in no event shall Tenant be entitled to withhold payment of Additional Rent during the certification process and Tenant shall remain obligated to pay all Additional Rent due as otherwise set forth in this Lease. In the event Tenant shall prevail in the certification process, Landlord, at its election, shall either promptly refund any excess Additional Rent payments to Tenant or shall apply such excess as a credit against future Additional Rent due from Tenant.

## **6. PARKING**

So long as Tenant complies with the terms, provisions and conditions of this Lease, Landlord shall maintain and operate, or cause to be maintained and operated automobile parking facilities ("**Parking Facilities**") adjacent to or within a reasonable distance from the Buildings. Landlord shall have the right to relocate such Parking Facilities to another location in Landlord's reasonable discretion to facilitate development of the Property. All vehicles located on or about the Premises shall be licensed and insured at all times and shall be in operable condition. NOTWITHSTANDING ANYTHING CONTAINED IN THIS LEASE TO THE CONTRARY, TENANT ACKNOWLEDGES AND AGREES THAT IT SHALL USE ANY PARKING FACILITIES AT ITS SOLE RISK AND THAT LANDLORD SHALL HAVE NO RESPONSIBILITY TO PREVENT, AND SHALL NOT BE LIABLE TO TENANT OR ANY TENANT REPRESENTATIVES FOR, DAMAGES OR INJURIES TO PERSONS OR PROPERTY PARKED OR OTHERWISE LOCATED ON OR ABOUT THE PREMISES.

## **7. PERMITTED USES**

Tenant shall use and occupy the Premises throughout the term of the Lease for light manufacturing, shop, and office purposes and uses customarily associated therewith and for no other purpose; in particular no use shall be made or permitted to be made of the Premises, nor acts done which will increase the existing rate of insurance upon the Buildings, or cause a cancellation of any insurance policy covering the Buildings, or any part thereof, nor shall Tenant sell, or permit to be kept, used, or sold, in or about the Premises, any article which may be prohibited by the standard form of fire insurance policies. Tenant shall comply with all laws, ordinances, rules, regulations and codes of all municipal, county, state and federal authorities pertaining to Tenant's use and occupation of the Premises. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, or other act or thing which disturbs the quiet enjoyment of any other tenant in the Buildings. Tenant shall also specifically not permit the storage of tires, flammable products, batteries, fertilizer, charcoal or any other similar items that cause objectionable odors to escape or be emitted from the Premises; Tenant shall ensure sanitation and freedom

from odor, smell and infestation from rodents or insects. Tenant, at its expense, shall provide (and enclose if required by codes or Landlord) a dumpster or dumpsters for Tenant's trash in a location and manner approved by Landlord, and shall cause its trash to be removed at intervals reasonably satisfactory to Landlord. In connection therewith, Tenant shall keep the dumpster(s) clean and insect, rodent and odor free.

## **8. ENVIRONMENTAL COMPLIANCE/HAZARDOUS MATERIALS**

**8.1. Definitions.** "Hazardous Materials" shall mean any (i) material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive, mutagenic or corrosive, including, without limitation, petroleum, or any petroleum derivative, solvents, heavy metals, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive problems and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, the state in which the Premises are located or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all environmental laws of the state where the Property is located, and any other environmental law, regulation or ordinance now existing or hereinafter enacted, (ii) any other substance or matter which results in liability to any person or entity from exposure to such substance or matter under any statutory or common law theory, and (iii) any substance or matter which is in excess of relevant and appropriate levels set forth in any applicable federal, state or local law or regulation pertaining to any hazardous or toxic substance, material or waste, or for which any applicable federal, state or local agency orders or otherwise requires removal, remediation or treatment. "Hazardous Materials Laws" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

**8.2. Use of Premises by Tenant.** Tenant hereby agrees that Tenant and Tenant's officers, employees, representatives, agents, consultants, contractors, subcontractors, successors, assigns, subtenants, concessionaires, invitees and any other occupants of the Premises (collectively, "Tenant Representatives") shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Premises or the Property or transport to or from the Premises or the Property without the express prior written consent of Landlord. Landlord may, in its sole discretion, place such conditions as Landlord deems appropriate with respect to such Hazardous Materials, including without limitation, rules, regulations and safeguards as may be required by any insurance carrier, environmental consultant or lender of Landlord, or environmental consultant retained by any lender of Landlord, and may further require that Tenant demonstrates to Landlord that such Hazardous Materials are necessary or useful to Tenant's business and will be generated, stored, used and disposed of in a manner that complies with all Hazardous Materials Laws regulating such Hazardous Materials and with good business practices. Tenant understands that Landlord may utilize an environmental consultant to assist in determining conditions of approval and monitoring in connection with the presence, storage, generation or use of Hazardous Materials on or about the Premises by Tenant, and Tenant agrees that any costs reasonably incurred by Landlord in connection with any such environmental consultant's services shall be reimbursed by Tenant to Landlord as Additional Rent upon demand. Unless approved in writing by Landlord, Tenant shall not be entitled to utilize any Hazardous Materials in the Premises. In connection therewith, Tenant shall at its own expense procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Tenant or any of Tenant's Representatives of Hazardous Materials on the Premises or the Property, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Premises or the Property with all required permits. Notwithstanding the foregoing Tenant shall be entitled to use and store in the Premises common cleaning solutions, lubricants and fuels used by Tenant in its ordinary operations, so long as the same are stored in appropriate containers, and in appropriate areas, in compliance with all Hazardous Materials Laws.

**8.3. Remediation.** If at any time during the Term any contamination of the Premises or the Property by Hazardous Materials shall occur where such contamination is caused by the act or omission of Tenant or Tenant's Representatives ("Tenant's Contamination"), then Tenant, at Tenant's sole cost and expense, shall promptly and

diligently remove such Hazardous Materials from the Premises, the Property or the groundwater underlying the Premises or the Property to the extent required to comply with applicable Hazardous Materials Laws to restore the Premises or the Property to the same or better condition which existed before Tenant's Contamination. Tenant shall not take any required remedial action in response to any Tenant's Contamination in or about the Premises or the Property, or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant's Contamination without first obtaining the prior written consent of Landlord, which may be subject to conditions imposed by Landlord as determined in Landlord's sole discretion, provided, however, Landlord's prior written consent shall not be necessary in the event that the presence of Hazardous Materials on, under or about the Premises or the Property (i) poses an immediate threat to the health, safety or welfare of any individual or (ii) is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Landlord's consent before taking such action. Tenant and Landlord shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this Lease. In addition to all other rights and remedies of Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Tenant's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Tenant's Contamination within thirty (30) days after all necessary approvals and consents have been obtained and thereafter continue to prosecute such remediation to completion in accordance with an approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Tenant shall reimburse Landlord within fifteen (15) business days of Landlord's demand for reimbursement of all amounts reasonably paid by Landlord (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by reasonable proof of payment by Landlord of the amounts demanded. Tenant shall promptly deliver to Landlord, legible copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises or the Property as part of Tenant's remediation of any Tenant's Contamination.

**8.4. Disposition of Hazardous Materials.** Except as discharged into the sanitary sewer in strict accordance and conformity with Paragraph 8.2 herein and all applicable Hazardous Materials Laws, Tenant shall cause any and all Hazardous Materials removed from the Premises and the Property (including without limitation all Hazardous Materials removed from the Premises as part of the required remediation of Tenant's Contamination) to be removed and transported solely by duly licensed haulers to duly licensed facilities for recycling or final disposal of such materials and wastes. Tenant is and shall be deemed to be the "operator" "in charge" of Tenant's "facility" and the "owner," as such terms are used in the Hazardous Materials Laws, of all Hazardous Materials and any wastes generated or resulting therefrom. Tenant shall be designated as the "generator," as such terms are used in the Hazardous Materials Laws, on all manifests relating to such Hazardous Materials or wastes.

**8.5. Notice of Hazardous Materials Matters.** Tenant shall immediately notify Landlord in writing of: (i) any enforcement, clean up, removal or other governmental or regulatory action instituted, contemplated or threatened concerning the Premises pursuant to any Hazardous Materials Laws; (ii) any claim made or threatened by any person against Tenant or the Premises relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials on or about the Premises; (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Premises including any complaints, notices, warnings or asserted violations in connection therewith, all upon receipt by Tenant of actual knowledge of any of the foregoing matters; and (iv) any spill, release, discharge or disposal of any Hazardous Materials in, on or under the Premises, the Property, or any portion thereof. Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant first receives or sends the same, with copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof.

**8.6. Indemnification by Tenant.** Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect, and hold Landlord, and each of Landlord's employees, representatives, agents, attorneys, successors and assigns, and its directors, officers, partners, representatives, any lender having a lien on or covering the Premises or any part thereof, and any entity or person named or required to be named as an additional insured in Paragraph 14.2 of this Lease free and harmless from and against any and all claims, actions (including, without limitation, the cost of investigation and testing, consultant's and attorney's fees, remedial and enforcement actions of any kind, administrative (informal or otherwise) or judicial proceedings and orders or judgments arising therefrom), causes of action, liabilities, penalties, forfeitures, damages (including, but not limited to, damages for the loss or restriction or use of rentable space or any amenity of the Premises or the Property, or damages arising from any adverse

impact on marketing of space in the Premises or the Property), diminution in the value of the Premises or the Property, fines, injunctive relief, losses or expenses (including, without limitation, reasonable attorneys' fees and costs) or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly by (i) any Tenant's Contamination, (ii) Tenant's or Tenant's Representatives failure to comply with any Hazardous Materials Laws with respect to the Premises, or (iii) offsite disposal or transportation of Hazardous Materials on, from, under or about the Premises or the Property by Tenant or Tenant's Representatives. Tenant's obligations hereunder shall include without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, clean up or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. For purposes of the indemnity provisions hereof, any acts or omissions of Tenant, or by employees, agents, assignees, contractors or subcontractors of Tenant or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant.

**8.7. Indemnification by Landlord.** Landlord shall indemnify, defend (by counsel reasonably acceptable to Tenant), protect, and hold Tenant, and each of Tenant's employees, representatives, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, actions, causes of action (including, without limitation, remedial and enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising therefrom), liabilities, penalties, forfeitures, losses or expenses (including, without limitation, reasonable attorneys' fees and costs) or death of or injury to any person or damage to any property whatsoever, to the extent arising from or caused in whole or in part, directly or indirectly by any contamination caused by Landlord in violation of a Hazardous Material Law. Landlord's obligations hereunder shall include without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, clean up or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. This indemnity shall be specifically limited to affirmative acts of Landlord, and shall not include the acts or omissions of any other tenants of the Property or other persons.

**8.8. Tenant Certifications.** Within ninety (90) days prior to the expiration of the Term, Tenant shall certify to Landlord in writing that, to the best of its knowledge, (i) the Premises is free from all Hazardous Materials caused by Tenant or Tenant's Representatives, and (ii) no such Hazardous Materials exist on, under or about the Premises other than as specifically identified to Landlord by Tenant in writing. If Landlord reasonably believes that such certification is inaccurate, or if an environmental report is required by law, Landlord shall give notice to Tenant within thirty (30) days after receipt of Tenant's certification that Tenant shall have the Premises thoroughly inspected by an environmental consultant acceptable to Landlord for purposes of determining whether the Premises is free from all Hazardous Materials. If Landlord fails to timely give such notice, the requirement for an environmental inspection report is not required of Tenant unless such report is otherwise required by Tenant under this Paragraph 8. Landlord's failure to request an environmental inspection report shall in no way alter, abridge or limit Tenant's indemnity obligation hereunder. Tenant shall deliver to Landlord a copy of the environmental consultant's report forty-five (45) days prior to the expiration of the Lease. In the event the report discloses the existence of any Hazardous Materials, requires any clean up or any other form of response (collectively "Clean up"), Tenant shall perform such immediately and deliver the Premises with the conditions specified in the report "cleaned up", to the full satisfaction of Landlord. In the event the conditions specified in the report require Clean up which cannot be completed prior to the expiration of the Term, Tenant shall be obligated to pay Landlord the greater of (i) the fair market rental value of the Premises, or (ii) the rent hereunder, as adjusted, for each day delivery of the Premises in the required condition to Landlord is delayed beyond the expiration of the Term in addition to the Clean up costs.

**8.9. Exclusivity.** The allocations of responsibility between, obligations and liabilities undertaken by, and indemnifications given by Landlord and Tenant under this Paragraph 8, shall be the exclusive provisions under this Lease, applicable to the subject matter treated in this Paragraph 8, and any other conflicting or inconsistent provisions contained in this Lease shall not apply with respect to the subject matter.

**8.10. Compliance with Environmental Laws.** Tenant shall at all times and in all respects comply with all Hazardous Materials Laws. All reporting obligations imposed by Hazardous Materials Laws are strictly the responsibility of Tenant. Tenant and Landlord have been informed that certain judicial decisions have held that, notwithstanding the specific language of a lease, courts may impose the responsibility for complying with legal requirements and for performing improvements, maintenance and repairs on a landlord or tenant based on the court's assessment of the parties' intent in light of certain equitable factors. Tenant and Landlord have each been advised by



their respective legal counsel about the provisions of this Lease allocating responsibility for compliance with laws and for performing improvements, maintenance and repairs between Tenant and Landlord. Tenant and Landlord expressly agree that the allocation of responsibility for compliance with laws and for performing improvements, maintenance and repairs set forth in this Lease represents Tenant's and Landlord's intent with respect to this issue.

**8.11. Survival and Duration of Obligations.** All covenants, representations, warranties, obligations and indemnities made or given under this Paragraph 8 shall survive the expiration or earlier termination of this Lease.

## **9. UTILITIES**

Tenant shall pay all service charges and utility deposits and fees, for water, electricity, sewage, janitorial, trash removal, gas, telephone, pest control and any other utility services furnished to the Premises and the improvements on the Premises during the entire term of this Lease ("**Utilities**"). Tenant shall pay for all Utilities in addition to Rent. Landlord shall not be liable for any reason for any loss or damage resulting from an interruption of any of the Utility services. Except as may be set forth in Exhibit "B" for Tenant Improvements, or as otherwise determined by Landlord, Landlord may elect to separately meter each of the Utilities at Landlord's expense. If any Utilities are not separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord, Tenant shall pay to Landlord, as Additional Rent, its share of the cost of such services, as reasonably determined by Landlord. If any Utilities are not separately metered, Landlord shall have the right to determine Tenant's consumption by submetering, survey or other methods designed to measure consumption with reasonable accuracy.

## **10. REPAIRS BY LANDLORD**

Landlord shall maintain only the structural soundness of the roof, foundations, and the exterior walls of the Buildings (exclusive of all glass and exclusive of all exterior doors) in good repair (collectively, "**Structural Repairs**"), except repairs rendered necessary by the misuse, negligence or intentional acts of Tenant, its employees, invitees or representatives which shall be repaired by Tenant. Landlord shall maintain all Common Areas of the Property, including, without limitation, the roof membrane and decking, common utility systems, the grounds surrounding the Buildings, including paving, the mowing of grass, care of shrubs and general landscaping as part of the Common Expenses set forth herein. Tenant shall promptly report in writing to Landlord any condition known to Tenant to be defective which Landlord is required to repair and failure to so report such conditions shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such conditions. Landlord shall be required to commence such repairs within a reasonable period of time from receipt of Tenant's notice.

## **11. REPAIRS BY TENANT**

Tenant accepts the Premises in its present "As-Is" condition and specifically acknowledges that the Premises is suited for the uses intended by Tenant. Tenant shall at its own cost and expense keep and maintain the Premises (including, once Substantially Completed, the Work to be Completed, if any, set forth in Exhibit "B-1") in good order and repair, promptly making all necessary repairs and replacements, including, but not limited to, all equipment and facilities and components thereof within the Premises, fixtures, walls (interior), finish work, ceilings, floors, lighting fixtures, bulbs and ballasts, utility connections and facilities within the Premises, windows, glass, doors, and plate glass, downspouts, gutters, air conditioning and heating systems, truck doors, dock levelers, bumpers, seals and enclosures, cranes, rail systems (if any), plumbing, electrical, termite and pest extermination, and damage to the Common Areas caused by Tenant, excluding only those repairs expressly required to be made by Landlord hereunder. Tenant, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Tenant shall maintain, and shall provide Landlord with proof thereof, an annual service maintenance contract for the HVAC system in a form and with a contractor reasonably satisfactory to Landlord and in the event that Tenant fails to obtain and/or maintain such service contract, Landlord shall have the right to obtain such HVAC service contract and bill Tenant for the cost of same. Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Tenant shall be permitted to implement its own reasonable security measures in the Premises, subject to prior approval by Landlord. Any security implemented by Tenant shall not interfere with the Building's security. Notwithstanding anything to the contrary herein, Tenant acknowledges and agrees that it shall be solely responsible for providing adequate security for its premises, trucks and containers, and its use of the Property and Premises thereof. Landlord shall have no responsibility to prevent, and shall not be liable to tenant, its agents,

employees, contractors, visitors or invitees, for losses due to theft, burglary or other criminal activity, or for damages or injuries to persons or property resulting from Tenant's storage of trucks and containers on the Premises, from persons gaining access to the Premises or any part of the Property, and Tenant hereby releases Landlord and its agents and employees from all liabilities for such losses, damages or injury, regardless of the cause thereof.

## **12. TENANT'S TAXES AND ASSESSMENTS**

Tenant covenants and agrees to pay promptly, when due, all personal property taxes or other taxes and assessments levied and assessed by any governmental authority upon the removable property of Tenant in, upon or about the Premises. In the event that such personal property taxes are assessed with the Taxes, Tenant shall be required to reimburse Landlord for Tenant's Share of such assessment.

## **13. ALTERATION OF PREMISES**

Tenant shall not alter, repair or change the Premises at a cost in excess of \$5,000.00 ("Tenant Repairs") without the prior written consent of Landlord which shall not be unreasonably withheld. All alterations, improvements or changes (any of the foregoing, "Tenant Alterations") shall remain a part of and be surrendered with the Premises, unless Landlord directs its removal under Paragraph 23 of this Lease. Tenant shall procure and keep in force, at Tenant's sole cost and expense, any permits, licenses, and other governmental and regulatory approvals required for any Tenant Alterations. All Tenant Alterations shall be performed in a good and workmanlike manner, and in compliance with all applicable laws, ordinances, rules, regulations, codes, and permits, by licensed contractors, who shall satisfy the insurance requirements in Paragraph 14.4. Tenant shall fully pay and discharge, when due and payable, all claims for labor done and material and services furnished in connection with any Tenant Alterations, and shall not allow any liens or claims against the Premises or the Property.

## **14. INSURANCE**

**14.1. Landlord's Insurance.** Landlord shall maintain in full force and effect throughout the entire term of this Lease general comprehensive liability insurance for the Buildings and Common Areas and general fire and extended coverage insurance, including vandalism and special form or such other or broader coverage as may from time to time be customary on the Buildings and the Common Areas and other areas of land within which the Buildings are located in such amounts determined by Landlord. Copies of all such insurance policies or certificates thereof endorsed to show payment of the premium shall be available for inspection by Tenant and such policies and certificates shall show Landlord and the beneficiary of any mortgage or deed of trust on the Premises to be additional insureds as their interests may exist (or a mortgagee loss payable endorsement). Such insurance may be provided by a blanket insurance policy covering the Premises, so long as the coverage on the Premises is at all times at least as great as required by this Paragraph 14. The insurance obtained by Landlord under this Paragraph 14.1 shall constitute an item of "Common Expenses" under Paragraph 5.1.C.

**14.2. Tenant's Insurance.** Tenant agrees to take out and keep in force during the term hereof, without expense to Landlord, with an insurance company with general policy holder's rating of not less than A-VII, as rated in the most current Best's Insurance Reports, or other company acceptable to Landlord, the policies of insurance as set forth below. Tenant shall be permitted to obtain the insurance required under this Paragraph 14 by providing a blanket policy of insurance only if such blanket policies expressly provide coverage to the Premises and Landlord as required by this Lease without regard to claims made under such policies with respect to other persons or properties and in such form and content reasonably acceptable to Landlord. Commercial general liability insurance, employer's liability insurance and business automobile liability insurance required limits hereunder can be satisfied by an umbrella/excess liability insurance policy if the applicable insurance coverages are included under the umbrella/excess liability insurance policy. All such insurance policies shall be on an occurrence basis and not a claims-made basis, contain a standard separation of insureds provision, and shall name Landlord, its property manager IRG Realty Advisors, LLC (or such other property manager selected by Landlord), and their respective agents and employees as additional insureds on a primary and non-contributory basis.

A. Causes of Loss – Special Form property insurance, in an amount not less than one hundred percent (100%) of replacement cost covering all tenant improvements, betterments and alterations permitted under this Lease, floor and wall coverings, and Tenant's office furniture, business and personal trade fixtures,

equipment, furniture system and other personal property from time to time situated in the Premises. Such property insurance shall include a replacement cost endorsement, providing protection against any peril included within the classification fire and extended coverage, sprinkler damage, vandalism, malicious mischief, and such other additional perils as covered in a cause of loss (special form) insurance policy. The proceeds of such insurance shall be used for the repair and replacement of the property so insured, except that if not so applied or if this Lease is terminated following a casualty, the proceeds applicable to the leasehold improvements shall first be paid to Landlord and the proceeds applicable to Tenant's personal property shall then be paid to Tenant;

B. Commercial general liability insurance, in the name of Tenant, insuring against any liability from the use and occupancy of the Premises and the business operated by Tenant. All such policies shall be written to apply to all bodily injury or death, property damage and personal injury losses, and shall include blanket contractual liability (including Tenant's indemnity obligations under this Lease), broad form property damage liability, premise-operations and products-completed operations and shall contain an exception to any pollution exclusion which insures damage or injury arising out of heat, smoke or fumes from hostile fire, a contractual liability endorsement, and provide primary coverage to Landlord (any insurance policy issued to Landlord providing duplicate or similar coverage shall be deemed to be excess over Tenant's policies), in such amounts as may from time to time be customary with respect to similar properties in the same area, but in any event not less than \$3,000,000.00 per occurrence (or such other amounts as may be required by Landlord). The amounts of such insurance required hereunder shall be adjusted from time to time as requested by Landlord based upon Landlord's determination as to the amounts of such insurance generally required at such time for comparable premises and buildings in the general geographical area of the Premises. In addition, such policy of insurance shall include coverage for any potential liability arising out of or because of any construction, work of repair, maintenance, restoration, replacement, alteration, or other work done on or about the Premises by or under the control or direction of Tenant;

C. Workers Compensation insurance as required by the state law applicable in the state in which the Premises is located with Employers Liability insurance with limits of not less than \$1,000,000.00; and

D. Business automobile liability insurance covering owned, hired and non-owned vehicles with limits of not less than \$1,000,000.00 combined single limit (bodily injury and property damage) per occurrence.

**14.3. Certificates of Insurance.** All policies of insurance set forth in Paragraph 14.2 above, shall provide that copies of the policies or certificates thereof showing the premium thereon to have been paid, shall be delivered to Landlord and to IRG Realty Advisors, LLC, 4020 Kinross Lakes Parkway, Suite 200, Richfield, Ohio 44286 (or such other property manager designated by Landlord), prior to the Commencement Date and thereafter fifteen (15) days prior to each renewal date. All such policies shall provide that they shall not be canceled nor coverage reduced by the insurer without first giving at least thirty (30) days prior written notice to Landlord. If Tenant fails to procure and keep in force such insurance, Landlord may procure it, and the cost thereof with interest at the maximum lawful rate shall be payable immediately by Tenant to Landlord as additional rent. Such insurance may be provided by a blanket insurance policy covering the Premises, so long as the coverage on the Premises is at all times at least as great as required by this Paragraph 14.

**14.4. Contractors' Insurance.** If Tenant permits or causes any construction, work of repair, maintenance, restoration, replacement, alteration, or other work to be done on or about the Premises by any independent contractor or other person, then Tenant shall cause such independent contractor or other person ("Contractor") to take out and keep in force, throughout the period during which such Contractor performs any work on the Premises and for a period of two years after completion of such work, without expense to Landlord, the policies of insurance as set forth below. All such policies shall be provided by an insurance company with general policy holder's rating of not less than A-VII, as rated in the most current Best's Insurance Reports, or other company acceptable to Landlord. All such insurance policies shall be on an occurrence basis, and shall name Landlord, its property manager IRG Realty Advisors, LLC (or such other property manager selected by Landlord), Tenant, and their respective agents and employees as additional insureds on a primary and non-contributory basis. Commercial

general liability insurance, employer's liability insurance and business automobile liability insurance required limits hereunder can be satisfied by an umbrella/excess liability insurance policy if the applicable insurance coverages are included under the umbrella/excess liability insurance policy. All policies of insurance set forth in this Paragraph 14.4 shall provide that copies of the policies or certificates thereof showing the premium thereon to have been paid, shall be delivered to Landlord and to IRG Realty Advisors, LLC, 4020 Kinross Lakes Parkway, Suite 200, Richfield, Ohio 44286 (or such other property manager designated by Landlord), prior to the date on which such Contractor commences work on the Premises and thereafter fifteen (15) days prior to each renewal date. All such policies shall provide that they shall not be canceled nor coverage reduced by the insurer without first giving at least thirty (30) days prior written notice to Landlord. If Tenant fails to cause such any Contractor performing work on the Premises to procure and keep in force such insurance, Landlord may procure it, and the cost thereof with interest at the maximum lawful rate shall be payable immediately by Tenant to Landlord as additional rent.

A. Commercial general liability insurance, in the name of Contractor, insuring against any liability from the use and occupancy of the Premises and the business operated by Contractor. All such policies shall be written to apply to all bodily injury or death, property damage and personal injury losses, and shall include blanket contractual liability (including Tenant's indemnity obligations under this Lease), broad form property damage liability, premise-operations and products-completed operations and shall contain an exception to any pollution exclusion which insures damage or injury arising out of heat, smoke or fumes from hostile fire, a contractual liability endorsement, and provide primary coverage to Landlord (any insurance policy issued to Landlord providing duplicate or similar coverage shall be deemed to be excess over Tenant's and Contractor's policies), in such amounts as may from time to time be customary with respect to similar properties in the same area, but in any event not less than \$3,000,000.00 per occurrence (or such other amounts as may be required by Landlord). The amounts of such insurance required hereunder shall be adjusted from time to time as requested by Landlord based upon Landlord's determination as to the amounts of such insurance generally required at such time for comparable premises and buildings in the general geographical area of the Premises. In addition, such policy of insurance shall include coverage for any potential liability arising out of or because of any construction, work of repair, maintenance, restoration, replacement, alteration, or other work done on or about the Premises by or under the control or direction of Tenant;

B. Workers compensation insurance as required by the state law applicable in the state in which the Premises is located with employer liability insurance with limits of not less than \$1,000,000.00; and

C. Business automobile liability insurance covering owned, hired and non-owned vehicles with limits of not less than \$1,000,000.00 combined single limit (bodily injury and property damage) per occurrence.

## **15. WAIVER, EXCULPATION AND INDEMNITY**

**15.1. Definitions.** For purposes of this Paragraph 15, (i) "**Tenant Parties**" shall mean, singularly and collectively, Tenant and Tenant's officers, directors, shareholders, partners, members, trustees, agents, employees, independent contractors, consultants, licensees, concessionaires, customers, guests, invitees or visitors as well as to all persons and entities claiming through any of the foregoing persons or entities, and (ii) "**Landlord Parties**" shall mean singularly and collectively, Landlord and Landlord's, mortgagees, officers, directors, shareholders, partners, members, trustees, agents, employees, independent contractors, and consultants, as well as to all persons and entities claiming through any of the foregoing persons or entities, but expressly excluding any other tenant or occupant of the Property.

**15.2. Exculpation.** Tenant, on behalf of itself and of all Tenant Parties, and as a material part of the consideration to be rendered to Landlord under this Lease, hereby waives, to the fullest extent permitted by law, all claims against Landlord for loss, theft or damage to goods, wares, merchandise or other property (whether tangible or intangible) in and about the Premises, for loss or damage to Tenant's business or other economic loss (whether direct, indirect or consequential), and for the injury or death to any persons in, on or about the Premises, except for damage or loss directly caused by Landlord's willful misconduct.



**15.3. Landlord's Indemnity.** Landlord shall indemnify, defend (by an attorney of Landlord's choice, reasonably acceptable to Tenant), reimburse, protect and hold harmless Tenant and all Tenant Parties from and against all third party claims, liability and/or damages arising from or related to the acts or omissions of Landlord or Landlord Parties, relating to their use, possession, or occupancy of the Property or, its obligations under this Lease, or to any work done, permitted or contracted for by any of them on or about the Premises, to the extent that such liability or damage is covered by Landlord's insurance (or would have been covered had Landlord carried the insurance as required under this Lease). It is specifically understood and agreed that Landlord shall not be liable or responsible for the acts or omissions of any of the other tenants of the Property or of any agents, independent contractors, consultants, licensees, concessionaires, customers, guests, invitees or visitors of persons other than Landlord.

**15.4. Tenant's Indemnity.** Tenant shall indemnify, defend (by an attorney of Tenant's choice, reasonably acceptable to Landlord), reimburse, protect and hold harmless Landlord and all Landlord Parties from and against all third party claims, liability and/or damages arising from or related to the negligence, acts or omissions of Tenant or any Tenant Parties relating to their use, possession, or occupancy of the Property or, Tenant's obligations under this Lease, or to any work done, permitted or contracted for by any of them on or about the Premises, and for any such third party claims, liability and/or damages that would have been barred by Paragraph 15.2 had they been claimed directly by Tenant. Tenant shall cause any independent contractor or other person who performs any construction, work of repair, maintenance, restoration, replacement, alteration, or other work on or about the Premises by or under the control or direction of Tenant to execute and deliver to IRG Realty Advisors, LLC, One West Avenue, 4020 Kinross Lakes Parkway, Suite 200, Richfield, Ohio 44286 (or such other property manager designated by Landlord) an agreement whereby such independent contractor or other person agrees to indemnify, defend (by an attorney of Landlord's choice, reasonably acceptable to such independent contractor or other person), reimburse, protect and hold harmless Landlord, all Landlord Parties, and Tenant from and against the matters described in this Paragraph 15.4.

**15.5. Waiver of Subrogation.** To the extent of any and all insurance maintained, or required to be maintained, by either Landlord or Tenant in any way connected with the Premises, Landlord and Tenant hereby waive on behalf of their respective insurance carriers any right of subrogation that may exist or arise as against the other party to this Lease. Landlord and Tenant shall cause the insurance companies issuing their insurance policies with respect to the Premises to waive any subrogation rights that the companies may have against Tenant and Landlord, respectively, which waivers shall be specifically stated in the respective policies.

**15.6. Survival and Duration of Obligations.** All representations, warranties, obligations and indemnities made or given under this Paragraph 15 shall survive the expiration or earlier termination of this Lease.

## **16. CONSTRUCTION LIENS**

**16.1.** Tenant shall not suffer or permit any construction liens, mechanic's liens or materialman's liens to be filed against Landlord's interest in the real property of which the Premises form a part nor against Tenant's leasehold interest in the Premises ("**Tenant Lien**"). Landlord shall have the right at all reasonable times to post and keep posted on the Premises, any notices which it deems necessary for protection from such liens, or take such other action as applicable law may require to protect from such liens. In connection therewith, Tenant shall cooperate with Landlord and shall sign any notice or other documents reasonably required by Landlord to comply with such applicable law. Tenant shall have the right to contest by proper proceedings any Tenant Lien, provided that Tenant shall prosecute such contest diligently and in good faith and such contest shall not expose Landlord to any civil or criminal penalty or liability in connection therewith. In such case, within five (5) days after Landlord's demand, Tenant shall furnish Landlord a surety bond or other adequate security satisfactory to Landlord in an amount equal to one hundred fifty percent (150%) of the amount of such claim or such higher amount as may be reasonably required to both to indemnify Landlord against liability and hold the Property free from adverse effect in the event the contest is not successful ("**Lien Bond**"). The Lien Bond may be retained by Landlord until the Tenant Lien has been removed of record or until judgment has been rendered on such claim and such judgment has become final, at which time Landlord shall have the right to apply such Lien Bond in discharge of the judgment on the Tenant Lien and to any actual costs, including reasonable attorneys' fees incurred by Landlord, and shall remit the balance thereof to Tenant. In the event that a Tenant Lien is filed and Tenant does not properly contest such lien or timely post the Lien Bond, Landlord, at its election, and upon not less than five (5) days prior written notice to Tenant, may pay and satisfy the Tenant Lien and, in such event the sums so paid by Landlord, including all actual and other expenses, including reasonable

attorney's fees, so paid by Landlord, shall be deemed to be Additional Rent due and shall be payable by Tenant at once without notice or demand together with interest thereon from the date of payment at the rate of eighteen percent (18%) per annum, provided such interest rate shall not exceed the maximum interest rate permitted by law. Notwithstanding the foregoing, Tenant shall have no responsibility for discharge of any mechanics' liens filed by a contractor, subcontractor, materialman, or laborer of Landlord.

**16.2.** Tenant agrees to give Landlord written notice not less than ten (10) days in advance of the commencement of any Tenant Repairs in order that Landlord may post appropriate notices of Landlord's non-responsibility. Promptly after the Tenant Repairs are completed, Tenant shall file a Notice of Completion.

## **17. QUIET ENJOYMENT**

Landlord covenants and agrees that Tenant, upon making all of Tenant's payments of Rent as and when due under the Lease, and upon performing, observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, shall peaceably and quietly hold, occupy and enjoy the Premises during the term of this Lease as extended by the options described herein, if any, subject to the (i) terms and provisions of this Lease and (ii) rights of any mortgagee or ground lessor.

## **18. LANDLORD'S RIGHT OF ENTRY**

Landlord or its agents shall have the right to enter the Premises at reasonable times upon reasonable notice in order to examine it or to show it to prospective tenants or buyers, to place "For Rent" or "For Sale" signs on or about the Premises, and to make modifications or other changes to the Property as are necessary in Landlord's sole discretion to facilitate development of the Property, provided, however, Landlord shall use its best efforts to minimize the effect of any such entry or any interference with Tenant's use of the Premises. Upon receipt of reasonable advance notice from Landlord, Tenant may arrange to have a designated representative accompany Landlord in entering the Premises. Landlord's right of reentry shall not be deemed to impose upon Landlord any obligation, responsibility, or liability for the care, supervision or repair of the Premises other than as herein provided; except that Landlord shall use reasonable care to prevent loss or damage to Tenant's property resulting from Landlord's entry. Landlord shall have the right at any time, without effecting an actual or constructive eviction and without incurring any liability to Tenant therefore, to change the arrangement or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets or other public parts of the Buildings and to change the name, number or designation by which the Buildings are commonly known, provided that such action does not result in any unreasonable interference with Tenant's access to or use of the Premises. Notwithstanding the foregoing, Landlord shall have the right to enter the Premises without first giving notice to Tenant in the event of an emergency where the nature of the emergency will not reasonably permit the giving of notice.

## **19. DESTRUCTION OF BUILDINGS**

**19.1. Partial Destruction.** In the event of a partial destruction of the building containing the Premises during the term of this Lease from any cause, Landlord shall forthwith repair the same, provided such repair can reasonably be made within ninety (90) days from the happening of such destruction under applicable laws and regulations (but only to the extent of insurance proceeds made available to Landlord by any mortgagee of the Premises). During such period, Tenant shall be entitled to a proportionate reduction of rent to the extent such repairs unreasonably interfere with the business carried on by Tenant in the Premises. If Tenant fails to remove its goods, wares or equipment within a reasonable time and as a result the repair or restoration is delayed, or if such damage or destruction is caused primarily by the negligence or willful act of Tenant, or its employees, invitees or agents, there shall be no reduction in rent during such delay. In the event that such repair cannot reasonably be made within ninety (90) days from the happening of such destruction under applicable laws and regulations, Landlord shall have the right to terminate this Lease by notifying Tenant in writing within sixty (60) days from the happening of such destruction of Landlord's decision not to repair such building in which event this Lease shall be deemed terminated. If Landlord fails to give such written notice of Landlord's decision not to repair such building within such sixty (60) days, then Landlord shall be required to commence the repair of the building promptly and thereafter diligently complete the repairs. In addition to the above, in the event that such building is partially destroyed and (i) the cost of repairing such building exceeds thirty-three and one-third percent (33-1/3%) of the replacement cost thereof, or (ii) the damage caused by the partial destruction of such building cannot reasonably be repaired within a period of ninety (90) days

from the happening of such damage, Landlord may elect to terminate this Lease, whether or not such building is insured, by written notice to Tenant given within sixty (60) days from the happening of such destruction. If Landlord fails to give such written notice of Landlord's decision not to repair such building within such sixty (60) days, then Landlord shall be required to repair such building within ninety (90) days from the happening of such destruction, if it can be reasonably repaired in such time, or as soon thereafter as reasonably practical if it cannot reasonably be repaired in such earlier period of time.

**19.2. Total Destruction.** A total destruction of the building containing the Premises shall terminate this Lease. A total destruction of such building means the cost of repairing such building exceeds seventy-five percent (75%) of the replacement cost of such building.

## **20. EMINENT DOMAIN**

**20.1. Definitions.** For purposes of this Lease, the word "**condemned**" is co-extensive with the phrase "**right of eminent domain**", that is, the right of the government to take property for public use, and shall include the intention to condemn expressed in writing as well as the filing of any action or proceeding for condemnation as well as if the Property is sold, transferred or conveyed in lieu of such appropriation.

**20.2. Exercise of Condemnation.** If any action or proceeding is commenced for the condemnation of the Premises or any portion thereof, or if Landlord is advised in writing by any government (federal, state or local) agency or department or bureau thereof, or any entity or body having the right or power of condemnation, of its intention to condemn all or any portion of the Premises at the time thereof, or if the Premises or any part or portion thereof be condemned through such action, then and in any of such events Landlord may, without any obligation or liability to Tenant, and without affecting the validity and existence of this Lease other than as hereafter expressly provided, agree to sell and/or convey to the condemnor, without first requiring that any action or proceeding be instituted, or if such action or proceeding shall have been instituted, without requiring any trial or hearing thereof, and Landlord is expressly empowered to stipulate to judgment therein, the part and portion of the Premises sought by the condemnor, free from this Lease and the rights of Tenant hereunder. Tenant shall have no claim against Landlord nor be entitled to any part or portion of the amount that may be paid or awarded as a result of the sale, for the reasons as aforesaid, or condemnation of the Premises or any part or portion thereof, except that Tenant shall be entitled to recover from the condemnor and Landlord shall have no claim therefore or thereto for Tenant's relocation costs, loss of goodwill, for Tenant's trade fixtures, any removable structures and improvements erected and made by Tenant to or upon the Premises which Tenant is or may be entitled to remove at the expiration of this Lease and Tenant's leasehold estate hereunder.

**20.3. Effect on Lease.** If the entire Premises is condemned, this Lease shall terminate as of the earlier of such taking or loss of possession. If only a part of the Premises is condemned and taken and the remaining portion thereof is in Tenant's reasonable discretion not suitable for purposes for which Tenant has leased the Premises, either Landlord or Tenant shall have the option to terminate this Lease effective as of the earlier of such taking or loss of possession. If by such condemnation and taking only a part of the Premises is taken, and the remaining part thereof is in Tenant's reasonable discretion suitable for the purposes for which Tenant has leased the Premises, this Lease shall continue, but the rental shall be reduced in an amount proportionate to the percentage that the floor area of that portion of the Premises physically taken by eminent domain bears to the floor area of the entire Premises.

## **21. BANKRUPTCY**

If a general assignment is made by Tenant for the benefit of creditors, or any action is taken by Tenant under any insolvency or bankruptcy act, or if a receiver is appointed to take possession of all or substantially all of the assets of Tenant (and Tenant fails to terminate such receivership within sixty (60) days after such appointment), or if any action is taken by a creditor of Tenant under any insolvency or bankruptcy act, and such action is not dismissed or vacated within thirty (30) days after the date of such filing, then this Lease shall terminate at the option of Landlord upon the occurrence of any such contingency and shall expire as fully and completely as if the day of the occurrence of such contingency was the date specified in this Lease for the expiration thereof. In such event, Tenant shall then quit and surrender the Premises to Landlord.

## 22. DEFAULT

If Tenant fails to pay any rent or other sum due hereunder, or in the event Tenant fails to perform any other covenant to be performed by Tenant under this Lease and continues to fail to perform the same for a period of five (5) days after receipt of written notice from Landlord pertaining thereto (or a reasonable period of time, using due diligence, if any non-monetary default cannot be cured within such five (5) day period, but not to exceed thirty (30) days), then Tenant shall be deemed to have breached this Lease and Landlord, in addition to other rights or remedies it may have, may:

A. Continue this Lease in effect by not terminating Tenant's right to possession of the Premises, and thereby be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover the Rent specified in this Lease as it becomes due under this Lease; or

B. Terminate Tenant's right to possession of the Premises, thereby terminating this Lease, and recover from Tenant:

(i.) The worth at the time of award of the unpaid Rent which had been earned at the time of termination of the Lease;

(ii.) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

(iii.) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

(iv.) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease; or

C. In lieu of, or in addition to, bringing an action for any or all of the recoveries described in subparagraph B above, bring an action to recover and regain possession of the Premises in the manner provided by the laws of unlawful detainer then in effect in the state where the Property is located. If Landlord makes any expenditure required of Tenant hereunder, or if Tenant fails to make any payment or expenditure required of Tenant hereunder, such amount shall be payable by Tenant to Landlord as Rent together with interest from the date due at the rate of eighteen percent (18%) per annum, provided such interest rate shall not exceed the maximum interest rate permitted by law, and Landlord shall have the same remedies as on the default in payment of Rent. The payment of interest required hereunder shall be in addition to the late charge set forth in Paragraph 3.3. Notwithstanding any other provisions of this Lease, under no circumstances shall Landlord or Tenant be liable to the other for any consequential damages arising out of the acts or omissions of Landlord or Tenant or a breach of this Lease by either party.

## 23. SURRENDER OF PREMISES

On or before the expiration of the Term, Tenant shall vacate the Premises in broom clean condition and otherwise in the same condition as existed on the Commencement Date, ordinary wear and tear and fire and casualty loss excepted, except that any improvements made within and on the Premises by Tenant shall remain, in the same condition and repair as when constructed or installed, reasonable wear and tear and fire and casualty loss excepted, unless Landlord gives Tenant at least thirty (30) days prior written notice, which, if any, of such improvements in the Premises are to be removed. Landlord's failure to timely give notice to Tenant to remove any such improvements shall not relieve Tenant of its obligation to remove any such improvements requested to be removed by Landlord. In addition, Tenant shall remove from the Premises all of Tenant's personal property and trade fixtures in order that Landlord can repossess the Premises on the day this Lease or any extension hereof expires or is sooner terminated. Any removal of Tenant's improvements, Tenant's property and/or trade fixtures by Tenant shall be accomplished in

a manner which will minimize any damage or injury to the Premises, and any such damage or injury shall be repaired by Tenant at its sole cost and expense with thirty (30) days after Tenant vacates.

#### **24. HOLDING OVER**

Should Tenant hold over and remain in possession of the Premises after the expiration of this Lease, without the written consent of Landlord, such possession shall be as a month-to-month tenant. Unless Landlord agrees otherwise in writing, Base Rent during the hold-over period shall be payable in an amount equal to one hundred fifty percent (150%) of the Base Rent paid for the last month of the term hereof until Tenant vacates the Premises and the Security Deposit shall increase to an amount equal to the increased monthly Base Rent. All other terms and conditions of this Lease shall continue in full force and effect during such hold-over tenancy, which hold-over tenancy shall be terminable by either party delivering at least one (1) month's written notice, before the end of any monthly period. Such hold-over tenancy shall terminate effective as of the last day of the month following the month in which the termination notice is given. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims, demands, actions, losses, damages, obligations, costs, and expenses, including, without limitation, attorneys' fees incurred or suffered by Landlord by reason of Tenant's failure to surrender the Premises on the expiration or earlier termination of this Lease in accordance with the provisions of this Lease.

#### **25. SURRENDER OF LEASE**

The voluntary or other surrender of this Lease by Tenant, or mutual cancellation thereof, shall not work a merger and may, at the option of Landlord, terminate all or any existing subleases or subtenancies or may operate as an assignment of any or all such subleases or subtenancies to Landlord.

#### **26. RELOCATION/REDUCTION**

Landlord has the right to relocate the Premises to similar space within the Property that Landlord deems to be reasonably equivalent upon not less than thirty (30) days prior written notice to Tenant. In such event, the relocated Premises shall have substantially the same amenities and access as the Premises and Landlord shall either relocate Tenant, at Landlord's sole cost and expense, or shall reimburse Tenant for Tenant's reasonable costs to relocate on such terms and conditions to be agreed upon by the parties. The parties shall act in good faith to coordinate any such relocation. In the event that Landlord elects to relocate Tenant, Landlord shall be responsible, at Landlord's sole cost and expense, to construct either a wall or fence as determined by Landlord in its reasonable discretion, subject to city code requirements, to separate the relocated Premises from any space occupied by other tenants of the Property.

#### **27. RULES AND REGULATIONS**

Tenant shall comply with all reasonable and nondiscriminatory rules and regulations now or hereinafter adopted by Landlord during the existence of this Lease, both in regard to the Property, the Buildings as a whole and to the Premises herein leased. In the event of any inconsistency between the provisions of this Lease and the provisions of any such rules and regulations, the provisions of this Lease shall control.

#### **28. NOTICE**

Any notice, request, demand, instruction or other document or communication required or permitted to be given hereunder shall be in writing addressed to the respective party as set forth below and may be personally served, sent by facsimile, email, or sent by a nationally recognized overnight courier or by U.S. Mail, first class, addressed as follows:

**TO LANDLORD:**

c/o Industrial Realty Group, LLC  
11111 Santa Monica Boulevard, Suite 800  
Los Angeles, California 90025  
Attention: John A. Mase  
Telephone: (310) 806-4434  
FAX: (310) 473-8702



**with a copy to:**

Fainsbert Mase Brown & Sussman, LLP  
11111 Santa Monica Boulevard, Suite 810  
Los Angeles, California 90025  
Attention: Jerry A. Brown, Jr., Esq.  
Email: jbrown@fms-law.com  
Telephone: (310) 473-6400  
FAX: (310) 473-8702

**TO TENANT:**

CITY OF SELMA, CA  
1710 Tucker Street  
Selma, CA 93662  
Attention: Isaac Moreno, Assistant City Manager  
Email: isaacm@cityofselma.com  
Telephone: (559) 891-2200 ext 3131  
FAX: (559) 896-5223

**with a copy to:**

CITY OF SELMA, CA  
1710 Tucker Street  
Selma, CA 93662  
Attention: Teresa Gallavan, City Manager  
Email: isaacm@cityofselma.com  
Telephone: (559) 891-2200 ext 3131  
FAX: (559) 896-5223

Any party may change their notice or email address and/or facsimile number by giving written notice thereof in accordance with this Paragraph 28. All notices hereunder shall be deemed given: (1) if served in person, when served; (2) if sent by facsimile or email, on the date of transmission if before 6:00 p.m. P.S.T.; provided that a hard copy of such notice is also sent by either a nationally recognized overnight courier or by U.S. Mail, first class; (3) if by overnight courier, by a nationally recognized courier which has a system of providing evidence of delivery, on the first business day after delivery to the courier; or (4) if by U.S. Mail, on the third day after deposit in the mail, postage prepaid, certified mail, return receipt requested.

## **29. ASSIGNMENT AND SUBLETTING**

**29.1. No Assignment.** Tenant shall not directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or Tenant's leasehold estate hereunder (collectively, "Assignment"), or permit the Premises to be occupied by anyone other than Tenant or sublet the Premises (collectively, "Sublease") or any portion thereof without Landlord's prior written consent in each instance, which consent may not be unreasonably withheld by Landlord. In addition, Tenant shall provide financial statements for Tenant and any proposed assignee or sublessee of this Lease, in form and substance reasonably acceptable to Landlord, with any request for Landlord's approval (or other notice) of any assignment or sublease and prior to the effectiveness of any such assignment or sublease.

**29.2. No Relief of Obligations.** No consent by Landlord to any Assignment or Sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the Assignment or Sublease. The consent by Landlord to any Assignment or Sublease shall not relieve Tenant of the obligation to obtain Landlord's express written consent to any other Assignment or Sublease. Any Assignment or Sublease that is not in compliance with this Paragraph 29 shall be void and, at the option of Landlord, shall constitute a material default by Tenant under this Lease. The acceptance of Rent by Landlord from a proposed assignee or sublessee shall not constitute the consent by Landlord to such Assignment or Sublease.

**29.3. Profits from Assignment or Sublease.** Any net profits (after the deduction of reasonable transaction costs, but not including attorneys' fees) resulting from any Assignment or Sublease shall be divided evenly between Landlord and Tenant.

**29.4. Reimbursement of Landlord.** Tenant shall reimburse Landlord for all reasonable out-of-pocket costs (including, without limitation, Landlord's reasonable attorneys' fees and any fees or costs imposed on Landlord by Landlord's mortgage lender) incurred by Landlord in connection with any proposed Assignment or Sublease.

**30. ATTORNEY'S FEES**

In the event of any legal or equitable action arising out of this Lease, the prevailing party shall be entitled to recover all reasonable fees, costs and expenses, together with reasonable attorney's fees incurred in connection with such action. The fees, costs and expenses so recovered shall include those incurred in prosecuting or defending any appeal. The prevailing party shall also be entitled to reasonable attorney's fees incurred to collect or enforce the judgment.

**31. JUDGMENT COSTS**

**31.1. Landlord.** Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by or against Tenant, or by or against any person holding the Premises by license of Tenant, or for foreclosure of any lien for labor or material furnished to or for Tenant, or any such person, or otherwise arising out of or resulting from any act or transaction of Tenant, or of any such person, Tenant covenants to pay to Landlord, the amount of any judgment rendered against Landlord or the Premises or any part thereof, and all costs and expenses, including reasonable attorney's fees incurred by Landlord in connection with such litigation.

**31.2. Tenant.** Should Tenant, without fault on Tenant's part, be made a party to any litigation instituted by or against Landlord, or by or against any person holding the Premises by license of Landlord, or for foreclosure of any lien for labor or material furnished to or for Landlord, or any such person, or otherwise arising out of or resulting from any act or transaction of Landlord, or of any such person, Landlord covenants to pay to Tenant, the amount of any judgment rendered against Tenant or the Premises or any part thereof, and all costs and expenses, including reasonable attorney's fees incurred by Tenant in connection with such litigation.

**32. BROKERS**

Landlord and Tenant each represent and warrant to each other that it has had no dealings with any real estate broker or agent in connection with the Premises and this Lease, and that it knows of no real estate broker or agent who is or might be entitled to a commission in connection with this Lease other than Buk Wagoner and Charlie Schuh of Colliers ("Broker"). Landlord shall only pay the real estate brokerage commission due to Broker and any real estate broker or agent entitled to a commission in connection with this Lease if claimed through the actions of Landlord. Tenant shall pay any other commission or finder's fee due if claimed through the actions of Tenant. Each of Tenant and Landlord shall indemnify and hold the other harmless from and against any such commission or finder's fee which may be claimed by any person or broker with respect to this transaction as a result of its breach of the foregoing representation.

**33. SUBORDINATION OF LEASE**

This Lease is subject and subordinate to any mortgages which may now or hereafter be placed upon or affect the property or Buildings of which the Premises are a part, and to all renewals, modifications, consolidations, replacements and extensions hereof, provided that the holder(s) of such mortgage(s) shall agree in writing not to disturb the possession of the Premises by Tenant or the rights of Tenant under this Lease so long as Tenant is not in material default (subject to applicable notice and cure rights in favor of Tenant as contained in this Lease) in the performance of its obligations thereunder and, in the event of foreclosure, Tenant agrees to look solely to the mortgagee's interest in the Property for the payment and discharge of any obligations imposed upon the mortgagee or Landlord under this Lease. In the event that a Successor Landlord, as hereinafter defined, takes title to the Property, (i) Successor Landlord shall be bound to Tenant under all of the terms and conditions of this Lease, (ii) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under this Lease, and (iii) this Lease shall continue in full force and effect, in accordance with its terms, as a direct lease between Successor Landlord and Tenant. This clause shall be self-operative, and no further instrument or subordination shall be necessary unless requested by a mortgagee or the insuring title company, in which event Tenant shall sign, within five (5) business days after

requested, such instruments and/or documents as the mortgagee and/or insuring title company reasonably request be signed ("SNDA"). In the event Tenant fails to execute a SNDA or an estoppel certificate as provided herein, Tenant hereby constitutes and appoints Landlord as its attorney-in-fact, with full power of substitution, to sign, execute, certify, acknowledge, deliver or record, where required or appropriate, in the name, place and stead of Tenant, all such SNDAs and estoppel certificates for and on behalf of Tenant as may be required. For purposes of this Paragraph 33, "Successor Landlord" shall mean any party that becomes owner of the Property as the result of a (i) foreclosure under any mortgage or deed of trust; (ii) any other exercise by a lender of rights and remedies (whether under any security instrument or under applicable law, including bankruptcy law) as a result of which such lender becomes owner of the Property; or (iii) delivery by Landlord to any lender (or its designee or nominee) of a deed or other conveyance of Landlord's interest in the Property in lieu of any of the foregoing.

#### **34. OPTIONS TO EXTEND**

Landlord hereby grants to Tenant three (3) options to extend ("Option(s) to Extend") the Term for the Premises for an additional one (1) year per extended option term ("Option Term(s)"), upon each and all of the terms and conditions of this Lease as amended below; provided, however, Tenant is not in default of this Lease on the date of exercise of the Option to Extend and has not been in default of this Lease more than two (2) times during the Term, as extended. Tenant shall give to Landlord written notice on or prior to three (3) months before expiration of the then current Term or first Option Term of the exercise of the Option(s) to Extend for such Option Term, time being of the essence. The Term, as defined in Paragraph 2 hereof, shall also include any Options to Extend properly exercised hereunder. If notice of exercise of any Option to Extend is not timely given, all further Options to Extend shall automatically expire. The rent for the Option Terms shall consist of Base Rent pursuant to Paragraph 3, Tenant's Share of Project Expenses pursuant to Paragraph 5, and any other charges under this Lease. The Options to Extend are personal to Tenant and may not be assigned without Landlord's written consent which may be withheld in its sole discretion.

#### **35. ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS**

**35.1. Estoppel Certificate.** Tenant shall, at any time and from time to time, upon not less than ten (10) days' prior request by Landlord, execute, acknowledge and deliver to Landlord, or to such other persons who may be designated in such request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and, if so, the dates to which the rent and any other charges have been paid in advance, and such other items requested by Landlord, including without limitation, the lease commencement date and expiration date, rent amounts, and that no offsets or counterclaims are present. It is intended that any such statement delivered pursuant to this Paragraph 35.1 may be relied upon by any prospective purchaser or encumbrancer (including assignee) of the Premises.

**35.2. Financial Statements.** If Landlord desires to finance, refinance, or sell the Buildings, or the Property, or any part thereof, Tenant shall deliver to Landlord, or to such potential lender or purchaser designated by Landlord, such financial information regarding Tenant, as may reasonably be required to establish Tenants' creditworthiness. In addition, Tenant shall provide such financial information in any request for Landlord's approval of any assignment or sublease, prior to the effectiveness of such assignment or sublease. All financial information provided by Tenant to Landlord or any lender or potential purchaser shall be held by the recipient in strict confidence and may not be used or disclosed by the recipient except for the purpose of determining Tenants' creditworthiness in connection with Tenants' obligations under this Lease.

#### **36. SHORT FORM OF LEASE**

Tenant agrees to execute, deliver and acknowledge, at the request of Landlord, a short form of this Lease satisfactory to counsel for Landlord, and Landlord may in its sole discretion record this Lease or such short form in the County where the Premises are located. Tenant shall not record this Lease, or a short form of this Lease, without Landlord's prior written consent which may be withheld in Landlord's reasonable discretion.



**37. SIGNS**

Tenant shall not place any sign upon the Premises, except that Tenant may, with Landlord's prior written consent which shall not be unreasonably withheld, install such signs on the exterior of the Premises and at the entrance to the Property as are reasonably required to advertise Tenant's own business. The installation of any sign on the Premises by or for Tenant shall be subject to the provisions of Paragraph 23. Tenant shall maintain any such signs installed on the Property. Unless otherwise expressly agreed herein, Landlord reserves the right to install, and all revenues from the installation of, such advertising signs on the Premises, including the roof, as do not unreasonably interfere with the conduct of Tenant's business.

**38. INTENTIONALLY DELETED**

**39. FORCE MAJEURE**

In discharging its duty to complete the tenant improvements and to operate, maintain and repair those systems as set forth in this Lease, Landlord shall be held to a standard of reasonableness and shall not be liable to Tenant for matters outside its control, including, but not limited to, acts of God, civil riot, war, strikes, labor unrest, delays in receiving government approvals, or shortage of material (collectively, "**Force Majeure**"), and in no event shall Landlord be liable to Tenant for incidental damages, including, but not limited to, loss of business or business interruption. If Landlord shall be delayed, hindered or prevented from performance of any of its obligations by reason of Force Majeure, the time for performance of such obligation shall be extended for the period of such delay.

**40. GENERAL PROVISIONS**

**40.1. Waiver of Jury Trial; Governing Law; Venue.** EACH PARTY TO THIS LEASE HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY. THIS LEASE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. THE PARTIES HERETO AGREE THAT VENUE SHALL BE PROPER IN ANY STATE OR FEDERAL COURT LOCATED WITHIN, OR HAVING JURISDICTION OVER, FRESNO COUNTY, CALIFORNIA.

**40.2. Waiver.** The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. The acceptance of rent hereunder shall not be construed to be a waiver of any breach by Tenant of any term, condition or covenant of this Lease.

**40.3. Remedies Cumulative.** It is understood and agreed that the remedies herein given to Landlord shall be cumulative, and the exercise of any one remedy of Landlord shall not be to the exclusion of any other remedy.

**40.4. Successors and Assigns.** The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto; if Landlord or Tenant is comprised of multiple parties, each of such parties hereto shall be jointly and severally liable hereunder.

**40.5. No Personal Liability.** No individual member, manager, manager of a member, partner, shareholder, director, officer, employee, trustee, investment advisor, consultant or agent of Landlord, or individual member of a joint venture, tenancy in common, firm, limited liability company or partnership (general or limited), which constitutes Landlord, or any successor interest thereof, shall be subject to personal liability with respect to any of the covenants or conditions of this Lease. Tenant shall look solely to the equity of Landlord in the Property and to no other assets of Landlord for the satisfaction of any remedies of Tenant in the event of any breach by Landlord. It is mutually agreed by Tenant and Landlord that this Paragraph 40.5 is and shall be deemed to be a material and integral part of this Lease. All obligations of Landlord shall be binding upon Landlord only during the period of Landlord's ownership of the Property and not thereafter.

**40.6. Entire Agreement.** This Lease, the exhibits referred to herein, and any addendum executed concurrently herewith, are the final, complete and exclusive agreement between the parties and cover in full each and every agreement of every kind or nature, whatsoever, concerning the Premises and all preliminary negotiations and agreements of whatsoever kind or nature, are merged herein. Landlord has made no representations or promises whatsoever with respect to the Premises, except those contained herein, and no other person, firm or corporation has at any time had any authority from Landlord to make any representations or promises on behalf of Landlord, and Tenant expressly agrees that if any such representations or promises have been made by others, Tenant hereby waives all right to rely thereon. No verbal agreement or implied covenant shall be held to vary the provisions hereof, any statute, law or custom to the contrary notwithstanding. Unless otherwise provided herein, no supplement, modification, or amendment of this Lease shall be binding unless executed in writing by the parties.

**40.7. Captions.** The captions of paragraphs of this Lease are for convenience only, and do not in any way limit or amplify the terms and provisions of this Lease.

**40.8. Partial Invalidity.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**40.9. Authority.** The person(s) executing this Lease warrants that he or she has the authority to execute this Lease and has obtained or has the requisite corporate or other authority to do the same.

**40.10. Approvals.** Any consent or approval required hereunder shall not be unreasonably withheld, conditioned or delayed by the party from whom such consent or approval is requested unless this Lease expressly provides otherwise. Tenant shall promptly reimburse Landlord for the reasonable costs and expenses related to Landlord's review, approval or execution of any Tenant requested documentation or requests, including without limitation, any assignment, sublease, permitting or financing by Tenant.

**40.11. Counterparts and Electronic Signatures.** This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Lease. The parties shall be entitled to sign and transmit an electronic signature of this Lease (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Lease upon request.

**40.12. Joint and Several Obligations.** The obligations of the persons signing as Tenant under this Lease shall be joint and several in all respects.

**40.13. OFAC Certification.** Tenant represents and warrants to Landlord that neither Tenant nor any person or entity that owns or controls, is owned or controlled by or is under common ownership or control with Tenant, and Landlord represents and warrants to Tenant that neither Landlord nor any person or entity that owns or controls, is owned or controlled by or is under common ownership or control with Landlord: (a) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury pursuant to Executive Order No. 13224, 66 Federal Register 49079 (September 25, 2001) or (b) has been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

**40.14. No Third-Party Beneficiaries.** No provisions of this Lease are intended, nor shall they be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any client, customer, subtenant, affiliate, stockholder, partner or employee of any party hereto or any other person or entity unless specifically provided otherwise herein, and except as so provided, all provisions hereof shall be personal solely between the parties to this Lease.

*[Signatures contained on the following page]*

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement in duplicate as of the day and year first above written.

**LANDLORD:**

**SELMA BUSINESS PARK, LLC,**  
a Delaware limited liability company

By: Holdings SPE Manager, LLC,  
a Delaware limited liability company,  
its Manager

By:   
John A. Mase  
Chief Executive Officer

Dated: 9-3-20

**TENANT:**

**CITY OF SELMA, CA,**  
a municipal government of the State of California

By:   
Teresa Gallavan  
City Manager

Dated: 9-3-20

**EXHIBIT "A"**

**PREMISES**

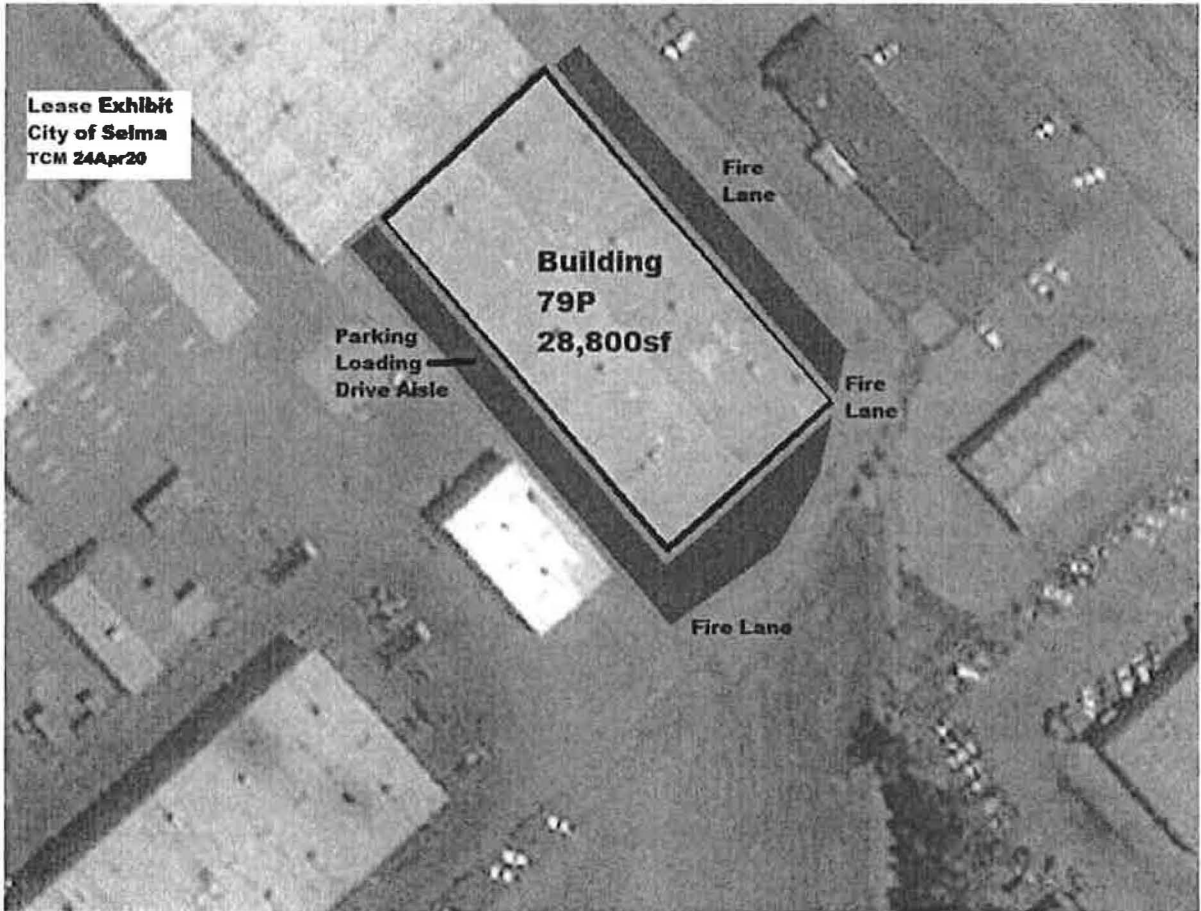


Exhibit "A"

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## EXHIBIT "B"

### TENANT IMPROVEMENTS

#### IMPROVEMENTS AT TENANT'S EXPENSE

Tenant shall construct certain improvements to the Premises, at Tenant's sole cost and expense, as more fully described on Exhibit "B-1" attached hereto (the "**Work to be Completed**"). In connection with the Work to be Completed, within one (1) month after the execution of this Lease by both Landlord and Tenant, Tenant shall deliver to Landlord three (3) copies of preliminary plans and specifications for the Initial Tenant Improvements (the "**Preliminary Plans**").

The Preliminary Plans shall be subject to Landlord's written approval (not to be unreasonably withheld, conditioned, or delayed). Landlord and Tenant shall work together, diligently and in good faith (with the assistance of their respective architects, engineers, and contractors, as appropriate), to review, modify (as necessary), and approve the Preliminary Plans. Within five (5) days after the Preliminary Plans have been approved by both Landlord and Tenant, Tenant shall prepare and deliver to Landlord final, revised versions of the Preliminary Plans (such revised versions, the "**Final Plans**").

As soon as practicable after Landlord and Tenant have approved the Final Plans, Tenant shall seek approval of the Final Plans from all appropriate government agencies (to the extent such approval is required by applicable laws, rules, regulations, and ordinances). Tenant shall be responsible for procuring all required governmental permits to construct the Work to be Completed in accordance with the Final Plans, and Tenant shall be responsible for the costs of all governmental approvals and permits for the Work to be Completed.

Tenant shall complete the construction of the Work to be Completed, substantially in accordance with the Final Plans, in a good and workmanlike manner, with good and sufficient materials, and in compliance with all applicable laws, rules, regulations, ordinances, permits, and approvals. All work shall be performed only by licensed contractors that have been approved by Landlord, in Landlord's reasonable discretion.

Tenant shall complete the construction of the Work to be Completed as soon as reasonably practicable. Tenant shall use its best efforts to ensure the work is Substantially Complete(d) (as defined in this Exhibit B) as quickly as practicable after Tenant obtains the required governmental approvals and permits.

The term "**Substantially Complete(d)**" means that (i) the contractor has substantially completed the Work to be Completed, which shall be deemed complete, even though that minor details of construction, mechanical adjustments or decorations which do not materially interfere with Tenant's use of the Premises remain to be performed (items normally referred to as "**Punch-List**" items) and (ii) Tenant shall have access to the Buildings and parking facilities, and substantially all services provided for in the Lease. Landlord and Tenant shall jointly prepare the Punch-List items. Landlord shall cause the Punch-List items to be corrected as soon as reasonably possible and practical. Tenant's occupancy of the Premises shall be deemed acceptance of the Premises and the Work to be Completed, subject to the Punch-List items.

The term "**Tenant Delays**" shall mean any delays attributable to the following: (i) any failure by Tenant to comply with the date and time limits in this Agreement; (ii) delays due to the acts or failures to act of Tenant; its agent or contractor where such acts or failures to act delay the completion of the Work to be Completed; (iii) delays due to any changes to the plans requested by Tenant; (iv) delays due to Tenant's selection of materials or methods of construction which cannot be timely incorporated into the schedule for the Work to be Completed; and (v) any other delays due to the acts or omissions of Tenant, its agent or representative, construction consultants or space planner, where such acts or omissions delay the completion of the Work to be Completed.

Exhibit "B"

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**EXHIBIT "B-1"**

**WORK TO BE COMPLETED**

1. Construction of an office space in the Premises (expanding same to 40' x 40'); and
2. Repair the electric distribution facilities in a permanent manner.

Exhibit "B-1"

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**ITEM NO: 1.b.**

**SUBJECT:** Approval of 2021/2022 List of Projects for Fresno Council of Governments (COG) Surface Transportation Block Grant Program (STBG) and Adoption of Resolution Supporting and Implementing AB 1012 Timely Use of Funds on Federal-Aid Projects

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**RECOMMENDATION:** Staff recommends the following:

1. City Council approve the project list proposed by staff.
2. City Council adopt Resolution Supporting and implementing AB 1012 “timely use of funds” on federal-aid projects.

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**EXECUTIVE SUMMARY:**

Fresno COG has called for applications for federally-funded transportation projects for the 2022-2025 fiscal years. Funding is available in the Surface Transportation Block Grant Program (STBG) and Congestion Mitigation and Air Quality Improvement (CMAQ) program.

**BACKGROUND:**

The Fresno Council of Governments (COG) administers federal funding for local transportation projects. A portion of the funding is set aside for the “Targeted Performance Program (TPP)” and “Regional Bid” funding allocations for the two following funding programs:

1. Surface Transportation Block Grant Program (STBG) — Typical roadway paving and rehabilitation projects.
2. Congestion Mitigation and Air Quality Improvement (CMAQ) program - Projects that reduce traffic congestion and air pollution.

The amount of funding for TPP projects is currently divided among all of the cities and the County based on population. Selma’s share of the STBG TPP pot is \$471,224. The City’s CMAQ TPP allocation is \$217,005.

The Regional Bid projects will divide \$18.50 million for STBG and \$21.21 million for CMAQ, and are competitively scored among all of the cities’ and County’s submitted projects. For this cycle, the STBG Regional Bid pot includes an additional \$5 million from

the Coronavirus Response and Relief Supplemental Appropriations Act of 2021. If local agencies submit more than one application, the projects must be prioritized by the agency.

COG has called for project applications to be submitted by September 17, 2021, for CMAQ applications, and October 1, 2021, for STBG applications, and a Council resolution supporting and implementing AB 1012 “timely use of funds” (see attachment 1) is required with both applications. AB 1012 has been enacted into State Law in part to provide for the “timely use” of State and Federal funding and failure for not meeting project delivery dates for any phase of a project may jeopardize Federal or State funding to the Region. STBG projects are required to be on collector and arterial streets and local street projects are not eligible. CMAQ funds may be used for any transportation project within the local agency’s jurisdiction as long as there is a reduction in air pollution which results from the project.

Staff has developed a list of candidate projects to submit for funding consideration. The proposed projects are listed in order of proposed priority of each program, with current estimates of costs. Please note that these estimates are preliminary at this point and will be refined prior to submittal of the applications. Attachment 2 shows the locations and proposed limits of the various projects:

#### **STBG Regional Bid**

1. *Dinuba Avenue Street Improvements – Between McCall Avenue and Garfield Street (Dockery Avenue (if funds allow) – \$900,000*

Reconstruction of new pavement and street maintenance can be funded through the STBG program if the existing streets are maintenance projects.

#### **STBG and CMAQ TPP Funds**

The applications for TPP projects are not due until February 2022 for both STBG and CMAQ, so that cities can learn whether or not any of their competitive Regional Bid applications are successful before determining what to do with their TPP funds. The Regional Bid application has a section that asks if the local agency would accept partial funding in the event that their full project cost is not selected for award. Staff recommends that the application for the STBG project state that the City will accept partial funding from the Regional Bid pot with the balance being made up from the City’s STBG TPP allocation. If the full project cost for any project is awarded, or if no Regional Bid funding is awarded, Staff anticipates bringing back a separate set of projects for proposed TPP funding in early Spring.

#### **REASON FOR RECOMMENDATION:**

The City of Selma has specified a goal of maintaining and resurfacing existing streets and STBG funds are a valuable funding source in meeting this goal. The City has been systematically maintaining streets based on the pavement management system and based on Staff recommendations regarding streets with the most significant maintenance issues. The street segment selected for this application would fall under the STBG requirements of



maintaining arterial or collector streets. Staff believes that this would address a high-volume street for east-west traffic for the City of Selma and continue to maintain streets based on recommendations from Public Works and confirmed by the pavement management system for streets most in need of maintenance. Staff believes that the proposed street project with this application will advance the goal of maintaining streets throughout the City and has the best chance of scoring well against other projects based on the relative importance within this round of competitive regional bid applications.

**FISCAL IMPACT:**

All of the Federal Highway projects require a local match of 11.47% from local Gas Tax, Measure C and/or Transportation Funds. The proposed projects would be programmed for future fiscal years which allow time to plan for the expenditures beyond that which has already been planned. This application is proposing to apply for a \$600,000.00 in regional bid money and to use \$300,000.00 from Lifeline funds to complete the project.

**ACTIONS FOLLOWING APPROVAL:**

1. Staff will prepare the STBG application and submit them to Fresno COG by early October per the approved project list.
2. Staff will include the Resolution supporting and implementing AB 1012 “timely use of funds” with the applications.

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<u>/s/</u>	<u>09/16/2021</u>
Philip Romero, Interim City Engineer	Date



<u>/s/</u>	<u>09/16/2021</u>
Fernando Santillan, Community Development Director	Date

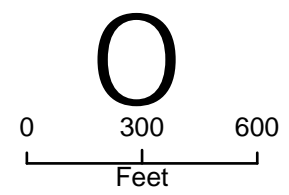
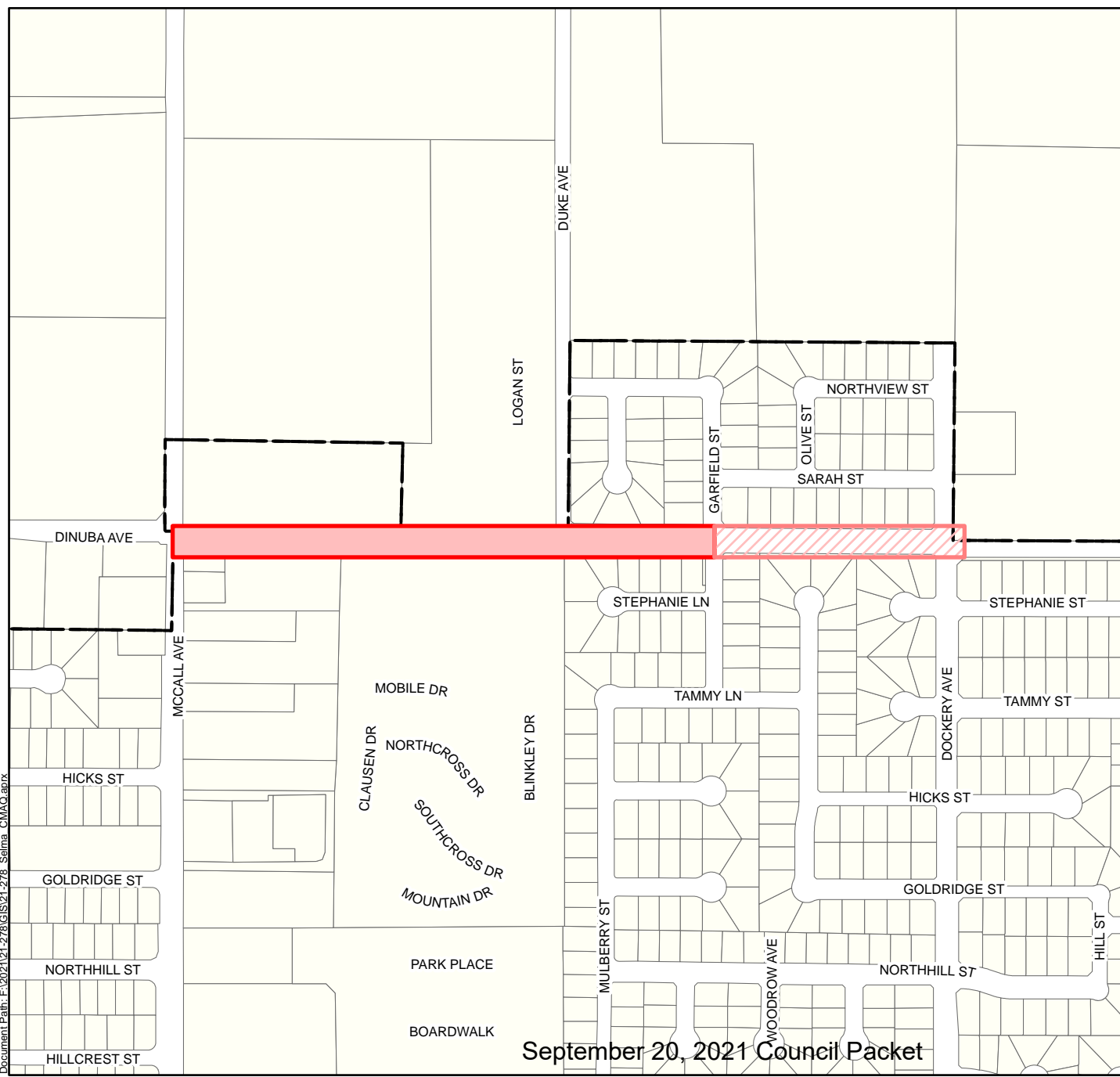
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## 2021 Call for Projects STBG Proposed Project List

### Legend

-  Dinuba Ave– Between McCall Ave and Garfield St
-  Extent if Funding Permits– Dinuba Ave- Between Garfield St and Dockery Ave



**RESOLUTION NO. 2021 – \_\_R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA  
SUPPORTING AND IMPLEMENTING AB 1012 “TIMELY USE OF FUNDS”**

**WHEREAS**, AB 1012 has been enacted into State Law in part to provide for the “timely use” of State and Federal funding; and

**WHEREAS**, the City of Selma is able to apply for and receive State and Federal funding under the Federal Transportation Act; and

**WHEREAS**, the City of Selma desires to ensure that its projects (as listed below) are delivered in a timely manner to preclude the Fresno Region from losing those funds for non-delivery; and

**WHEREAS**, it is understood by the City of Selma that failure for not meeting project delivery dates for any phase of a project may jeopardize Federal or State funding to the Region; and

**WHEREAS**, the City of Selma must demonstrate dedicated and available local matching funds; and

**WHEREAS**, the City of Selma’s proposed project list for STBG projects for the 2021-22 Call for Projects is as follows:

1. STBG – Dinuba Avenue Street Improvements
  - a. Between McCall Avenue and Garfield Street (Dockery Avenue if funds allow)

**NOW THEREFORE, IT IS HEREBY RESOLVED**, that the City of Selma hereby agrees to ensure that all project delivery deadlines for all project phases will be met or exceeded.

**BE IT FURTHER RESOLVED**, that failure to meet project delivery deadlines may be deemed as sufficient cause for the Fresno Council of Governments Policy Board to terminate an agency’s project and reprogram Federal/State funds as deemed necessary.

**BE IT FURTHER RESOLVED**, that the City Council of the City of Selma does direct its management and engineering staffs to ensure all projects are carried out in a timely manner as per the requirements of AB 1012 and the directive of the City Council of the City of Selma.

I, Reyna Rivera, City Clerk to the City of Selma do hereby certify that the foregoing Resolution was approved at a regular meeting of the City Council of the City of Selma on the 20th day of September 2021 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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Scott Robertson, Mayor

ATTEST:

By: \_\_\_\_\_  
Reyna Rivera, City Clerk

**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

September 20, 2021

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**ITEM NO:** 1.c.

**SUBJECT:** Consideration of a Resolution Authorizing Portal-to-Portal Overtime for the Division Chief Position While Responding on Out-of-County Assignments

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**RECOMMENDATION:** Staff recommends that Council approve the resolution authorizing portal-to-portal overtime for the Division Chief position while responding to out-of-county assignments.

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**DISCUSSION:** Every year during fire season, fire department personnel respond throughout the State to assist with firefighting operations. The California Office of Emergency Services (CAL OES) reimburses the City for personnel costs associated with these responses. The Division Chief is an exempt position, and therefore, not authorized to accrue overtime. With the approval of the recent Mid-Management Memorandum of Understanding (MOU), language has been added that will allow the Division Chief to accrue overtime during out-of-county assignments that are reimbursed by CAL OES. This resolution is required by CAL OES to authorize the Division Chief to accrue overtime from the time he/she departs Selma until the time at which he/she returns (Considered portal-to-portal).

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**RECOMMENDATION:** Staff recommends that council approve the resolution authorizing portal-to-portal overtime for the Division Chief position while responding to out-of-county assignments.

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/s/ \_\_\_\_\_ 09/16/2021  
Robert Petersen, Fire Chief Date

/s/ \_\_\_\_\_ 09/16/2021  
Ralph Jimenez, Interim City Manager Date

RESOLUTION No.: 2021-\_\_\_\_R

A RESOLUTION OF THE CITY OF SELMA IDENTIFYING THE TERMS AND CONDITIONS FOR FIRE DEPARTMENT RESPONSE AWAY FROM THEIR OFFICIAL DUTY STATION AND ASSIGNED TO AN EMERGENCY INCIDENT.

WHEREAS, the City of Selma Fire Department is a public agency located in the County of Fresno, State of California, and

WHEREAS, it is the City of Selma's desire to provide fair and legal payment to all its employees for time worked; and

WHEREAS, the City of Selma has in its employ, Fire Department response personnel include: Fire Chief, Division Chief, Fire Captain, Engineer/Apparatus/Equipment Operator, Firefighter/Paramedic, and Firefighter/EMT; and

WHEREAS, the City of Selma will compensate its employees portal to portal while in the course of their employment and away from their official duty station and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response; and

WHEREAS, the City of Selma will compensate its employees overtime in accordance with their current Memorandum of Understanding while in the course of their employment and away from their official duty station and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response.

Now, Therefore, Be It Hereby resolved by the City of Selma that:

1. Personnel shall be compensated according to Memorandum of Understanding (MOU), Personnel Rules and Regulations, and/or other directive that identifies personnel compensation in the workplace.
2. In the event a personnel classification does not have an assigned compensation rate, a "Base Rate" as set forth in an organizational policy, administrative directive or similar document will to compensate such personnel.
3. The Selma Fire Department will maintain a current salary survey or acknowledgement of acceptance of the "base rate" on file with the California Governor's Office of Emergency Services, Fire Rescue Division.
4. Personnel will be compensated (portal to portal) beginning at the time of dispatch to the return to jurisdiction when equipment and personnel are in service and available for agency response.
5. Fire department response personnel include: Fire Chief, Division Chief, Fire Captain, Engineer/Apparatus/Equipment Operator, Firefighter/Paramedic, and Firefighter/EMT.



PASSED, APPROVED AND ADOPTED this 20th day of September 2021.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

I, \_\_\_\_\_, City Clerk/Board Clerk of the \_\_\_\_\_,  
hereby certify that the foregoing resolution was duly  
passed at a regular meeting of the City Council of the  
\_\_\_\_\_ held on the \_\_\_\_\_th day of \_\_\_\_\_, 201\_\_ by the  
following vote on roll call:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
City Clerk

**CITY MANAGER'S/STAFF'S REPORT  
REGULAR CITY COUNCIL MEETING DATE:**

September 20, 2021

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**ITEM NO:** 1.d

**SUBJECT:** Consideration and Necessary Action on Resolution Approving and Authorizing the City Manager to Execute an Agreement between the City and ALTA Language Services, Inc.

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**BACKGROUND:** City of Selma established a Bilingual Pay Program to recognize employees whose language skills enhance the effectiveness of their department and the City in serving the diverse citizenry of Selma.

In order to qualify for Bilingual pay, an employee must pass a proficiency examination.

**DISCUSSION:** City Staff is requesting approval of the attached standard agreement for language testing services that are offered by ALTA Language Services, Inc.

The term of this agreement shall be one (1) year from the effective date and shall be automatically renewed for additional one-year terms unless terminated for any reason or no reason upon thirty (30) days' notice by one Party to the other Party.

<b><i>COST:</i></b> (Enter cost of item to be purchased in box below)		<b><i>BUDGET IMPACT:</i></b> (Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).
Estimated expense \$66 per employee		
<b><i>FUNDING:</i></b> (Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).		<b><i>ON-GOING COST:</i></b> (Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).
Funding Source: 1400-General  Fund Balance:		

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**RECOMMENDATION:** Adopt Resolution Approving and Authorizing Execution of Agreement between City and ALTA Language Services, Inc. to provide language test services.

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\_\_\_\_\_/s/\_\_\_\_\_  
Christina Arias, Human Resources Manager

\_\_\_\_\_  
09/16/2021  
Date

\_\_\_\_\_/s/\_\_\_\_\_  
Ralph Jimenez, Interim City Manager

\_\_\_\_\_  
09/16/2021  
Date

## LANGUAGE TESTING AGREEMENT

### Testing Department

This language Testing Agreement is effective as of \_\_\_\_\_ ("Effective Date"), by and between the City of Selma, having an address at 1710 Tucker Street, Selma, California 93662, ("Customer") and ALTA Language Services, Inc., having an address at 3355 Lenox Rd. NE, Suite 510, Atlanta, Georgia 30326 ("ALTA" and, collectively with Customer, the "Parties").

### WITNESSETH:

WHEREAS, Customer has requested that ALTA provide certain services for the Customer relating to language testing and ALTA desires to provide these services, subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

#### 1. Services to be Provided

ALTA will provide Customer with any language testing Service(s) as set forth in Exhibit A. Exhibit A is attached hereto and incorporated in this Agreement by reference. It is understood that Customer will determine the services to be provided and will request the services when necessary. The term "Services" in this Agreement means all the services described in Exhibit A.

#### 2. Fees and Billing Procedures

- (a) Customer will pay ALTA the testing fees as per Exhibit B and, if using ProctorU services, the additional proctoring fees as per Exhibit C.
- (b) Customer shall pay ALTA for Services rendered no later than thirty (30) days after receipt of an invoice from ALTA.
- (c) Any amounts unpaid after the date on which payment is due shall bear interest at the rate of 12% per annum. In the event either Party terminates this Agreement in accordance with Section 3 below, ALTA shall be entitled to service fees and all other fees, charges and expenses incurred or accrued up to the date that the termination is effective.

#### 3. Term and Termination

The term of this Agreement shall be one (1) year from the Effective Date and shall be automatically renewed for additional one-year terms unless terminated for any reason or no reason upon thirty (30) days' notice by one Party to the other Party. In the event of termination,

this Agreement will continue to govern the Parties' rights and obligations with respect to Services performed prior to termination. Customer may continue to request, and ALTA shall continue to provide, Services during the period after receipt of the notice of termination and prior to the Termination Date. During such period between the notice and the Termination Date, the Parties shall comply with all duties and obligations in this Agreement with respect to the Services to be provided by ALTA prior to the Termination Date. After the Termination Date, the Parties shall have no further rights or obligations under this Agreement. Within thirty (30) days following the Termination Date, ALTA shall invoice Customer for all outstanding Service Fees and other fees, charges and expenses incurred prior to the Termination Date. Notwithstanding the foregoing, upon the material breach of this Agreement by either Party, the other Party may terminate this Agreement in writing to be effective immediately.

#### 4. Relationship of the Parties

In performing the responsibilities hereunder, ALTA is acting as an independent contractor, and nothing contained herein shall be construed to create a partnership, agency, joint venture, or employer/employee relationship between the Parties. ALTA will be solely responsible for all employment and income taxes with respect to its compensation. Neither Party has the authority to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the other Party or to bind such other Party in any way. Each Party shall be responsible for its own social security, withholding and other applicable tax obligations.

#### 5. ALTA Qualifications

ALTA represents and warrants to Customer that ALTA, and all of ALTA's employees, agents or volunteers (the "ALTA Parties"), have in effect, and shall maintain in full force throughout the Term of this Agreement, all licenses, credentials, permits and any other qualifications required by law to perform the Services, including, but not limited to, all licenses necessary to perform the Services in the State of California, and to fully and faithfully satisfy all of the terms set forth in this Agreement. ALTA and any ALTA Parties performing Services shall be competent to perform the Services.

#### 6. Indemnification

Each party shall indemnify, defend and hold the other party (and all officers, directors, employees, Referrals, and affiliates thereof) harmless from and against any and all claims, demands, actions, losses, damages, assessments, charges, liabilities costs and expenses (including without limitation interest, penalties, and reasonable attorney's fees and disbursements) which may at any time be suffered or incurred by, or be assessed against, any and all of them, directly or indirectly, on account of or in connection with: (i) such party's default under any provision herein, breach of any representation or warranty herein, or failure in any way to perform obligation hereunder; or (ii) negligent acts or omissions or the willful misconduct of such party or its employees, referrals, contractors or invitees.

## 7. Insurance

ALTA shall secure and maintain throughout the Term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$1,000,000 each occurrence, if applicable; and (iii) worker's compensation insurance as required by California Labor Code section 3200, *et seq.*, if applicable.

## 8. Limitation of Liability

ALTA shall not be liable for any indirect, special, punitive, or consequential damages which arise under or relate to this Agreement, including but not limited to lost profits. ALTA's aggregate liability under this Agreement shall be limited to the insurance coverage limits set forth in Section 7. Except as otherwise provided herein, the Services are provided AS IS, without warranty.

## 9. Confidential Information

ALTA acknowledges that any and all proprietary and other confidential information, including personally identifiable information (collectively, "Confidential Information"), supplied to ALTA by or on behalf of Customer shall be treated as confidential and shall not be disclosed to any third party for any purpose except in connection with the provision of the Services provided hereunder. ALTA shall take appropriate actions by instruction or agreement with each of its employees, contractors, agents and representatives to keep such information confidential.

In the event that ALTA becomes aware of an unauthorized disclosure of Customer's Confidential Information, or of circumstances that could have resulted in unauthorized access to or disclosure or use of Customer's Confidential Information, ALTA will immediately notify Customer, fully investigate the incident, and reasonably cooperate with Customer's investigation of and response to the incident. Except as otherwise required by law, ALTA will not provide notice of the incident directly to affected individuals whose personally identifiable information was involved, to regulatory agencies, or to other entities, without prior written permission from Customer.

## 10. Entire Agreement; Modification

This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other negotiations and agreements, written or verbal, between the Parties relating to the matters contemplated hereby. This Agreement may not be amended, waived or changed except by written agreement signed by both, ATLA and Customer.

## 11. Price Adjustments

ALTA shall have the right to increase the prices charged for the Services to reflect any change in the costs incurred to deliver such Services. ALTA shall use its reasonable efforts to prevent any such cost increment from occurring. In the event that ALTA seeks to increase the prices charged

for the Services, ALTA shall provide written notice to Customer at least three (3) months prior to such rise becoming effective.

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## 12. Notices

All notices required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when personally delivered, or one (1) day following the day when deposited with a commercially respected overnight delivery service such as Federal Express, or three (3) days following the day when deposited in the United States mail, to the following addresses:

If to ALTA:

ALTA Language Services, Inc.  
3355 Lenox Rd NE, Suite 510  
Atlanta, GE 30326

If to Customer:


## 13. Waiver

No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof and any written waiver in one or more instances shall not be deemed to be a further or continuing waiver of any such right, power or privilege.

## 14. Successors and Assigns

Subject to the immediately succeeding sentence, this Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns. Neither ALTA nor Customer may assign or otherwise transfer its interest hereunder without the prior written consent of the other Party.

## 15. Severability

If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect or impair the validity or enforceability of the remaining provisions of this Agreement, which shall remain in full force and effect, and the Parties hereto shall continue to be bound thereby.

## 16. Headings

The section headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.



17. Governing Law

This Agreement shall be construed, and its validity determined by the laws of the State of California. Any suits, claims or causes of action arising from this Agreement shall be brought in a court in Fresno County, California and all objections to venue and personal jurisdiction in such forum waived. Should any litigation, including appellate proceedings, be required by ALTA to obtain payment of the Service Fee or any other fees or expenses provided for herein, Customer shall be obligated to pay ALTA's reasonable attorneys' fees actually incurred, interest, and other costs incident to collection.

18. Counterparts

This Agreement may be executed in separate counterparts. Facsimile copies of this Agreement and any signature hereon shall for all purposes be considered as originals.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

ACCEPTED AND AGREED TO BY:

CUSTOMER:

ALTA Language Services, Inc.

Name (Print): \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

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



## EXHIBIT A

### Language Testing Services

**ALTA is not responsible for proctoring tests. Proctoring procedures are at the Customer's discretion. ALTA partners with ProctorU to proctor Listening & Speaking IVR and online tests for additional fees as per Exhibit C.**

- (e) **LIVE ORAL LANGUAGE EVALUTATIONS:** ALTA shall provide live oral language evaluations by telephone for individuals identified by Customer in the language(s) specified by Customer and offered by ALTA.
  - i. Customer will arrange for the language evaluation testing date and times with ALTA. ALTA's office hours are Monday through Friday, from 9:00am ET to 6:00pm ET.
  - ii. Customer may change the schedule for the testing, without penalty, up to 6:00 pm (U.S. Eastern Time) on the business day (i.e., Monday through Friday) prior to the test.
  - iii. ALTA will provide a 15-minute period for each candidate to appear for his or her scheduled language evaluation test. Candidates are free to call in 5 minutes prior to and 10 minutes following the scheduled start time of their test. If candidate fails to appear by the 10-minute additional time period, Customer will be charged for the testing as if it had taken place and will be required to reschedule such candidate's evaluation testing if it so desires.
  - iv. ALTA will score each candidate's performance according to specified grading criteria.
  - v. The results of all evaluations will be submitted by ALTA to Customer's administrative contact by email.
  - vi. ALTA will not discuss the testing results with the testing candidate.
- (f) **AUTOMATED ORAL LANGUAGE EVALUATIONS (IVR):** ALTA shall provide automated (IVR) oral language evaluations by telephone for individuals identified by Customer in the language(s) specified by Customer and offered by ALTA.
  - i. Customer will assign the test through the ALTA portal.
  - ii. The testing candidate may call in at any time for their automated oral language evaluation.

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ALTA Language Services, Inc. • 3355 Lenox Rd NE, Suite 510 • Atlanta, GA 30326  
Tel: 1.404.920.3800 • Fax: 1.404.920.3801 • [www.altalang.com](http://www.altalang.com)

LANGUAGE TESTING AGREEMENT – TESTING DEPARTMENT V 10.0 – 1/16/2020

Page 6 of 10



- iii. The completed exam will be submitted to ALTA electronically for scoring.
  - iv. ALTA will score each candidate's performance according to specified grading criteria.
  - v. The results of all evaluations will be submitted by ALTA to Customer's administrative contact by email.
  - vi. ALTA will not discuss the testing results with the testing candidate.
- (c) ONLINE/PAPER READING COMPREHENSION, AND/OR ONLINE LISTENING COMPREHENSION, AND/OR MEDICAL TERMINOLOGY TESTS: ALTA shall provide Online Reading Comprehension, and/or Listening Comprehension, and/or Medical Terminology language tests for individuals identified by Customer in the language(s) specified by Customer and offered by ALTA.
- i. Customer will assign the test through the ALTA portal.
  - ii. Customer will submit completed exams back to ALTA electronically through the ALTA online testing portal.
  - iii. ALTA will score each candidate's performance according to specified grading criteria.
  - iv. The results of all evaluations will be submitted by ALTA to Customer's administrative contact by email.
  - v. ALTA will not discuss the testing results with the testing candidate.
- (d) ONLINE/PAPER WRITING AND/OR TRANSLATION PROFICIENCY EVALUATIONS: ALTA shall provide Online Writing and/or Translation Proficiency language evaluations for individuals identified by Customer in the language(s) specified by Customer and offered by ALTA.
- i. Customer will assign the test through the ALTA portal.
  - ii. Customer will submit completed exams back to ALTA electronically through the ALTA online testing portal.
  - iii. ALTA will score each candidate's performance according to specified grading criteria.
  - iv. The results of all evaluations will be submitted by ALTA to Customer's administrative contact by email.
  - v. ALTA will not discuss the testing results with the testing candidate.



- (e) **ONLINE CODE OF ETHICS TESTS:** ALTA shall provide Code of Ethics tests for individuals identified by Customer.
- i. Customer will assign the test through the ALTA portal.
  - ii. Customer will submit completed exams back to ALTA electronically through the ALTA online testing portal.
  - iii. ALTA will score each candidate's performance according to specified grading criteria.
  - iv. The results of all evaluations will be submitted by ALTA to Customer's administrative contact by email.
  - v. ALTA will not discuss the testing results with the testing candidate.
- (f) **QBS and CCLA TESTING:** ALTA shall provide oral language evaluations using the Qualified Bilingual Staff (QBS) and/or the Clinician Cultural and Linguistic Assessment (CCLA) by telephone for individuals identified by Customer in the language(s) specified by the Customer and offered by ALTA.
- i. Customer will assign the test through the ALTA portal.
  - ii. Customer will verify the identity of each testing candidate.
  - iii. ALTA will provide the QBS and CCLA using its IVR system, available 24 hours a day seven days per week.
  - iv. ALTA will score each candidate's performance according to specified grading criteria.
  - v. The results of all evaluations will be submitted by ALTA to the Customer's administrative contact by email.
  - vi. ALTA will not discuss the testing results with the testing candidate.



## EXHIBIT B

### Testing Rate Guide (07/01/2019)

Testing Item	Cost
Online Listening Comprehension	\$33
Online Reading Comprehension	\$33
Online Medical Terminology	\$33
Online Code of Ethics	\$33
Live Listening and Speaking (audio)	\$66
Live Listening and Speaking (video)	\$76
IVR Listening and Speaking	\$55
Online (or paper) Writing	\$66
Online (or paper) Translation (each way)	\$66
Live Interpretation	\$110
Online Audio Translation	\$66
QBS	\$110
CCLA	\$110

Access to Toll Free Number                      \$2 per test

Candidate called by ALTA                      \$10 per test

Cancellation Policy for live tests: Cancellations can be done at no charge by contacting ALTA by 6 PM ET on the business day before the test. Later cancellations will be charged the full amount. Tests scheduled on the same day cannot be cancelled.

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LANGUAGE TESTING AGREEMENT – TESTING DEPARTMENT V 10.0 – 1/16/2020

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## EXHIBIT C

### Proctoring Fees

Testing Item	Cost
Online Listening Comprehension	\$23
Online Reading Comprehension	\$23 for one hour, \$29 for two hours
Online Medical Terminology	\$23
Online Code of Ethics	\$23
IVR Listening and Speaking	\$15
Online Writing	\$23
Online Translation (each way)	\$29
Online Audio Translation	\$29

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Tel: 1.404.920.3800 • Fax: 1.404.920.3801 • [www.altalang.com](http://www.altalang.com)

LANGUAGE TESTING AGREEMENT – TESTING DEPARTMENT V 10.0 – 1/16/2020

Page 10 of 10



**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

September 20, 2021

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**ITEM NO:** 1.e.

**SUBJECT:** Community Development Block Grant (CDBG) Amendment 1 to Agreement for fiscal year 2020-2021

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**RECOMMENDATION:** Approve the City of Selma's Community Development Block Grant (CDBG) Amendment 1 to Agreement for fiscal year 2020-2021 and Authorize the City Manager to sign the Agreement.

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**EXECUTIVE SUMMARY:**

On September 1, 2020, the County and the City of Selma (City) entered into Agreement 20-328, whereby \$204,791 in 2020-2021 CDBG funds were made available to the City for the Selma Sidewalk ADA Improvements, Project No. 20651. The City's estimated cost for the project was \$531,000.

The City also submitted an application for the 2021-2022 CDBG funds for a Sewer Replacement Project that included replacement of sewer mains and manhole structures in Thompson Avenue and Nebraska Avenue. After the 2021-2022 CDBG Application was submitted, the Selma-Kingsburg-Fowler County Sanitation District completed a sewer project that built this portion of sewer main, and the CDBG funds were not needed for the sewer replacement project as requested in the 2021-2022 CDBG Application.

The City requested that the unused 2021-2022 CDBG funds be transferred to the 2020-2021 Selma Sidewalk ADA Improvements, Project No. 20651.

The Amendment 1 to Agreement allocates an additional \$311,021 of CDBG funds, \$274,774 from the City's 2021-2022 CDBG allocation and \$36,247 of the City's remaining CDBG balance.

The City will also commit \$15,188 of local funds for the project.

**BACKGROUND:**

The Selma Sidewalk ADA Improvement Project 20651, consists of the following:

Replacement or modification of curb ramps, sidewalk, and brick pavers that have been damaged by tree roots or otherwise do not meet Americans with Disabilities (ADA) standards at various locations within an area generally bounded by North Street, Grant Street, McCall Avenue, Third Street, and Front Street in the City. Please see Attachment A for the site location map outlining the project area. The project will also include the restoration of irrigation and electrical systems damaged by tree removal operations. The improvements will provide ADA-compliant pedestrian travelling surfaces that will be usable by all residents.

The estimated cost of the project is \$531,000.

**REASON FOR RECOMMENDATION:**

The City of Selma will be using unused 2021-2022 CDBG funds to complete the 2020-2021 CDBG project and the City will not have to pay from local funds to complete the Selma Sidewalk ADA Improvements, Project No. 20651.

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Brandon A. Broussard, Interim City Engineer

9/14/2021

Date

/s/

Fernando Santillan, Community Development Director

09/16/2021

Date

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AMENDMENT I TO AGREEMENT

THIS AMENDMENT I TO AGREEMENT, ("Amendment I"), is made this \_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the State of California ("County"), and the CITY OF SELMA ("City").

WITNESSETH

WHEREAS, the County has been designated as the sponsoring agency to administer and implement the Community Development Block Grant (CDBG) Program activities of the County, and its participating cities, in accordance with the provisions of Title I of the Housing and Community Development Act of 1974, as amended, and the laws of the State of California; and

WHEREAS, on September 1, 2020, the County and the City entered into Agreement 20-328, ("Agreement"), whereby \$204,791 in CDBG funds were made available to the City for the Selma Sidewalk ADA Improvements, Project No. 20651 ("Project"); and

WHEREAS, the City now has an additional \$311,021 from its allocation of CDBG funds that may be made available to the Project to reduce its local fund contribution under the Agreement; and

WHEREAS, the City has requested these additional CDBG funds in the amount of \$311,021 be made available to the Project for the purposes of this Agreement.

NOW THEREFORE, in consideration of their mutual promises as hereinafter set forth, the City and the County agree to amend the Agreement as follows:

- 1. Page 1, Lines 14-18, is amended to read:

"WHEREAS, the City has estimated that total cost of the Project is \$531,000, and the City has committed local funds to the Project in the amount of \$15,188, and is in need of \$515,812 in CDBG funding to complete the Project; and

WHEREAS, the County can provide \$515,812 in CDBG funds needed for the Project from the City's 2020-2021 CDBG allocation (\$204,791), from the City's 2021-2022 CDBG allocation (\$274,774); and from the City's remaining balance of CDBG funds (\$36,247); and"

- 2. The proposed funding summary for the Project on Page 2, Lines 27 and 28, is amended to read:

1	"CDBG	\$515,812
2	Local Financial Contribution	<u>15,188</u>
	Total	\$531,000"

3           3.       That the dollar figure set forth on Page 2, Line 24, Page 3, Line 12, and Page 4,  
4 Line 16, of the Agreement, is amended to read "\$515,812".

5                   County and City agree that this Amendment I is sufficient to amend the Agreement,  
6 and that upon execution of this Amendment I, the Agreement and this Amendment I together shall  
7 be considered the Agreement.

8                   The Agreement, as hereby amended, is ratified and continued. All remaining provisions,  
9 terms, covenants, conditions, and promises contained in the Agreement shall remain in full force  
10 and effect.

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1 IN WITNESS WHEREOF, the parties have executed this Amendment I as of the day and  
2 year first hereinabove written.

3  
4 CITY OF SELMA

COUNTY OF FRESNO

5  
6 By: \_\_\_\_\_  
7 City Manager

Steve Brandau, Chairman of the  
Board of Supervisors of the  
County of Fresno

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

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

9  
10 ATTEST:

ATTEST:  
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

11  
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13 \_\_\_\_\_  
14 City Clerk, City of Selma

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

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16 APPROVED AS TO LEGAL FORM:

17  
18 \_\_\_\_\_  
19 City Attorney

20  
21 REMIT TO:

22 FUND NO: 0001  
23 SUBCLASS NO: 10000  
24 ORG NO: 7205  
ACCOUNT NO: 7885  
PROJECT NO: N20651  
ACTIVITY CODE: 7219

City of Selma  
Attn: City Manager  
1710 Tucker Street  
Selma, CA 93657  
Telephone: (559) 891-2200

25  
26 SW:JA: G:\7205ComDev\Agendas-Agreements\2021\1102\_AP Amend; Amend I to Selma ADA 20651 AGT.docx August 31, 2021

# CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
77927	08/30/2021	Printed	A&S PUMP SERVICE	INSTALL NEW PUMP AT PIONEER VILLAGE		10,849.87
77928	08/30/2021	Printed	ABC COOLING & HEATING	REFUND PERMITS 21-0466 & 21-0467		256.34
77929	08/30/2021	Printed	MARK ALVES / ALVES ELECTRIC	LIGHTING AT SHAFER PARK		850.00
77930	08/30/2021	Printed	AMERICAN AMBULANCE	SEPTEMBER 2021 PAYMENT		62,500.00
77931	08/30/2021	Void				
77932	08/30/2021	Printed	ARAMARK UNIFORM	UNIFORMS/TOWELS/FIRST AID KITS 7/29-8/5/21		579.94
77933	08/30/2021	Printed	AT&T	TELEPHONE -AUGUST 2021		23.07
77934	08/30/2021	Printed	AT&T	INTERNET SERVICE -WEED & SEED		74.19
77935	08/30/2021	Printed	AT&T	INTERNET SERVICE -CVTC		68.85
77936	08/30/2021	Printed	AT&T	TELEPHONE 7/12/21-8/11/21		45.17
77937	08/30/2021	Printed	AT&T	TELEPHONE 7/12/21-8/11/21		104.15
77938	08/30/2021	Printed	AT&T MOBILITY	TELEPHONE -MDT'S 7/1-7/31/21		437.51
77939	08/30/2021	Printed	AT&T MOBILITY	TELEPHONE -MDT'S 7/12-8/11/21		1,577.84
77940	08/30/2021	Printed	FRED BARKER	COED SOFTBALL UMPIRE		2,280.00
77941	08/30/2021	Printed	BAUER COMPRESSORS INC.	NOMEX JACKETS AND PANTS		4,080.27
77942	08/30/2021	Printed	JAY WESLEY BROCK / TOP DOG TRAINING CENTER	K9 MAINTENANCE 8/2/21		180.00
77943	08/30/2021	Printed	CALIFORNIA PARK & RECREATION	MEMBERSHIP RENEWAL		150.00
77944	08/30/2021	Printed	CARROT-TOP INDUSTRIES, INC.	US, CALIFORNIA, AND CITY OF SELMA FLAGS		818.91
77945	08/30/2021	Printed	CENTRAL SANITARY SUPPLY	JANITORIAL SUPPLIES		476.98
77946	08/30/2021	Printed	JOHNNIE CERDA	POST SUPERVISOR COURSE PER DIEM 9/13-9/24/21	R	110.00
77947	08/30/2021	Printed	CISCO SYSTEMS CAPITAL CRP	LEASE-PHONE SYSTEM/BACKUP 8/15-9/14/21		3,280.05
77948	08/30/2021	Printed	CITIZENPRIME, LLC.	FLAMEFIGHTER FIRE HOSE WASHER		563.00
77949	08/30/2021	Printed	CITY OF SANGER FIRE DEPARTMENT	CONSULTING FOR IGT -JULY 2021		250.75
77950	08/30/2021	Printed	DATA TICKET, INC.	PARKING CITATION PROCESSING -JUNE 21		200.00
77951	08/30/2021	Printed	DEPARTMENT OF JUSTICE	FINGERPRINTS -JULY 2021		941.00
77952	08/30/2021	Printed	DON BERRY CONSTRUCTION INC.	ALLEY IMPROVEMENTS PROG PAY & RETENTION	G	42,418.59
77953	08/30/2021	Printed	FIVE CITIES EDA	1st QUARTER DUES JULY-SEPT 21		1,387.74
77954	08/30/2021	Printed	FORTNER'S AUTO SERV & TOWING	TIRE REPAIRS UNIT#187 & 192		150.00
77955	08/30/2021	Printed	FRESNO COUNTY EDC	CENTRAL VALLEY TRAINING CENTER 7/1-7/31/21	R	18,718.27
77956	08/30/2021	Printed	FRESNO OXYGEN	OXYGEN RENTALS		151.96
77957	08/30/2021	Printed	NESTOR GALVAN	FIRE APPARATUS TRAINING PER DIEM 8/22-8/27/21		275.00
77958	08/30/2021	Printed	RENE GARZA	MANAGEMENT COURSE PER DIEM 9/12- 9/17/21	R	355.00
77959	08/30/2021	Printed	GCS ENVIRONMENTAL EQUIPMENT	SWITCH PACK MODULE UNIT#31315		573.75
77960	08/30/2021	Printed	GEIL ENTERPRISES INC	JANITORIAL SERVICES -AUG 2021		3,545.00
77961	08/30/2021	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 8/4/21		2,511.00
77962	08/30/2021	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 8/10/21		1,838.50
77963	08/30/2021	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 8/18/21		3,653.04
77964	08/30/2021	Printed	HENRY SCHEIN INC.	MEDICAL SUPPLIES		10,641.00
77965	08/30/2021	Printed	RAUL R HERRERA JR / ECN POLYGRAPH & INVESTIGATIONS	POLYGRAPH SERVICE 8/5/21		200.00
77966	08/30/2021	Printed	J'S COMMUNICATION INC.	PORTABLE RADIOS		9,996.98
77967	08/30/2021	Printed	RALPH JIMENEZ	INTERIM CITY MANAGER AGREEMENT - AUGUST 21		16,500.00
77968	08/30/2021	Printed	MICHAEL KAIN	MEDICAL PREMIUM REIMB -SEPT 21		1,304.68
77969	08/30/2021	Printed	KAISER PERMANENTE	COBRA PREMIUM ASSISTANCE		2,683.08
77970	08/30/2021	Printed	JEFF KESTLY	MEDICAL PREMIUM REIMB -SEPT 21		204.52
77971	08/30/2021	Printed	KINGS BASIN WATER AUTHORITY	ANNUAL MEMBERSHIP		7,000.00
77972	08/30/2021	Printed	KINGS INDUSTRIAL OCCUPATION MEDICAL CENTER	DRUG SCREENS -FD		2,917.45
77973	08/30/2021	Printed	KOEFRAN INDUSTRIES, INC.	EMPTY ANIMAL CONTROL FREEZER		163.86
77974	08/30/2021	Printed	TIM J LAW / LAW & ASSOCIATES INVESTIGATORS	LAW ENFORCEMENT BACKGROUNDS		2,800.00

# CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
77975	08/30/2021	Void				
77976	08/30/2021	Printed	LIEBERT, CASSIDY, WHITMORE	LEGAL FEES -JUNE 2021		35,926.05
77977	08/30/2021	Printed	FRANK R LOPEZ / FRANK'S TARPS	COMMERCIAL CANOPIES		1,898.31
77978	08/30/2021	Printed	LOZANO SMITH LLP	LEGAL FEES -JULY 2021		23,535.00
77979	08/30/2021	Printed	MCCAIN INC.	OPTICOM & CONTROLLER FOR STREET LIGHTS		5,827.28
77980	08/30/2021	Printed	JANINE D MINAMI / AMI CONCEPTS	BUSINESS IMPROVEMENT DISTRICT ADDITIONAL FEES -JULY 21	G	5,800.00
77981	08/30/2021	Printed	MMJ SOLUTIONS, INC.	WORKPLACE INVESTIGATION 7/12-7/19/21		3,240.00
77982	08/30/2021	Printed	OFFICE DEPOT, INC.	OFFICE SUPPLIES		473.00
77983	08/30/2021	Printed	PG&E	UTILITIES -AUGUST 2021		12.00
77984	08/30/2021	Printed	PG&E	UTILITIES -AUGUST 2021		53.33
77985	08/30/2021	Printed	PG&E	UTILITIES -AUGUST 2021		130.26
77986	08/30/2021	Printed	PG&E	UTILITIES -AUGUST 2021		15,851.15
77987	08/30/2021	Printed	PITNEY BOWES GLOBAL FINANCIAL	POSTAGE MACHINE LEASES -CH & PD		568.65
77988	08/30/2021	Printed	PROFESSIONAL PRINT & MAIL, INC	ENVELOPES		386.02
77989	08/30/2021	Printed	PROFORCE LAW ENFORCEMENT	BLACKHAWK TASER HOLSTERS	G	152.95
77990	08/30/2021	Printed	PURCHASE POWER	POSTAGE REFILL -CH		500.00
77991	08/30/2021	Printed	MELINDA RAMOS	VOCAL DIRECTION HEAD OVER HEELS		400.00
77992	08/30/2021	Printed	DANIEL ANTHONY RIVAS	STRIKE TEAM FUEL, LODGING, PER DIEM 7/28-8/16/21	R	1,701.50
77993	08/30/2021	Printed	GEORGE E SALDATE	SENIOR DANCE DJ 8/27/21	R	100.00
77994	08/30/2021	Printed	SCOTT SANDERS	MEDICAL PREMIUM REIMB -SEPT 21		1,326.20
77995	08/30/2021	Printed	SANTA MARIA CALIFORNIA NEWS	PUBLIC HEARING -PLANNING		182.32
77996	08/30/2021	Printed	SECOND CHANCE ANIMAL SHELTER	MONTHLY SUPPORT -SEPT 21 & BALANCES FOR JULY & AUG 21		8,639.11
77997	08/30/2021	Printed	SELMA DISTRICT CHAMBER OF COMMERCE	1ST QTR DUES FY 21/22		7,500.00
77998	08/30/2021	Printed	SITEONE LANDSCAPE SUPPLY, LLC.	LANDSCAPING SUPPLIES		4,395.94
77999	08/30/2021	Printed	STERICYCLE, INC.	STERI-SAFE OSHA COMPLIANCE -SEPT 21		180.75
78000	08/30/2021	Printed	STRYKER SALES CORPORATION	HEART MONITOR		33,383.26
78001	08/30/2021	Printed	SUN BADGE CO	BADGES FOR PARAMEDICS & EMTS		435.80
78002	08/30/2021	Printed	SUPERIOR VISION INSURANCE INC	VISION INSURANCE -AUGUST 21		1,963.20
78003	08/30/2021	Printed	THE CRISCOM COMPANY	SEWER INFRASTRUCTURE -SEPT 21		4,500.00
78004	08/30/2021	Printed	TIFCO INDUSTRIES, INC.	RETRACTABLE RATCHES, CABLE TIES, SEAL TAPE		499.73
78005	08/30/2021	Printed	TURNING POINT OF CENTRAL CA	BUSINESS LIC OVERPAYMENT REIMB - DOUBLE PAYMENT		4.00
					<b>TOTAL</b>	<b>380,253.12</b>

Grant: G PD State Appropriation: PDSA (457) Reimbursement: R

WIRE/EFT						
08/30/21			IRG MASTER HOLDINGS	CVTC LEASE -SEPTEMBER 2021		10,411.01



**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

**September 20, 2021**

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**ITEM NO:** 2.

**SUBJECT:** Continued Item – Consideration and Necessary Action on Resolution declaring an Abandoned Sign at 1630 2<sup>nd</sup> Street, Selma, California, an Illegal On-Premises Advertising Display and a Public Nuisance and Ordering the Property Owner to Abate the Nuisance

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**RECOMMENDATION:** Conduct the public hearing and determine whether property owner is progressing to reestablish use of the sign and, if so, continue consideration of resolution declaring the sign located on the property described in the resolution to be illegal and a nuisance and ordering the property owner to abate the nuisance by removing the sign, and determine date and time to consider any objection by the property owner to the order to remove the illegal advertising display. If not, adopt the resolution.

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**DISCUSSION:**

Update: Mr. Mendrin has submitted an incomplete application but has not paid fees as of September 14, 2021.

Staff met with Mr. Dave Mendrin on March 26<sup>th</sup> regarding his 2<sup>nd</sup> Street project. Mr. Mendrin presented a draft site plan and staff gave him feedback and suggested preliminary revisions on the plan. Mr. Mendrin was to take the proposed changes back to his design team. In the weeks following that initial meeting, there has been some correspondence with Mr. Mendrin's team regarding the parking requirements for the site. However, no updated plan or application for Site Plan review has been submitted to the City. On May 13, Mr. Mendrin indicated on a phone call that he was going to be opening up escrow within the next day or two on the home behind his commercial lot in order to expand his project. He had previously indicated that he was still working on getting letters of intent from Valero and Starbucks.

**BACKGROUND:**

There is a sign, commonly known as a freeway sign because it is visible from Highway 99 that has been abandoned or is not maintained or not used to identify or advertise any ongoing business and has not been used for any such purpose for a period of not less than ninety (90) days prior to October 16, 2020, the date upon which the Property Owner was given notice that the City would consider this Resolution declaring the sign an illegal on-site premises advertising display and a public nuisance. Under the provisions of the City's Ordinances and under Business and Professions Code §5499.1, et. seq., the City Council of

the City of Selma may, by Resolution, declare the sign a public nuisance and order the abatement of the nuisance by the property owner. Once the Resolution is approved, the property owner will be given a notice to abate the nuisance and an opportunity to object to the City's declaration that the abandoned sign is a nuisance at a City Council meeting on a date to be determined by the City Council. If the property owner fails to abate the nuisance by having the sign removed, the City may abate the nuisance using its own forces or contracting for the removal of the signs in accordance with the provisions of the Business and Professions Code. The costs of the abatement will be made a lien against the Property until paid.

At the City Council meetings of November 2, 2020, December 7, 2020, and January 19, the City Council continued this item to the second meeting in March 2021 to provide the property owner, who had previously indicated a willingness to reestablish the sign as one to advertise a product or business, additional time. At the March 15 City Council meeting, the Council continued the public hearing through May 17<sup>th</sup> to allow further time for Mr. Mendrin to achieve progress on the development project. At the May 17<sup>th</sup> Council Meeting, Council granted Mr. Mendrin an additional 60 days until July 19<sup>th</sup> to make additional progress on his project. At the July 19<sup>th</sup> City Council Meeting, the Council granted Mr. Mendrin an additional 60 days until September 20<sup>th</sup> to make further progress on the project.

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<b><u>COST:</u></b> <i>(Enter cost of item to be purchased)</i>		<b><u>BUDGET IMPACT</u></b> <i>(Enter amount this non-budgeted item will impact this years' budget – if budgeted, enter NONE).</i>
<i>Undetermined. The staff will need to evaluate whether the removal can be done by City forces or should be done through a contractor and the cost would be determined at that time.</i>		<i>Temporary. The City would bare the costs of removing the illegal signs which would be recovered by being made a lien against the property until paid.</i>
<b><u>FUNDING:</u></b> <i>(Enter the funding source for this item – if fund exists, enter the balance in the fund).</i>		<b><u>ON-GOING COST:</u></b> <i>(Enter the amount that will need to be budgeted each year – if one-time cost, enter NONE).</i>
Funding Source: <i>General Fund</i>  Fund Balance:		<i>None.</i>

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**RECOMMENDATION** Conduct the public hearing and determine whether property owner is progressing to reestablish use of the sign and, if so, continue consideration of

resolution declaring the sign located on the property described in the resolution to be illegal and a nuisance and ordering the property owner to abate the nuisance by removing the sign, and determine date and time to consider any objection by the property owner to the order to remove the illegal advertising display. If not, adopt the resolution.

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/s/  
Fernando Santillan, Community Development Director

09/16/2021  
Date

/s/  
Ralph Jimenez, Interim City Manager

09/16/2021  
Date

**RESOLUTION NO. 2021-\_\_\_R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF SELMA DECLARING A PUBLIC NUISANCE AND ORDERING ABATEMENT OF AN  
ILLEGAL ON-PREMISES ADVERTISING DISPLAY**

**WHEREAS**, the City of Selma issued a Notice to the owner of the property located at 1630 2<sup>nd</sup> Street, Selma, California, Fresno County Assessor Parcel No. 388-155-22 the “Property”), that the City Council would consider a Resolution declaring an on-premises advertising display located on the Property illegal and a public nuisance as required by Business and Professions Code §5499.2(b); and

**WHEREAS**, the sign is an illegal advertising display within the meaning of Business and Professions Code §5499.1 because it is an on-premises advertising display that was legally erected, but has ceased to be used to identify or advertise any ongoing business and has not been used for that purpose for a period of not less than 90 days prior to October 16, 2020; and

**WHEREAS**, on November 2, 2020 the City Council of the City of Selma did conduct and continue a public hearing to December 7, 2020 pursuant to Business and Professions Code §5499.2 to determine whether the sign was an illegal on-premises advertising display and a public nuisance; and

**WHEREAS**, on December 7, 2020 the City Council of the City of Selma did conduct the continued public hearing pursuant to Business and Professions Code §5499.2 to determine whether the sign was an illegal on-premises advertising display and a public nuisance and continued the public hearing to January 19, 2021; and

**WHEREAS**, on January 19, 2020 the City Council of the City of Selma did conduct the continued public hearing pursuant to Business and Professions Code §5499.2 to determine whether the sign was an illegal on-premises advertising display and a public nuisance and continued the public hearing to March 15, 2021; and

**WHEREAS**, on March 15, 2021 the City Council of the City of Selma did conduct the continued public hearing pursuant to Business and Professions Code §5499.2 to determine whether the sign was an illegal on-premises advertising display and a public nuisance and continued the public hearing to May 17, 2021; and

**WHEREAS**, on May 17, 2021 the City Council of the City of Selma did conduct the continued public hearing pursuant to Business and Professions Code §5499.2 to determine whether the sign was an illegal on-premises advertising display and a public nuisance and continued the public hearing to July 19, 2021; and

**WHEREAS**, on July 19, 2021 the City Council of the City of Selma did conduct the continued public hearing pursuant to Business and Professions Code §5499.2 to determine whether the sign was an illegal on-premises advertising display and a public nuisance;

**WHEREAS**, on September 20, 2021 the City Council of the City of Selma did conduct the continued public hearing pursuant to Business and Professions Code §5499.2 to determine whether the sign was an illegal on-premises advertising display and a public nuisance;

1. The forgoing recitals are true and correct and incorporated herein as though fully set forth at this point.

3. Any Property owner(s) objecting to the notice to remove illegal advertising display shall have an opportunity to object at a meeting of the City Council to be held on October 18, 2021. Notice to the property owners shall be given in the following form:

Notice hereby given that on the 20<sup>th</sup> day of September, 2021, the City Council of the City of Selma adopted a Resolution declaring that an illegal advertising display is located on or in front of this Property (Fresno County Assessor Parcel No. 388-155-22) which constitutes a public nuisance and must be abated by the removal of the illegal display. Otherwise, it will be removed, and the nuisance abated by the City of Selma. The cost of removal will be assessed upon the property from or in front of which the display is removed and will constitute a lien upon the property until paid. Reference is hereby made to Resolution No. \_\_\_\_\_ for further particulars. A copy of this Resolution is on file in the office of the Clerk of the City Council of the City of Selma.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_”  
{Title}

This Resolution was duly adopted by the City Council of the City of Selma at a regular meeting on the 20th of September, 2021 by the following vote:

September 20, 2021 Council Packet

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Scott Robertson, Mayor

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Reyna Rivera, City Clerk

**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

September 20, 2021

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**ITEM NO:**

3.

**SUBJECT:** Consideration of Options for Fall 2021 Community Clean-up Week Event

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**RECOMMENDATION:** Staff recommends consideration of the options for a Selma location presented by Waste Management for the Fall Cleanup event.

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**BACKGROUND:** The City of Selma has a multi-year agreement with Waste Management through 2024. The agreement stipulates Waste Management will provide two community clean-up events a year in a location approved by the City. On March 18, 2019, Council approved holding the events at the Waste Management Transfer Station at 5608 South Villa Avenue, Fresno.

On February 16, 2021, Council considered a number of options for future community clean-up events (Attachment A). Of the options, Council expressed interest in potentially moving the event back to Selma and possibly looking at a voucher program in the next fiscal year.

**DISCUSSION:** Given the terms of the agreement between Waste Management and the City of Selma, moving the location of the drop-off may be done by Council action via a minute order. Changing to a voucher system for drop offs will require an amendment to the agreement.

Having the event at the Waste Management facility has increased the hours for drop offs and it increased the tons of refuse disposed of by Selma residents, as noted in Attachment A.

If Council would like to bring the event back to Selma, staff recommends directing Waste Management to determine a suitable location in Selma. City staff has begun assisting Waste Management with identifying potential sites in Selma, including contacting private property owners who might be willing to allow the use of their property to Waste Management. There is no additional cost to the City to move the event.

If Council would like to consider a voucher program, staff recommends reviewing the option during next fiscal year's budget process. The City pays for the disposal costs of the clean-up weeks. According to Waste Management's experience in Fowler, which uses a voucher system, there is greater participation in the program and we expect expenses for disposal to increase significantly.

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\_\_\_\_\_/s/\_\_\_\_\_  
Fernando Santillan, Community Development Director

\_\_\_\_\_  
09/16/2021  
Date

\_\_\_\_\_/s/\_\_\_\_\_  
Ralph Jimenez, Interim City Manager

\_\_\_\_\_  
09/16/2021  
Date

# Semiannual Clean-up Event Options

Proposal Option	Required Adjustment to Rate	Estimated Disposal Cost to the City	Additional Notes:
Two Clean Up Events Per Year at Former Selma Disposal Yard	Included with Current Rate at Previous Cost	Dependent on Participation Approximately \$2500 October 2019 (44 Tons) and \$1300 April 2019 (22 Tons)	
Two Clean Up Events Per Year at WM Yard	Included with Current Rate	Approximately \$10k Based on August 2020 Participation (54 Tons)	Note, Participation was higher at the WM yard compared to the most recent events hosted within the City
Annual Curbside Clean Up Event (5 Saturdays)	\$.93 Per Home Per Month	Approximately \$75k Assuming 1,335 Tons at the Current Gate Rate (\$56.07 in 2020, Subject to Change Annually)	Up to 5 Items Per Home (Maximum), 500 Pounds Per Home  Pricing assumes the City pays disposal and facilitates any street sweeping or litter pick up required following the event. As discussed at our meeting, this could be a significant task depending on participation and set out habits
Voucher Program – Two Vouchers Per Resident in Good Standing Per Year, Set Amount Per Voucher	No Additional Cost to Current Rate	Dependent on Participation, Estimated to be \$100k Annually Based on 18% Participation Rate or Approximately 2,000 Tons	Participation based on City of Fowler Participation Rate
On Call Bulky Item Program	Significant Additional Expense to Cover Additional Staffing & Equipment	Dependent on Participation	The bulky item program will require a more concrete participation assumption and the potential for look backs in the agreement to support an increase of higher than anticipated participation. The cost of an additional flatbed vehicle and staffing would likely make the program unnecessarily burdensome on Selma residents.



**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

September 20, 2021

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**ITEM NO:**

4.

**SUBJECT:**

Consideration of designation of voting delegate for League Conference and direction of City's position on the League Resolutions for Fair and Equitable Distribution of the Bradley Burns 1% Local Sales Tax and to Provide Adequate Regulatory authority and funding to assist cities with Cleanup Activities on Rail Operator Properties

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**DISCUSSION:** Each year, before the annual League Conference, all cities are asked to designate their voting delegate(s). This delegate is authorized to vote on behalf of their city on all League ordinances, resolutions, by-laws or policy changes (attached).

The League of California Cities Annual Conference is scheduled for September 22-24, 2021, to be held in Sacramento. The League's General Assembly will convene on the last day of the conference for the Annual Business Meeting in order to consider and take action on resolutions that establish League policy. Each member city of the League of California Cities may, with the approval of the City Council, designate a city official as their Designated Voting Delegate and, in the event that the Designated Voting Delegate is unable to serve in that capacity, up to two Alternate Voting Delegates. Designated Voting Delegates and Alternates must be registered to attend the Annual Conference. A staff member can be appointed to fill the voting role in the event that no Councilmember plans to attend, or as an alternate delegate.

The League Resolution for Council consideration includes the following resolution:

A Resolution calling for fair and equitable distribution of the Bradley Burns 1% Local Sales Tax and a Resolution to provide adequate regulatory authority and funding to assist cities with cleanup activities on rail operator properties.

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**RECOMMENDATION:** 1) Council appoint a voting delegate and alternate for the League of California Cities annual conference. 2) Council consider City's position of League Resolution and provide voting delegate(s) direction.

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/s/  
Ralph Jimenez, Interim City Manager

09/16/2021  
Date



## *Annual Conference Resolutions Packet*

### *2021 Annual Conference Resolutions*



*September 22 - 24, 2021*

## INFORMATION AND PROCEDURES

**RESOLUTIONS CONTAINED IN THIS PACKET:** The League of California Cities (Cal Cities) bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, two resolutions have been introduced for consideration at the Annual Conference and referred to Cal Cities policy committees.

**POLICY COMMITTEES:** Three policy committees will meet virtually one week prior to the Annual Conference to consider and take action on the resolutions. The sponsors of the resolutions have been notified of the time and location of the meetings.

**GENERAL RESOLUTIONS COMMITTEE:** This committee will meet at 1:00 p.m. on Thursday, September 23, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of Cal Cities regional divisions, functional departments, and standing policy committees, as well as other individuals appointed by the Cal Cities president. Please check in at the registration desk for room location.

**CLOSING LUNCHEON AND GENERAL ASSEMBLY:** This meeting will be held at 12:30 p.m. on Friday, September 24, at the SAFE Credit Union Convention Center.

**PETITIONED RESOLUTIONS:** For those issues that develop after the normal 60-day deadline, a petition resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Closing Luncheon & General Assembly. This year, that deadline is 12:30 p.m., Thursday, September 23. Resolutions can be viewed on Cal Cities Web site: [www.cacities.org/resolutions](http://www.cacities.org/resolutions).

Any questions concerning the resolutions procedures may be directed to Meg Desmond [mdesmond@calcities.org](mailto:mdesmond@calcities.org).

## **GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS**

Policy development is a vital and ongoing process within Cal Cities. The principal means for deciding policy on the important issues facing cities is through Cal Cities seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop Cal Cities policy. Resolutions should adhere to the following criteria.

### **Guidelines for Annual Conference Resolutions**

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing Cal Cities policy.
4. The resolution should be directed at achieving one of the following objectives:
  - (a) Focus public or media attention on an issue of major importance to cities.
  - (b) Establish a new direction for Cal Cities policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
  - (c) Consider important issues not adequately addressed by the policy committees and board of directors.

## KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action
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		1	2	3
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1 - Policy Committee Recommendation  
to General Resolutions Committee  
2 - General Resolutions Committee  
3 - General Assembly

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### HOUSING, COMMUNITY & ECONOMIC DEVELOPMENT POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

### REVENUE & TAXATION POLICY COMMITTEE

		1	2	3
1	Online Sales Tax Equity			

### TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

## KEY TO ACTIONS TAKEN ON RESOLUTIONS (*Continued*)

Resolutions have been grouped by policy committees to which they have been assigned.

### **KEY TO REVIEWING BODIES**

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

### **KEY TO ACTIONS TAKEN**

- |     |   |
|-----|---|
| A   | Approve   |
| D   | Disapprove  |
| N   | No Action   |
| R   | Refer to appropriate policy committee for study             |
| a   | Amend+  |
| Aa  | Approve as amended+   |
| Aaa | Approve with additional amendment(s)+                       |
| Ra  | Refer as amended to appropriate policy committee for study+ |
| Raa | Additional amendments and refer+                            |
| Da  | Amend (for clarity or brevity) and Disapprove+              |
| Na  | Amend (for clarity or brevity) and take No Action+          |
| W   | Withdrawn by Sponsor  |

### **ACTION FOOTNOTES**

\* Subject matter covered in another resolution

\*\* Existing League policy

\*\*\* Local authority presently exists

### **Procedural Note:**

The League of California Cities resolution process at the Annual Conference is guided by the Cal Cities Bylaws.

**1. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES (“CAL CITIES”) CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION**

Source: City of Rancho Cucamonga

Concurrence of five or more cities/city officials:

Cities: Town of Apple Valley; City of El Cerrito; City of La Canada Flintridge; City of La Verne; City of Lakewood; City of Moorpark; City of Placentia; City of Sacramento

Referred to: Revenue and Taxation Policy Committee

**WHEREAS**, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

**WHEREAS**, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

**WHEREAS**, in terms of “siting” the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines “out-of-state” online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

**WHEREAS**, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale (“situs”) as the location from which the goods were shipped such as a fulfillment center; and

**WHEREAS**, in early 2021, one of the state’s largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being entirely allocated to the specific city where the warehouse fulfillment center is located as opposed to going into a countywide pool that is shared with all jurisdictions in that County, as was done previously; and

**WHEREAS**, this all-or-nothing change for the allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue from the retailer that was once spread amongst all cities in countywide pools is now concentrated in select cities that host a fulfillment center; and

**WHEREAS**, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting a 1 million square foot fulfillment center, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

**WHEREAS**, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their RHNA obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

**WHEREAS**, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

**WHEREAS**, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering product from that center now receive no revenue from the center's sales activity despite also experiencing the impacts created by the center, such as increased traffic and air pollution; and

**WHEREAS**, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

**NOW, THEREFORE, BE IT RESOLVED** that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.



## Background Information to Resolution

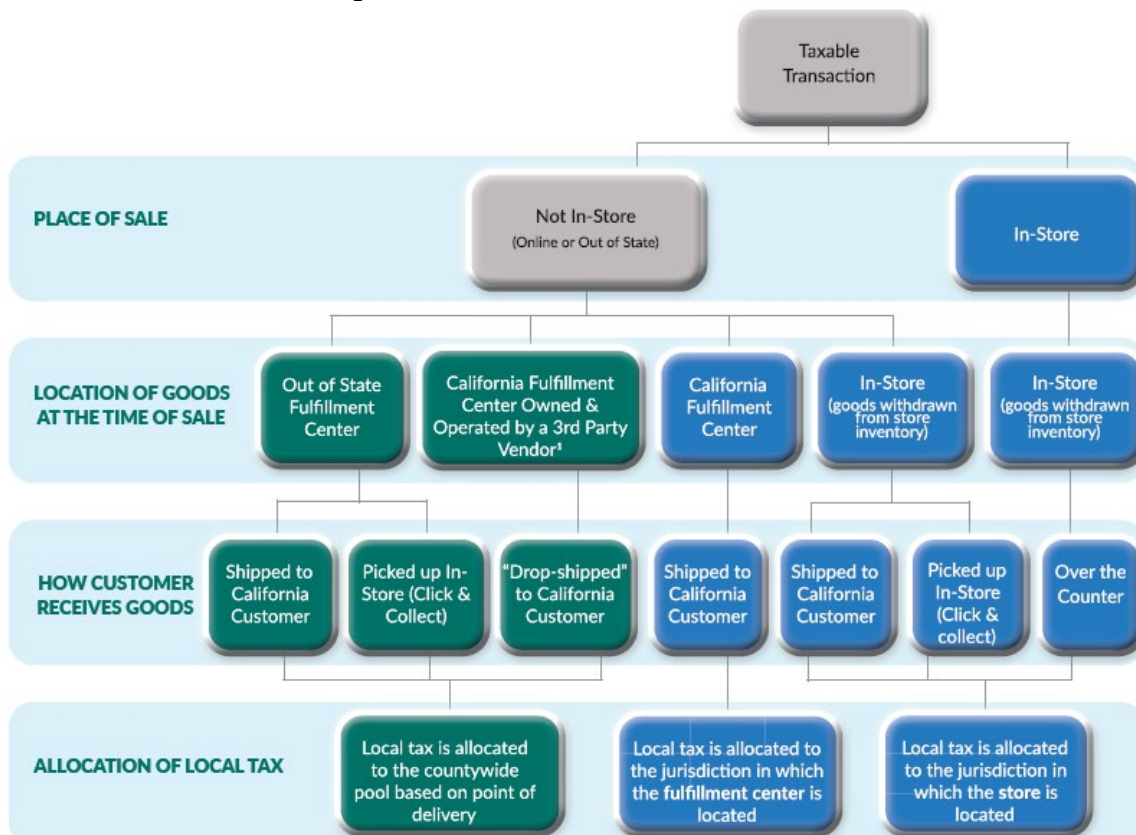
**Source:** City of Rancho Cucamonga

### **Background:**

Sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950's, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction's boundaries.

Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances. The California Department of Tax and Fee Administration (CDTFA) is responsible for administering this system and issuing rules regarding how it is applied in our state.

The following chart created by HdL Companies, the leading provider of California sales tax consulting, illustrates the complex structure of how sales and use tax allocation is done in California, depending on where the transaction starts, where the goods are located, and how the customer receives the goods:



<sup>1</sup> In this scenario the retailer does not own a stock of goods in California and sales orders are negotiated/processed out of state. An out of state company is not required to hold a seller's permit for an in-state third party warehouse if they do not own a stock of goods at the time of sale.

With the exponential growth of online sales and the corresponding lack of growth, and even decline, of shopping at brick and mortar locations, cities are seeing much of their sales tax

growth coming from the countywide sales tax pools, since much of the sales tax is now funneled to the pools.

Recently, one of the world's largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated. Following the chart above, previously much of the sales tax would have followed the green boxes on the chart and been allocated to the countywide pool based on point of delivery. Now, much of the tax is following the blue path through the chart and is allocated to the jurisdiction in which the fulfillment center is located. (It should be noted that some of the tax is still flowing to the pools, in those situations where the fulfillment center is shipping goods for another seller that is out of state.)

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers.

This has brought to light again the need to address the issues in how sales and use taxes are distributed in the 21<sup>st</sup> century. Many, if not most cities will never have the opportunity have a warehouse fulfillment center due to lack of space or not being situated along a major travel corridor. These policies especially favor retailers who may leverage current policy in order to negotiate favorable sales tax sharing agreements, providing more money back to the retailer at the expense of funding critical public services.

With that stated, it is important to note the many impacts to the jurisdictions home to the fulfillment centers. These centers do support the ecommerce most of us as individuals have come to rely on, including heavy wear and tear on streets – one truck is equal to about 8,000 cars when it comes to impact on pavement – and increased air pollution due to the truck traffic and idling diesel engines dropping off large loads. However, it is equally important that State policies acknowledge that entities without fulfillment centers also experience impacts from ecommerce and increased deliveries. Cities whose residents are ordering products that are delivered to their doorstep also experience impacts from traffic, air quality and compromised safety, as well as the negative impact on brick-and-mortar businesses struggling to compete with the sharp increase in online shopping. These cities are rightfully entitled to compensation in an equitable share of sales and use tax. We do not believe that online sales tax distribution between fulfillment center cities and other cities should be an all or nothing endeavor, and not necessarily a fifty-fifty split, either. But we need to find an equitable split that balances the impacts to each jurisdiction involved in the distribution of products purchased online.

Over the years, Cal Cities has had numerous discussions about the issues surrounding sales tax in the modern era, and how state law and policy should be revisited to address these issues. It is a heavy lift, as all of our cities are impacted a bit differently, making consensus difficult. We believe that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.

It is for these reasons, that we should all aspire to develop an equitable sales tax distribution for online sales.

**LETTERS OF CONCURRENCE**  
Resolution No. 1

July 19, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The Town of Apple Valley strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool. Now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents.

We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the Town of Apple Valley concurs that the resolution should go before the General Assembly. If you have any questions regarding the Town's position in this matter, please do not hesitate to contact the Town Manager at 760-240-7000 x 7051.

Sincerely,

A handwritten signature in black ink, appearing to read "Curt Emick", written in a cursive style.

Curt Emick  
Mayor

July 21, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: Letter of Support for the City of Rancho Cucamonga's Resolution for Fair and Equitable Distribution of the Bradley Burns 1% Local Sales Tax**

Dear President Walker:

The City of El Cerrito supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Previously, all sales tax revenue generated by this retailer's sales went into a countywide pool and was distributed amongst the jurisdictions in the pool; now the revenue from in-state sales goes entirely to the city where the fulfillment center is located and the packages are shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities such as El Cerrito who have no chance of ever obtaining a fulfillment center as we are a built out, four square mile, small city. Additionally, cities not situated along major travel corridors and no/low property tax cities that rely on sales tax revenue are especially impacted, as well as cities struggling to build much needed affordable housing that may require rezoning commercial parcels in order to meet their RHNA allocations.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies serve to divide local agencies, exacerbate already difficult municipal finances, and in the end results in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of El Cerrito concurs that the resolution should go before the General Assembly.

Sincerely,



Paul Fadelli, Mayor  
City of El Cerrito

cc: El Cerrito City Council  
City of Rancho Cucamonga



City Council  
Terry Walker, Mayor  
Keith Eich, Mayor Pro Tem  
Jonathan C. Curtis  
Michael T. Davitt  
Richard B. Gunter III

July 14, 2021

Ms. Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of La Cañada Flintridge strongly supports the City of Rancho Cucamonga's effort to introduce a resolution for consideration by the General Assembly at CalCITIES' 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1% Bradley Burns local tax revenue (sales tax) from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool, as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as an out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the jurisdiction where the fulfillment center is located and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state transactions even though their packages are delivered to locations within those cities' borders and paid for by residents in those locations. Cities that abut jurisdictions with fulfillment centers experience fulfillment centers' impacts just as much, such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers, that was once spread amongst all cities in countywide pools, is now concentrated in select cities fortunate enough to host a fulfillment center. This benefits only those few hosting jurisdictions and is particularly unfair to cities who have no chance of ever hosting a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely heavily on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably eager to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances and, in the end, result in a net loss of local government sales tax proceeds that simply serve to make private



Ms. Cheryl Viegas Walker, President

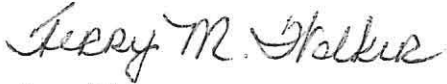
July 14, 2021

Page 2

sector businesses even more profitable at the expense of cities' residents. We should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Cañada Flintridge concurs that the proposed resolution should go before the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads "Terry M. Walker".

Terry Walker

Mayor



# CITY OF LA VERNE CITY HALL

3660 "D" Street, La Verne, California 91750-3599  
[www.cityoflaverne.org](http://www.cityoflaverne.org)

July 19, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of La Verne strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities which have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are



General Administration 909/596-8726 • Water Customer Service 909/596-8744 • Community Services 909/596-8700  
Public Works 909/596-8741 • Finance 909/596-8716 • Community Development 909/596-8706 • Building 909/596-8713  
Police Department 909/596-8722 • Fire Department 909/596-8737 • General Fax 909/596-8737

September 20, 2021 Council Packet

especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exacerbate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Verne concurs that the resolution should go before the General Assembly.

Sincerely,

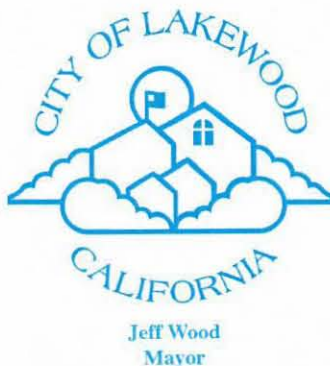


Bob Russi  
City Manager  
City of La Verne



Ariel Pe  
Council Member

Todd Rogers  
Council Member



July 15, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of Lakewood strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities that have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Lakewood concurs that the resolution should go before the General Assembly.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Wood", is written over the word "Sincerely,".

Jeff Wood  
Mayor

# Lakewood



# CITY OF MOORPARK

799 Moorpark Avenue, Moorpark, California 93021  
Main City Phone Number (805) 517-6200 | Fax (805) 532-2205 | moorpark@moorparkca.gov

July 14, 2021

**TRANSMITTED ELECTRONICALLY**

Cheryl Viegas-Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of Moorpark strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies of the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates both as an in-state online retailer and as an out-of-state online retailer. Whereas all sales tax revenues generated by this retailer's sales previously went into countywide pools and were distributed amongst the jurisdictions in the pool, sales tax revenues from in-state sales now go entirely to the city where the fulfillment center is located and the package is shipped from. Cities that do not have a fulfillment center now receive no sales tax revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and deteriorating road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenues from large online retailers that were once spread amongst all cities in countywide pools are now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted, as well as

cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone limited commercial properties for residential land uses.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and ultimately result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses more profitable at the expense of everyone's residents. We can do better than this, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Moorpark concurs that the resolution should go before the General Assembly at the 2021 Annual Conference in Sacramento.

Sincerely,



Janice S. Parvin  
Mayor

cc: City Council  
City Manager



*The People are the City*

**Mayor**  
CRAIG S. GREEN

**Mayor Pro Tem**  
CHAD P. WANKE

**Councilmembers:**  
RHONDA SHADER  
WARD L. SMITH  
JEREMY B. YAMAGUCHI



**City Clerk:**  
ROBERT S. MCKINNELL

**City Treasurer**  
KEVIN A. LARSON

**City Administrator**  
DAMIEN R. ARRULA

**401 East Chapman Avenue – Placentia, California 92870**

**July 14, 2021**

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of Placentia strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent (1%) Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

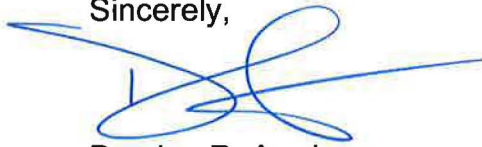
This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The

current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Placentia concurs that the resolution should go before the General Assembly. Should you have any questions regarding this letter, please contact me at (714) 993-8117 or via email at [administration@placentia.org](mailto:administration@placentia.org).

Sincerely,



Damien R. Arrula  
City Administrator



*Leyne Milstein  
Assistant City Manager*

*City Hall  
915 I Street, Fifth Floor  
Sacramento, CA 95814-2604  
916-808-5704*

July 19, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of Sacramento strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment

*Leyne Milstein*  
*Assistant City Manager*

*City Hall*  
*915 I Street, Fifth Floor*  
*Sacramento, CA 95814-2604*  
*916-808-5704*

center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Sacramento concurs that the resolution should go before the General Assembly.

Sincerely,



Leyne Milstein (Jul 19, 2021 14:48 PDT)

**Leyne Milstein**  
**Assistant City Manager**

## **League of California Cities Staff Analysis on Resolution No. 1**

Staff: Nicholas Romo, Legislative Affairs, Lobbyist

Committee: Revenue and Taxation

### **Summary:**

This Resolution calls on the League of California Cities (Cal Cities) to request the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

### **Background:**

The City of Rancho Cucamonga is sponsoring this resolution to *“address the issues in how sales and use taxes are distributed in the 21st century.”*

The City notes that *“sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950’s, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction’s boundaries. Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances.*

*Recently, one of the world’s largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated.*

*This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer’s fulfillment centers.”*

The City’s resolution calls for action on an unspecified solution that *“rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction,”* which aims to acknowledge the actions taken by cities to alleviate poverty, catalyze economic development, and improve financial stability within their communities through existing tax sharing and zoning powers.

Ultimately, sponsoring cities believe *“that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.”*

### **Sales and Use Tax in California**

The Bradley-Burns Uniform Sales Tax Act allows all local agencies to apply its own sales and use tax on the same base of tangible personal property (taxable goods). This tax rate currently is fixed at 1.25% of the sales price of taxable goods sold at retail locations in a local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Cities and counties use this 1% of the tax to support general operations, while the remaining 0.25% is used for county transportation purposes.

In California, all cities and counties impose Bradley-Burns sales taxes. California imposes the sales tax on every retailer engaged in business in this state that sells taxable goods. The law requires businesses to collect the appropriate tax from the purchaser and remit the amount to the California Department of Tax and Fee Administration (CDTFA). Sales tax applies whenever a retail sale is made, which is basically any sale other than one for resale in the regular course of business. Unless the person pays the sales tax to the retailer, they are liable for the use tax, which is imposed on any person consuming taxable goods in the state. The use tax rate is the same rate as the sales tax rate.

Generally, CDTFA distributes Bradley-Burns tax revenue based on where a sale took place, known as a *situs-based system*. A retailer’s physical place of business—such as a retail store or restaurant—is generally the place of sale. “Sourcing” is the term used by tax practitioners to describe the rules used to determine the place of sale, and therefore, which tax rates are applied to a given purchase and which jurisdictions are entitled to the local and district taxes generated from a particular transaction.

California is primarily an origin-based sourcing state – meaning tax revenues go to the jurisdiction in which a transaction physically occurs if that can be determined. However, California also uses a form of destination sourcing for the local use tax and for district taxes (also known as “transactions and use taxes” or “add-on sale and use taxes”). That is, for cities with local add-on taxes, they receive their add-on rate amount from remote and online transactions.

Generally, allocations are based on the following rules:

- The sale is sourced to the place of business of the seller - whether the product is received by the purchaser at the seller’s business location or not.
- If the retailer maintains inventory in California and has no other in state location, the source is the jurisdiction where the warehouse is situated. *This resolution is concerned with the growing amount of online retail activity being sourced to cities with warehouse/fulfillment center locations.*
- If the business’ sales office is located in California but the merchandise is shipped from out of state, the tax from transactions under \$500,000 is allocated

via the county pools. The tax from transactions over \$500,000 is allocated to the jurisdiction where the merchandise is delivered.

- When a sale cannot be identified with a permanent place of business in the state, the sale is sourced to the allocation pool of the county where the merchandise was delivered and then distributed among all jurisdictions in that county in proportion to ratio of sales. *For many large online retailers, this has been the traditional path.*

#### Online Sales and Countywide Pools

While the growth of e-commerce has been occurring for more than two decades, led by some of the largest and most popular retailers in the world, the dramatic increase in online shopping during the COVID-19 pandemic has provided significant revenue to California cities as well as a clearer picture on which governments enjoy even greater benefits.

In the backdrop of booming internet sales has been the steady decline of brick-and-mortar retail and shopping malls. For cities with heavy reliance on in-person retail shopping, the value of the current allocation system has been diminished as their residents prefer to shop online or are incentivized to do so by retailers (during the COVID-19 pandemic, consumers have had no other option but to shop online for certain goods). All the while, the demands and costs of city services continue to grow for cities across the state.

As noted above, the allocation of sales tax revenue to local governments depends on the location of the transaction (or where the location is ultimately determined). For in-person retail, the sales tax goes to the city in which the product and store are located - a customer purchasing at a register. For online sales, the Bradley Burns sales tax generally goes to a location other than the one where the customer lives – either to the city or county where an in-state warehouse or fulfillment center is located, the location of in-state sales office (ex. headquarters) or shared as use tax proceeds amongst all local governments within a county based on their proportionate share of taxable sales.

Under current CDTFA regulations, a substantial portion of local use tax collections are allocated through a countywide pool to the local jurisdictions in the county where the property is put to its first functional use. The state and county pools constitute over 15% of local sales and use tax revenues. Under the pool system, the tax is reported by the taxpayer to the countywide pool of use and then distributed to each jurisdiction in that county on a pro-rata share of taxable sales. If the county of use cannot be identified, the revenues are distributed to the state pool for pro-rata distribution on a statewide basis.

#### Concentration of Online Sales Tax Revenue and Modernization

Sales tax modernization has been a policy goal of federal, state, and local government leaders for decades to meet the rapidly changing landscape of commercial activity and ensure that all communities can sustainably provide critical services.

For as long as remote and internet shopping has existed, policy makers have been concerned about their potential to disrupt sales and use tax allocation procedures that underpin the funding of local government services. The system was designed in the early twentieth century to ensure that customers were paying sales taxes to support local government services within the community where the transactions occurred whether they resided there or not. This structure provides benefit to and recoupment for the public resources necessary to ensure the health and safety of the community broadly.

City leaders have for as long been concerned about the loosening of the nexus between what their residents purchase and the revenues they receive. Growing online shopping, under existing sourcing rules, has led to a growing concentration of sales tax revenue being distributed to a smaller number of cities and counties. As more medium and large online retailers take title to fulfillment centers or determine specific sales locations in California as a result of tax sharing agreements in specific cities, online sales tax revenue will be ever more concentrated in a few cities at the control of these companies. Furthermore, local governments are already experiencing the declining power of the sales tax to support services as more money is being spent on non-taxable goods and services.

*For more on sales and use tax sourcing please see Attachment A.*

#### State Auditor Recommendations

In 2017, the California State Auditor issued a report titled, "[The Bradley-Burns Tax and Local Transportation Funds](#)", noting that:

*"Retailers generally allocate Bradley Burns tax revenue based on the place of sale, which they identify according to their business structure. However, retailers that make sales over the Internet may allocate sales to various locations, including their warehouses, distribution center, or sales offices. This approach tends to concentrate Bradley Burns tax revenue into the warehouses' or sales offices' respective jurisdictions. Consequently, counties with a relatively large amount of industrial space may receive disproportionately larger amounts of Bradley Burns tax, and therefore Local Transportation Fund, revenue.*

*The State could make its distribution of Bradley Burns tax revenue derived from online sales more equitable if it based allocations of the tax on the destinations to which goods are shipped rather than on place of sale."*

The Auditor's report makes the following recommendation:

*"To ensure that Bradley-Burns tax revenue is more evenly distributed, the Legislature should amend the Bradley-Burns tax law to allocate revenues from Internet sales based on the destination of sold goods rather than their place of sale."*



In acknowledgement of the growing attention from outside groups on this issue, Cal Cities has been engaged in its own study and convening of city officials to ensure pursued solutions account for the circumstances of all cities and local control is best protected. These efforts are explored in subsequent sections.

#### Cal Cities Revenue and Taxation Committee and City Manager Working Group

In 2015 and 2016, Cal Cities' Revenue and Taxation Policy Committee held extensive discussions on potential modernization of tax policy affecting cities, with a special emphasis on the sales tax. The issues had been identified by Cal Cities leadership as a strategic priority given concerns in the membership about the eroding sales tax base and the desire for Cal Cities to take a leadership role in addressing the associated issues. The policy committee ultimately adopted a series of policies that were approved by the Cal Cities board of directors. Among its changes were a recommended change to existing sales tax sourcing (determining where a sale occurs) rules, so that the point of sale (situs) is where the customer receives the product. The policy also clarifies that specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood. See "Existing Cal Cities Policy" section below.

#### Cal Cities City Manager Sales Tax Working Group Recommendations

In the Fall of 2017, the Cal Cities City Managers Department convened a working group (Group) of city managers representing a diverse array of cities to review and consider options for addressing issues affecting the local sales tax.

The working group of city managers helped Cal Cities identify internal common ground on rapidly evolving e-commerce trends and their effects on the allocation of local sales and use tax revenue. After meeting extensively throughout 2018, the Group made several recommendations that were endorsed unanimously by Cal Cities' Revenue and Taxation Committee at its January, 2019 meeting and by the board of directors at its subsequent meeting.

The Group recommended the following actions in response to the evolving issues associated with e-commerce and sales and use tax:

#### Further Limiting Rebate Agreements: The consensus of the Group was that:

- Sales tax rebate agreements involving online retailers should be prohibited *going forward*. They are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one.
- Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited *going forward*. Existing law already prohibits such agreements for auto dealers and big box stores.

Shift Use Tax from Online Sales, including from the South Dakota v. Wayfair Decision Out of County Pools: The Group's recommendation is based first on the principle of "situs" and that revenue should be allocated to the jurisdiction where the use occurs. Each city and county in California imposed a Bradley Burns sales and use tax rate

under state law in the 1950s. The use tax on a transaction is the rate imposed where the purchaser resides (the destination). These use tax dollars, including new revenue from the South Dakota v. Wayfair decision, should be allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

- Shift of these revenues, from purchases from out of state retailers including transactions captured by the South Dakota v. Wayfair decision, out of county pools to full destination allocation on and after January 1, 2020.
- Allow more direct reporting of use taxes related to construction projects to jurisdiction where the construction activity is located by reducing existing regulatory threshold from \$5 million to \$100,000.

Request/Require CDTFA Analysis on Impacts of Sales Tax Destination Shifts: After discussion of numerous phase-in options for destination sourcing and allocation for sales taxes, the Group ultimately decided that a more complete analysis was needed to sufficiently determine impacts. Since the two companies most cities rely on for sales tax analysis, HdL and MuniServices, were constrained to modeling with transaction and use tax (district tax) data, concerns centered on the problem of making decisions without adequate information. Since the CDTFA administers the allocation of local sales and use taxes, it is in the best position to produce an analysis that examines:

- The impacts on individual agencies of a change in sourcing rules. This would likely be accomplished by developing a model to examine 100% destination sourcing with a report to the Legislature in early 2020.
- The model should also attempt to distinguish between business-to-consumer transactions versus business-to-business transactions.
- The model should analyze the current number and financial effects of city and county sales tax rebate agreements with online retailers and how destination sourcing might affect revenues under these agreements.

Conditions for considering a Constitutional Amendment that moves toward destination allocation: Absent better data on the impacts on individual agencies associated with a shift to destination allocation of sales taxes from CDTFA, the Group declined to prescribe if/how a transition to destination would be accomplished; the sentiment was that the issue was better revisited once better data was available. In anticipation that the data would reveal significant negative impacts on some agencies, the Group desired that any such shift should be accompanied by legislation broadening of the base of sales taxes, including as supported by existing Cal Cities policy including:

- Broadening the tax base on goods, which includes reviewing existing exemptions on certain goods and expanding to digital forms of goods that are otherwise taxed; and
- Expanding the sales tax base to services, such as those commonly taxed in other states.

This Resolution builds upon previous work that accounts for the impacts that distribution networks have on host cities and further calls on the organization to advocate for changes to sales tax distribution rules.



The Resolution places further demands on data collected by CDTFA to establish a “fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases.” Such data is proposed to be collected by [SB 792 \(Glazer, 2021\)](#). More discussion on this topic can be found in the “Staff Comments” section.

**Staff Comments:**

**Proposed Resolution Affixes Equity Based, Data Driven Approach to Existing Cal Cities Policy on Sales Tax Sourcing**

The actions resulting from this resolution, if approved, would align with existing policy and efforts to-date to modernize sales tax rules. While not formalized in existing Cal Cities policy or recommendations, city managers and tax practitioners generally have favored proposals that establish a sharing of online sales tax revenues rather than a full destination shift. City leaders and practitioners across the state have acknowledged during Cal Cities Revenue and Taxation and City Manager’s working group meetings that the hosting of fulfillment centers and ancillary infrastructure pose major burdens on local communities including detrimental health and safety impacts. This acknowledgement has moved mainstream proposals such as this one away from full revenue shifts towards an equity-based, data driven approach that favors revenue sharing. This Resolution would concretely affix this approach as Cal Cities policy.

**More Data is Needed to Achieve Equity Based Approach**

A major challenge is the lack of adequate data to model the results of shifting in-state online sale tax revenues. Local government tax consultants and state departments have limited data to model the effects of changes to sales tax distribution because their information is derived only from cities that have a local transactions and use tax (TUT). Tax experts are able to model proposed tax shifts using TUTs since they are allocated on a destination basis (where a purchaser receives the product; usually a home or business). However, more than half of all cities, including some larger cities, do not have a local TUT therefore modeling is constrained and incomplete.

Efforts to collect relevant sales tax information on the destination of products purchased online are ongoing. The most recent effort is encapsulated in [SB 792 \(Glazer, 2021\)](#), which would require retailers with online sales exceeding \$50 million a year to report to CDTFA the gross receipts from online sales that resulted in a product being shipped or delivered in each city. The availability of this data would allow for a much more complete understanding of online consumer behavior and the impacts of future proposed changes to distribution. SB 792 (Glazer) is supported by Cal Cities following approval by the Revenue and Taxation Committee and board of directors.

**Impact of Goods Movement Must Be Considered**

As noted above, city leaders and practitioners across the state acknowledge that the hosting of fulfillment centers and goods movement infrastructure pose major burdens on local communities including detrimental health, safety, and infrastructure impacts. Not least of which is the issue of air pollution from diesel exhaust. According to California Environmental Protection Agency (Cal EPA):

*“Children and those with existing respiratory disease, particularly asthma, appear to be especially susceptible to the harmful effects of exposure to airborne PM from diesel exhaust, resulting in increased asthma symptoms and attacks along with decreases in lung function (McCreanor et al., 2007; Wargo, 2002). People that live or work near heavily-traveled roadways, ports, railyards, bus yards, or trucking distribution centers may experience a high level of exposure (US EPA, 2002; Krivoshto et al., 2008). People that spend a significant amount of time near heavily-traveled roadways may also experience a high level of exposure. Studies of both men and women demonstrate cardiovascular effects of diesel PM exposure, including coronary vasoconstriction and premature death from cardiovascular disease (Krivoshto et al., 2008). A recent study of diesel exhaust inhalation by healthy non-smoking adults found an increase in blood pressure and other potential triggers of heart attack and stroke (Krishnan et al., 2013) Exposure to diesel PM, especially following periods of severe air pollution, can lead to increased hospital visits and admissions due to worsening asthma and emphysema-related symptoms (Krivoshto et al., 2008). Diesel exposure may also lead to reduced lung function in children living in close proximity to roadways (Brunekreef et al., 1997).”*

The founded health impacts of the ubiquitous presence of medium and heavy-duty diesel trucks used to transport goods to and from fulfillment centers and warehouses require host cities to meet increased needs of their residents including the building and maintenance of buffer zones, parks, and open space. While pollution impacts may decline with the introduction of zero-emission vehicles, wide scale adoption by large distribution fleets is still in its infancy. Furthermore, the impacts of heavy road use necessitate increased spending on local streets and roads upgrades and maintenance. In addition, many cities have utilized the siting of warehouses, fulfillment centers, and other heavy industrial uses for goods movements as key components of local revenue generation and economic development strategies. These communities have also foregone other land uses in favor of siting sales offices and fulfillment networks.

All said, however, it is important to acknowledge that disadvantaged communities (DACs) whether measured along poverty, health, environmental or education indices exist in cities across the state. For one example, see: [California Office of Environmental Health Hazard Assessment \(OEHHA\) CalEnviroScreen](#). City officials may consider how cities without fulfillment and warehouse center revenues are to fund efforts to combat social and economic issues, particularly in areas with low property tax and tourism-based revenues.

The Resolution aims to acknowledge these impacts broadly (this analysis does not provide an exhaustive review of related impacts) and requests Cal Cities to account for them in a revised distribution formula of the Bradley Burns 1% local sales tax from in-state online purchases. The Resolution does not prescribe the proportions.

### **Clarifying Amendments**

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. *To review the proposed changes, please see Attachment B.*

**Fiscal Impact:**

Significant but unknown. The Resolution on its own does not shift sales tax revenues. In anticipation and mitigation of impacts, the Resolution requests Cal Cities to utilize online sales tax data to identify a fair and equitable distribution formula that accounts for the broad impacts fulfillment centers involved in online retail have on the cities that host them. The Resolution does not prescribe the revenue distribution split nor does it prescribe the impacts, positive and negative, of distribution networks.

**Existing Cal Cities Policy:**

- Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.
- Support as Cal Cities policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood.
- Revenue from new regional or state taxes or from increased sales tax rates should be distributed in a way that reduces competition for situs-based revenue. (Revenue from the existing sales tax rate and base, including future growth from increased sales or the opening of new retail centers, should continue to be returned to the point of sale.)
- The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected.
- Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities, when the physical location of the affected businesses does not change. Sales tax rebate agreements involving online retailers are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one. Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward.
- Support Cal Cities working with the state California Department of Tax and Fee Administration (CDTFA) to update the county pool allocation process to ensure that more revenues are allocated to the jurisdiction where the purchase or first use of a product occurs (usually where the product is delivered). Use Tax collections from online sales, including from the South Dakota v Wayfair Decision, should be shifted out of county pools and allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

**Support:**

The following letters of concurrence were received:

Town of Apple Valley

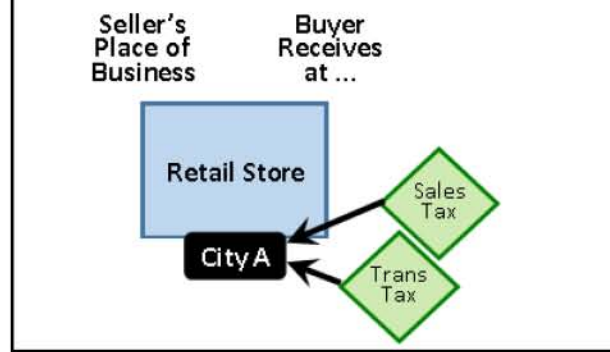
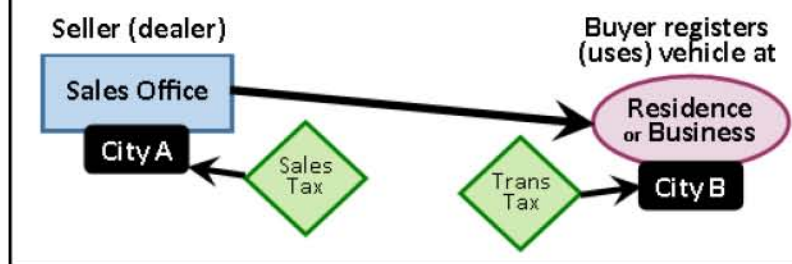
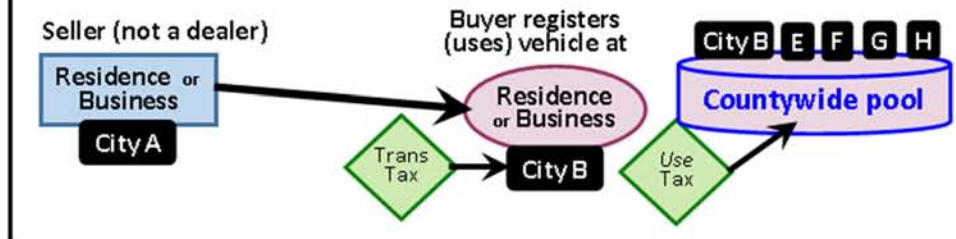
City of El Cerrito

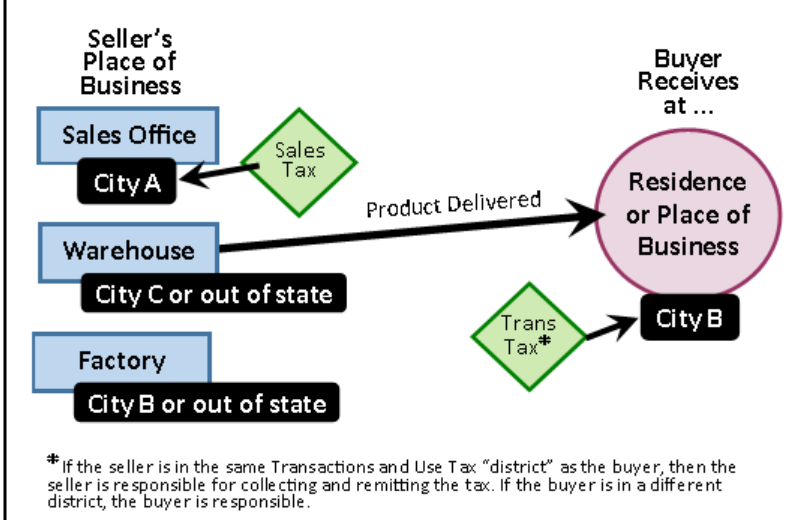
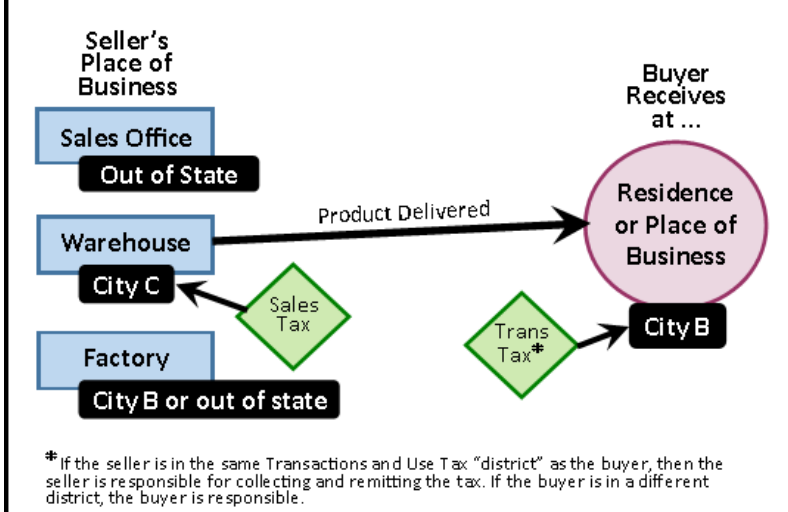
City of La Canada Flintridge

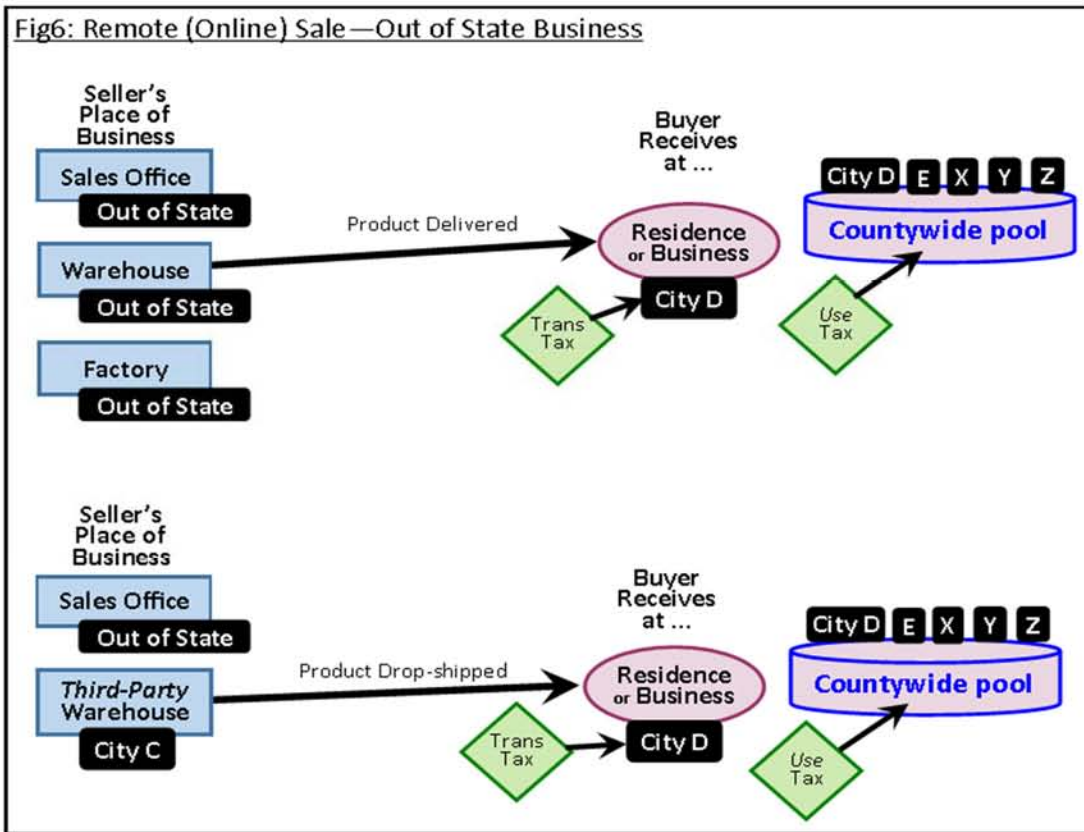
City of La Verne

City of Lakewood

City of Moorpark  
City of Placentia  
City of Sacramento

Fig1: Typical "Over the Counter" TransactionFig2: Dealership Automobile SaleFig3: Private Party Automobile Sale

**Fig4: Remote (Online) Sale —In-State Business Office****Fig5: Remote (Online) Sale —In-State Warehouse, Out-of-State Sales Office**



GUIDELINES FOR ALLOCATION OF		LOCAL TAX - ONLINE AND IN-STORE	
Place of Sale	Location of Goods at the Time of Sale	How Customer Receives Goods	Allocation of Tax
Online – Order is placed or downloaded outside California	California Fulfillment Center	Shipped to California Customer	Local tax is allocated to the jurisdiction in which the fulfillment center is located
Online – Order is placed or downloaded in California	California Fulfillment Center	Shipped to California Customer	Per CDTFA Regulation 1802, local tax is allocated to the jurisdiction where the order is placed
Online	Out of State Fulfillment Center	Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	Out of State Fulfillment Center	Picked Up In-Store (Click & Collect)	Local tax is allocated to the countywide pool based on point of delivery
Online	California Fulfillment Center Owned and Operated by Third Party Vendor	Drop-Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	In-Store (Goods withdrawn from store inventory)	Shipped to California Customer	Local Tax is allocated to the jurisdiction where the store is located
Online	In-Store (Goods withdrawn from store inventory)	Picked Up In-Store (Click & Collect)	Local Tax is allocated to the jurisdiction where the store is located
In-Store	In-Store (Goods withdrawn from store inventory)	Over the Counter	Local Tax is allocated to the jurisdiction where the store is located

Courtesy of HdL Companies

*CaliforniaCityFinance.com*



## Tax Incentive Programs, Sales Tax Sharing Agreements

In recent years, especially since Proposition 13 in 1978, local discretionary (general purpose revenues) have become more scarce. At the same time, options and procedures for increasing revenues have become more limited. One outcome of this in many areas has been a greater competition for sales and use tax revenues. This has brought a rise in arrangements to encourage certain land use development with rebates and incentives which exploit California's odd origin sales tax sourcing rules.

The typical arrangement is a sales tax sharing agreement in which a city provides tax rebates to a company that agrees to expand their operations in the jurisdiction of the city. Under such an arrangement, the company generally agrees to make a specified amount of capital investment and create a specific number of jobs over a period of years in exchange for specified tax breaks, often property tax abatement or some sort of tax credit. In some cases, this has simply taken the form of a sales office, while customers and warehouses and the related economic activity are disbursed elsewhere in the state. In some cases the development takes the form of warehouses, in which the sales inventory, owned by the company, is housed.<sup>6</sup>

Current sales tax incentive agreements in California rebate amounts ranging from 50% to 85% of sales tax revenues back to the corporations.

Today, experts familiar with the industry believe that between 20% to 30% of local Bradley-Burns sales taxes paid by California consumers is diverted from local general funds back to corporations; over \$1 billion per year.

### The Source of Origin Based Sourcing Problems

Where other than over-the-counter sales are concerned origin sourcing often causes a concentration of large amounts of tax revenue in one location, despite the fact that the economic activity and service impacts are also occurring in other locations.

The large amounts of revenue concentrated in a few locations by California's "warehouse rule" origin sourcing causes a concentration of revenue far in excess of the service costs associated with the development.

In order to lure jobs and tax revenues to their communities, some cities have entered into rebate agreements with corporations. This has grown to such a problem, that 20% to 30% of total local taxes paid statewide are being rebated back to corporations rather than funding public services.

## Moving to Destination Sourcing: The Concept<sup>7</sup>

A change from origin sourcing rules to destination sourcing rules for the local tax component of California's sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

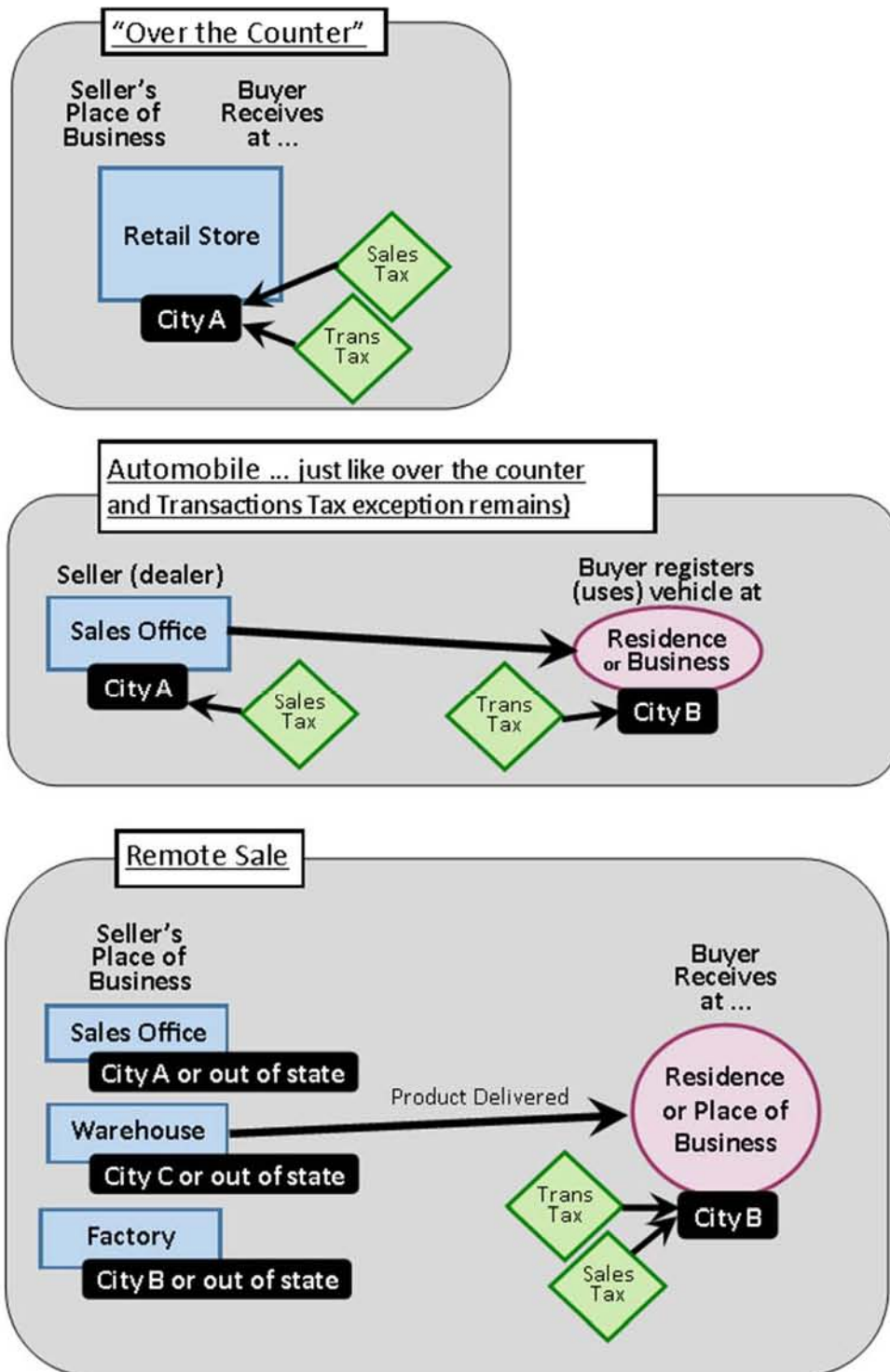
A change from origin based sourcing to destination based sourcing would have no effect on state tax collections. However, it would alter the allocations of local sales and use tax revenues among local agencies. Most retail transactions including dining, motor fuel purchases, and in-store purchases would not be affected. But in cases where the property is received by the purchaser in a different jurisdiction than where the sales agreement was negotiated, there would be a different allocation than under the current rules.

<sup>6</sup> See Jennifer Carr, "Origin Sourcing and Tax Incentive Programs: An Unholy Alliance" Sales Tax Notes; May 27, 2013.

<sup>7</sup> The same issues that are of concern regarding the local sales tax do not apply to California's Transactions and Use Taxes ("Add-on sales taxes") as these transactions, when not over the counter, are generally allocated to the location of use or, as in the case of vehicles, product registration. There is no need to alter the sourcing rules for transactions and use taxes.



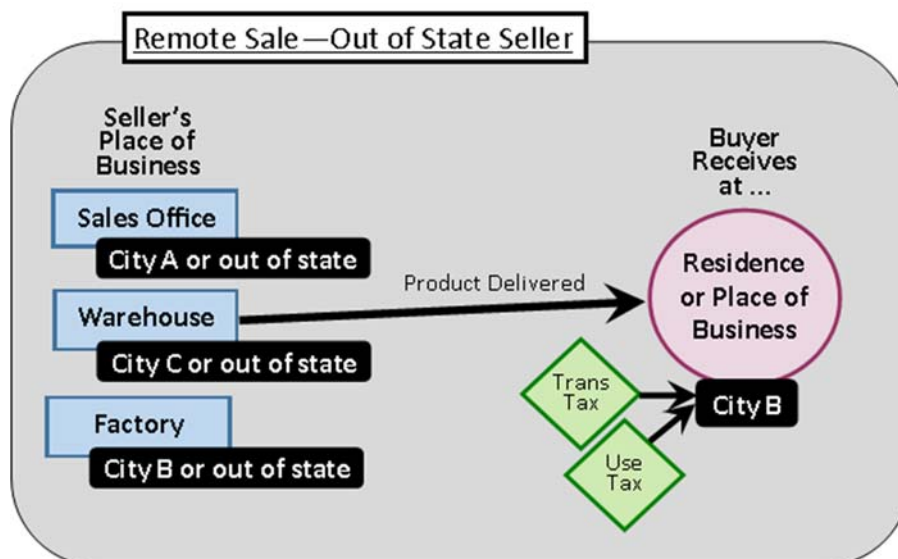
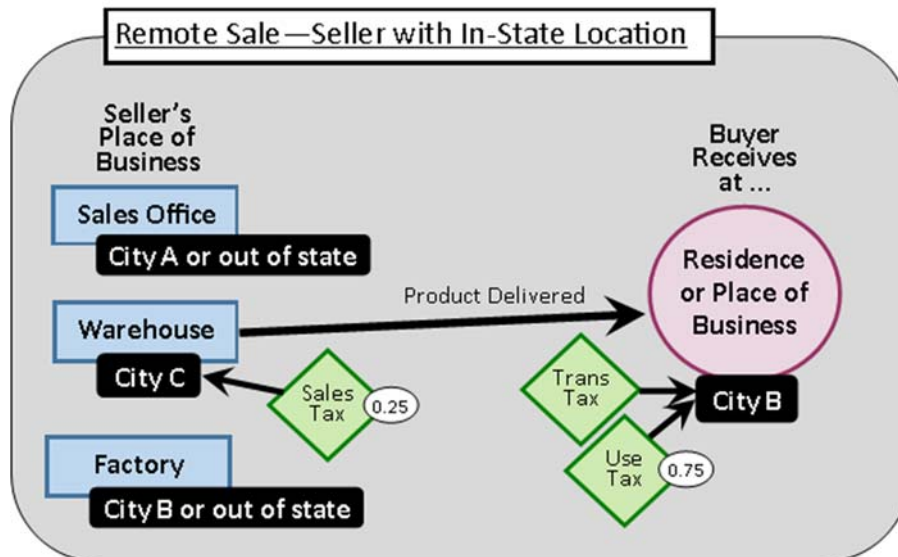
## Destination Sourcing Scenario 1: Full-On



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## Destination Sourcing Scenario 2: Split Source

- Same as now for “over the counter” and automobile.
- Leave 0.25% on current seller if instate (origin)
- Could be phased in.



mjgc

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RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES")  
CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES  
FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL  
SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE  
PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO  
CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST  
CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT  
AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

**WHEREAS**, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

**WHEREAS**, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

**WHEREAS**, in terms of "siting" the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines "out-of-state" online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

**WHEREAS**, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale ("situs") as the location from which the goods were shipped such as a fulfillment center; and

**WHEREAS**, in early 2021, one of the state's largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being ~~entirely~~ allocated to ~~the specific city~~ cities where ~~the~~ warehouse fulfillment centers ~~is-are~~ located as opposed to going into ~~a~~ countywide pools that ~~is are~~ shared with all jurisdictions in ~~those counties~~ that County, as was done previously; and

**WHEREAS**, this all-or-nothing ~~change for the~~ allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue ~~from the retailer~~ that was once spread amongst all cities in countywide pools is now concentrated in select cities that host ~~a~~ fulfillment centers; and

**WHEREAS**, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting ~~a 1 million square foot~~ fulfillment centers, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

**WHEREAS**, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

**WHEREAS**, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

**WHEREAS**, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering products from those that centers s now receive no Bradley Burns revenue ~~from the center's sales activity~~ despite also experiencing the impacts created by the m center, such as increased traffic and air pollution; and

**WHEREAS**, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

**NOW, THEREFORE, BE IT RESOLVED** that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

**2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECCESARY FUNDING FOR CUPC TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QAULITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETLY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUTT THE RAILROAD RIGHT-OF-WAY.**

Source: City of South Gate

Concurrence of five or more cities/city officials:

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

**WHEREAS**, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

**WHEREAS**, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the California Public Utilities Commission for operational safety and maintenance; and

**WHEREAS**, the California Public Utilities Commission (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

**WHEREAS**, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

**WHEREAS**, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

**WHEREAS**, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

**WHEREAS**, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

**WHEREAS**, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well a betterment to rail safety.

**RESOLVED**, at the League of California Cities, General Assembly, assembled at the League Annual Conference on September 24, 2021, in Sacramento, that the League calls for the Governor and the Legislature to work with the League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.

## **Background Information to Resolution**

**Source:** City of South Gate

### **Background:**

The State of California has over 6,000 miles of rail lines, with significant amount running through communities that are either economically disadvantaged and/or disadvantaged communities of color. While the Federal Railroad Administration (FRA) has primary oversight of rail operations, they delegate that obligation to the State of California for lines within our State. The administration of that oversight falls under the California Public Utilities Commission (CPUC). The CPUC has only 41 inspectors covering those 6,000 miles of railroad lines in the State of California. Their primary task is ensuring equipment, bridges and rail lines are operationally safe.

The right-of-way areas along the rail lines are becoming increasingly used for illegal dumping, graffiti and homeless encampments. Rail operators have admitted that they have insufficient funds set aside to clean up or sufficiently police these right-of-way areas, despite reporting a net income of over \$13 billion in 2020. CPUC budget does not provide the resources to oversee whether rail operators are properly managing the right-of-way itself.

The City of South Gate has three rail lines traversing through its city limits covering about 4 miles. These lines are open and inviting to individuals to conduct illegal dumping, graffiti buildings and structures along with inviting dozens of homeless encampments. As private property, Cities like ourselves cannot just go upon them to remove bulky items, trash, clean graffiti or remove encampments. We must call and arrange for either our staff to access the site or have the rail operator schedule a cleanup. This can take weeks to accomplish, in the meantime residents or businesses that are within a few hundred feet of the line must endure the blight and smell. Trash is often blown from the right-of-way into residential homes or into the streets. Encampments can be seen from the front doors of homes and businesses.

South Gate is a proud city of hard working-class residents, yet with a median household income of just \$50,246 or 65% of AMI for Los Angeles County, it does not have the financial resources to direct towards property maintenance of any commercial private property. The quality of life of communities like ours should not be degraded by the inactions or lack of funding by others. Cities such as South Gate receive no direct revenue from the rail operators, yet we deal with environmental impacts on a daily basis, whether by emissions, illegal dumping, graffiti or homeless encampments.

The State of California has record revenues to provide CPUC with funding nor only for safety oversight but ensuring right-of-way maintenance by operators is being managed properly. Rail Operators should be required to set aside sufficient annual funds to provide a regular cleanup of their right-of-way through the cities of California.







**LETTERS OF CONCURRENCE**  
Resolution No. 2



## CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 21, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

### **RE: City of South Gate Annual Conference Resolution**

President Walker:

The City of Bell Gardens supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Marco Barcena at 562-7761 if you have any questions.

Sincerely,

Marco Barcena  
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)



## CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

### **RE: City of South Gate Annual Conference Resolution**

President Walker:

As a Councilwoman with the City of Bell Gardens, I support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Lisseth Flores at (562) 806-7763 if you have any questions.

Sincerely,

*Lisseth Flores*

Lisseth Flores  
Councilwoman

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)



## CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 15, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

### **RE: City of South Gate Annual Conference Resolution**

President Walker:

The city of Bell supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Paul Philips, City Manager at 323-588-6211, if you have any questions.

Sincerely,

Alicia Romero  
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division,



# CITY OF COMMERCE

July 20, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: Railroad Oversight Annual Conference Resolution**

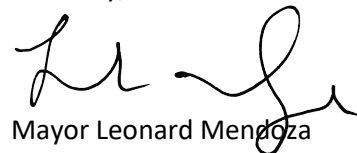
President Walker:

The City of Commerce supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' ("League") 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially disadvantaged communities of color that are home to the State's freight rail lines. While I am supportive of the economic base the railroad industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Edgar Cisneros, City Manager, via email at [ecisneros@ci.commerce.ca.us](mailto:ecisneros@ci.commerce.ca.us) or at 323-722-4805, should you have any questions.

Sincerely,



Mayor Leonard Mendoza

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)



# CITY OF CUDAHY CALIFORNIA

*Incorporated November 10, 1960*

5220 Santa Ana Street  
Cudahy, California 90201  
(323)773-5143

July 21, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

Dear President Walker:

The City of Cudahy supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. If you have any questions, please do not hesitate to call my office at 323-773-5143.

Sincerely,



Jose Gonzalez  
Mayor

CC: Chris Jeffers, City Manager, City of South Gate





# City of El Segundo

## Office of the Mayor

July 16, 2021

### Elected Officials:

Drew Boyles,  
Mayor  
Chris Pimentel  
Mayor Pro Tem  
Carol Pirsztuk,  
Council Member  
Scot Nicol,  
Council Member  
Lance Groux,  
Council Member  
Tracy Weaver,  
City Clerk  
Matthew Robinson,  
City Treasurer

### Appointed Officials:

Scott Mitnick,  
City Manager  
Mark D. Hensley,  
City Attorney

### Department Directors:

Barbara Voss  
Deputy City Manager  
Joseph Lillio,  
Finance  
Chris Donovan,  
Fire Chief  
Charles Mallory,  
Information Technology  
Services  
Melissa McCollum,  
Community Services  
Rebecca Redyk,  
Human Resources  
Dennis Cook,  
Interim Development Services  
Jamie Bermudez,  
Interim Police Chief  
Elias Sassoon,  
Public Works

[www.elsegundo.org](http://www.elsegundo.org)  
[www.elsegundobusiness.com](http://www.elsegundobusiness.com)  
[www.elsegundo100.org](http://www.elsegundo100.org)

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

### RE: City of South Gate Annual Conference Resolution

President Walker:

The City of El Segundo supports the Los Angeles County Division's City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

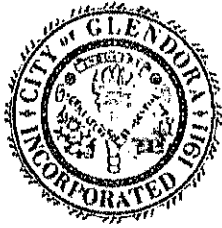
As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact El Segundo Public Works Director Elias Sassoon at 310-524-2356, if you have any questions.

Sincerely,

Drew Boyles  
Mayor of El Segundo

CC: City Council, City of El Segundo  
Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)  
Jeff Kiernan, League Regional Public Affairs Manager (via email)

350 Main Street, El Segundo, California 90245-3813  
Phone (310) 524-2302 Fax (310) 322-7137



**CITY OF GLENDORA** CITY HALL

(626) 914-8200

116 East Foothill Blvd., Glendora, California 91741  
[www.ci.glendora.ca.us](http://www.ci.glendora.ca.us)

July 14, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**SUBJECT: SUPPORT FOR THE CITY OF SOUTH GATE'S ANNUAL  
CONFERENCE RESOLUTION**

Dear President Walker:

The City of Glendora is pleased to support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue that many communities, small and large, are experiencing along active transportation corridors, particularly rail lines. Given the importance and growth of the ports and logistics sector, and the economic support they provide, we need to do more to ensure that conflicts are appropriately addressed and mitigated to ensure they do not become attractive nuisances. Our cities are experiencing increasing amounts of illegal dumping (trash and debris) and the establishment of encampments by individuals experiencing homelessness along roadways, highways and rail lines. Such situations create unsafe conditions – safety, health and sanitation – that impact quality of life even as we collectively work to address this challenge in a coordinated and responsible manner.

As members of the League of California Cities, Glendora values the policy development process provided to the General Assembly and strongly support consideration of this issue. Your attention to this matter is greatly appreciated. Should you have any questions, please feel free to contact Adam Raymond, City Manager, at [araymond@ci.vofglendora.org](mailto:araymond@ci.vofglendora.org) or (626) 914-8201.

Sincerely,

Karen K. Davis  
Mayor

C: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)

**PRIDE OF THE FOOTHILLS**





July 21, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**Re: Resolution No. 2021-18 Supporting City of South Gate Annual Conference Resolution**

President Walker:

The City of Huntington Park (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Enclosed is Resolution No. 2021-18 adopted by the City Council of the City of Huntington Park.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively affect our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, Ricardo Reyes, at 323-582-6161, if you have any questions.

Sincerely,

Graciela Ortiz  
Mayor, City of Huntington Park

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)

Enclosure(s)



**CITY OF LA MIRADA**  
*DEDICATED TO SERVICE*

13700 La Mirada Boulevard  
La Mirada, California 90638  
P.O. Box 828  
La Mirada, California 90637-0828  
Phone: (562) 943-0131 Fax: (562) 943-1464  
[www.cityoflamirada.org](http://www.cityoflamirada.org)

July 19, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, California 95814

**SUBJECT: LETTER OF SUPPORT FOR CITY OF SOUTH GATE'S PROPOSED  
RESOLUTION AT CALCITIES ANNUAL CONFERENCE**

President Walker:

The City of La Mirada supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities that are home to the State's freight rail lines. While the City of La Mirada is supportive of the economic base the railroad industry serves to the State, the rail lines have become places where illegal dumping and a growing homeless population are significant problems. The negative impact of these illegal activities decreases the quality of life for the La Mirada community, increases blight and unhealthy sanitation issues, and negatively impacts the City's ability to meet State water quality standards under the MS4 permits.

As members of the League, the City of La Mirada values the policy development process provided to the General Assembly. We appreciate your consideration on this issue. Please feel free to contact Assistant City Manager Anne Haraksin at (562) 943-0131 if you have any questions.

Sincerely,

**CITY OF LA MIRADA**

Ed Eng  
Mayor

cc: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)

July 22, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: Support for City of South Gate Resolution—Cleanup Activities on Rail Operator Properties**

Dear President Walker,

On behalf of the City of Long Beach, I write to support the City of South Gate's proposed resolution for the League of California Cities' (League) 2021 Annual Conference. This resolution seeks to direct the League to adopt a policy urging State and federal governments to increase oversight of rail operators' land maintenance. The City is a proponent of increased maintenance along railways and believes a League advocacy strategy would help expedite regional responses.

The COVID-19 pandemic has exacerbated the public health and safety concerns on rail rights-of-way, as trash, debris, and encampments have increased exponentially. These challenges erode the quality of life for our communities, increase blight, and contribute to public health and sanitation issues. To address these concerns, the City has engaged directly with regional partners to prioritize ongoing maintenance and cleanups, and has invested \$4 million in the Clean Long Beach Initiative as part of the City's Long Beach Recovery Act to advance economic recovery and public health in response to the COVID-19 pandemic.

The City of South Gate's proposed resolution would further advance these efforts for interjurisdictional coordination. The increased oversight proposed by the resolution will help support better coordination and additional resources to address illegal dumping and encampments along private rail operator property. This is a critical measure to advance public health and uplift our most vulnerable communities. For these reasons, the City supports the proposed League resolution.

Sincerely,



THOMAS B. MODICA  
City Manager

cc: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)



OFFICE OF THE  
**MAYOR**  
**MARISELA SANTANA**

City of  
**LYNWOOD**

Incorporated 1921

11330 Bullis Road, Lynwood, CA 90262  
(310) 603-0220 x 200



## CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

### **RE: City of South Gate Annual Conference Resolution**


President Walker:

The City of Lynwood supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Ernie Hernandez at (310) 603-0220 ext. 200, if you have any questions.

Sincerely,



Marisela Santana, Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)



July 19, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: Resolution in Support of City of South Gate Annual Conference Resolution**

President Walker:

The City of Montebello (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Attached is the Resolution to be considered for adoption by the City Council of the City of Montebello at our July 28, 2021, City Council meeting.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

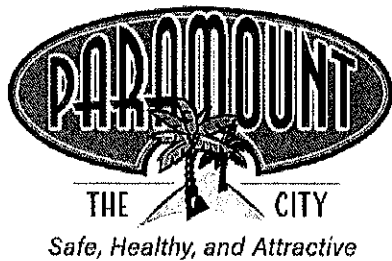
As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, René Bobadilla, at 323-887-1200, if you have any questions.

Sincerely,

Kimberly Cobos-Cawthorne  
Mayor, City of Montebello

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)





BRENDA OLMOS  
Mayor

VILMA CUELLAR STALLINGS  
Vice Mayor

ISABEL AGUAYO  
Councilmember

LAURIE GUILLEN  
Councilmember

PEGGY LEMONS  
Councilmember

July 19, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: SUPPORT FOR ANNUAL LEAGUE OF CITIES CONFERENCE GENERAL  
ASSEMBLY RESOLUTION**

President Walker:

The City of Paramount supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. The proposed resolution is attached

South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic boon the freight industry serves to the State, their rail line rights of way have often become places where illegal dumping is a constant problem and where our growing homeless populations reside. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As a member of the California League of Cities, the City of Paramount values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact City Manager John Moreno at (562) 220-2222 if you have any questions.

---

*Dedicated to providing fiscally responsible services that maintain a vibrant community.*

16400 Colorado Avenue • Paramount, CA 90723-5012 • Ph: 562-220-2000 • [paramountcity.com](http://paramountcity.com)  
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**Steve Carmona**  
City Manager

**City of Pico Rivera**  
**OFFICE OF THE CITY MANAGER**

6615 Passons Boulevard · Pico Rivera, California 90660

**(562) 801-4371**

Web: [www.pico-rivera.org](http://www.pico-rivera.org) e-mail: [scastro@pico-rivera.org](mailto:scastro@pico-rivera.org)

**City Council**

Raul Elias

*Mayor*

Dr. Monica Sánchez

*Mayor Pro Tem*

Gustavo V. Camacho

*Councilmember*

Andrew C. Lara

*Councilmember*

Erik Lutz

*Councilmember*

**CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION**

July 14, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: City of South Gate Annual Conference Resolution**

President Walker:

The City of Pico Rivera supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantaged communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Steve Carmona at (562) 801-4405 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Carmona'.

City Manager  
City of Pico Rivera

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)

## **League of California Cities Staff Analysis on Resolution No. 2**

Staff: Damon Conklin, Legislative Affairs, Lobbyist  
Jason Rhine, Assistant Director, Legislative Affairs  
Caroline Cirrincione, Policy Analyst

Committees: Transportation, Communications, and Public Works  
Housing, Community, and Economic Development

### **Summary:**

The City of South Gate submits this resolution, which states the League of California Cities should urge the Governor and the Legislature to provide adequate regulatory authority and necessary funding to assist cities with railroad right-of-way areas to address illegal dumping, graffiti, and homeless encampments that proliferate along the rail lines and result in public safety issues.

### **Background:**

#### **California Public Utilities Commission (CPUC) Railroad Oversight**

The CPUC's statewide railroad safety responsibilities are carried out through its Rail Safety Division (RSD). The Railroad Operations and Safety Branch (ROSB), a unit of RSD, enforces state and federal railroad safety laws and regulations governing freight and passenger rail in California.

The ROSB protects California communities and railroad employees from unsafe practices on freight and passenger railroads by enforcing rail safety laws, rules, and regulations. The ROSB also performs inspections to identify and mitigate risks and potential safety hazards before they create dangerous conditions. ROSB rail safety inspectors investigate rail accidents and safety-related complaints and recommend safety improvements to the CPUC, railroads, and the federal government as appropriate.

Within the ROSB, the CPUC employs 41 inspectors who are federally certified in the five Federal Railroad Administration (FRA) railroad disciplines, including hazardous materials, motive power and equipment, operations, signal and train control, and track. These inspectors perform regular inspections, focused inspections, accident investigations, security inspections, and complaint investigations. In addition, the inspectors address safety risks that, while not violations of regulatory requirements, pose potential risks to public or railroad employee safety.

#### **CPUC's Ability to Address Homelessness on Railroads**

Homeless individuals and encampments have occupied many locations in California near railroad tracks. This poses an increased safety risk to these homeless individuals of being struck by trains. Also, homeless encampments often create unsafe work environments for railroad and agency personnel.

While CPUC cannot compel homeless individuals to vacate railroad rights-of-way or create shelter for homeless individuals, it has the regulatory authority to enforce measures that can reduce some safety issues created by homeless encampments. The disposal of waste materials or other disturbances of walkways by homeless individuals can create tripping hazards in the vicinity of railroad rights-of-way. This would cause violations of [Commission GO 118-A](#), which sets standards for walkway surfaces alongside railroad tracks. Similarly, tents, wooden structures, and miscellaneous debris in homeless encampments can create violations of



[Commission GO 26-D](#), which sets clearance standards between railroad tracks, and structures and obstructions adjacent to tracks.

#### Homelessness in California

According to the [2020 Annual Homeless Assessment Report \(AHAR\)](#) to Congress, there has been an increase in unsheltered individuals since 2019. More than half ([51 percent or 113,660 people](#)) of all unsheltered homeless people in the United States are found in California, about four times as high as their share of the overall United States population.

Many metro areas in California lack an adequate supply of affordable housing. This housing shortage has contributed to an increase in homelessness that has spread to railroad rights-of-way. Homeless encampments along railroad right-of-way increase the incidents of illegal dumping and unauthorized access and trespassing activities. Other impacts include train service reliability with debris strikes, near-misses, and trespasser injuries/fatalities. As of April 2021, there have been 136 deaths and 117 injuries reported by the [Federal Railroad Administration](#) over the past year. These casualties are directly associated with individuals who trespassed on the railroad.

Cities across the state are expending resources reacting to service disruptions located on the railroad's private property. It can be argued that an increase in investments and services to manage and maintain the railroad's right-of-way will reduce incidents, thus enhancing public safety, environmental quality, and impacts on the local community.

#### State Budget Allocations – Homelessness

The approved State Budget includes a homelessness package of \$12 billion. This consists of a commitment of \$1 billion per year for direct and flexible funding to cities and counties to address homelessness. While some details related to funding allocations and reporting requirements remain unclear, Governor Newsom signed AB 140 in July, which details key budget allocations, such as:

- \$2 billion in aid to counties, large cities, and Continuums of Care through the Homeless Housing, Assistance and Prevention grant program (HHAP);
- \$50 million for Encampment Resolution Grants, which will help local governments resolve critical encampments and transitioning individuals into permanent housing; and
- \$2.7 million in onetime funding for Caltrans Encampment Coordinators to mitigate safety risks at encampments on state property and to coordinate with local partners to connect these individuals to services and housing.

The Legislature additionally provided \$2.2 billion specifically for Homekey with \$1 billion available immediately. This funding will help local governments transition individuals from Project Roomkey sites into permanent housing to minimize the number of occupants who exit into unsheltered homelessness.

With regards to this resolution, the State Budget also included \$1.1 billion to clean trash and graffiti from highways, roads, and other public spaces by partnering with local governments to pick up trash and beautify downtowns, freeways, and neighborhoods across California. The program is expected to generate up to 11,000 jobs over three years.

#### Cities Railroad Authority

A city must receive authorization from the railroad operator before addressing the impacts made by homeless encampments because of the location on the private property. Additionally, the city

must coordinate with the railroad company to get a flagman to oversee the safety of the work crews, social workers, and police while on the railroad tracks.

A city may elect to declare the encampment as a public nuisance area, which would allow the city to clean up the areas at the railroad company's expense for failing to maintain the tracks and right-of-way. Some cities are looking to increase pressure on railroad operators for not addressing the various homeless encampments, which are presenting public safety and health concerns.

Courts have looked to [compel railroad companies](#) to increase their efforts to address homeless encampments on their railroads or [grant a local authority's application](#) for an Inspection and Abatement Warrant, which would allow city staff to legally enter private property and abate a public nuisance or dangerous conditions.

In limited circumstances, some cities have negotiated Memoranda of Understandings (MOU) with railroad companies to provide graffiti abatement, trash, and debris removal located in the right-of-way, and clean-ups of homeless encampments. These MOUs also include local law enforcement agencies to enforce illegally parked vehicles and trespassing in the railroad's right-of-way. MOUs also detailed shared responsibility and costs of providing security and trash clean-up. In cases where trespassing or encampments are observed, the local public works agency and law enforcement agency are notified and take the appropriate measures to remove the trespassers or provide clean-up with the railroad covering expenses outlined in the MOU.

Absent an MOU detailing shared maintenance, enforcement, and expenses, cities do not have the authority to unilaterally abate graffiti or clean-up trash on a railroad's right-of-way.

#### **Fiscal Impact:**

If the League of California Cities were to secure funding from the state for railroad clean-up activities, cities could potentially save money in addressing these issues themselves or through an MOU, as detailed above. This funding could also save railroad operators money in addressing concerns raised by municipalities about illegal dumping, graffiti, and homeless encampments along railroads.

Conversely, if the League of California Cities is unable to secure this funding through the Legislature or the Governor, cities may need to consider alternative methods, as detailed above, which may include significant costs.

#### **Existing League Policy:**

##### **Public Safety:**

###### ***Graffiti***

The League supports increased authority and resources devoted to cities for abatement of graffiti and other acts of public vandalism.

##### **Transportation, Communications, and Public Works**

###### ***Transportation***

The League supports efforts to improve the California Public Utilities Commission's ability to respond to and investigate significant transportation accidents in a public and timely manner to improve rail shipment, railroad, aviation, marine, highway, and pipeline safety

## Housing, Community, and Economic Development

### *Housing for Homeless*

Homelessness is a statewide problem that disproportionately impacts specific communities. The state should make funding and other resources, including enriched services, and outreach and case managers, available to help assure that local governments have the capacity to address the needs of the homeless in their communities, including resources for regional collaborations.

Homeless housing is an issue that eludes a statewide, one-size-fits-all solution, and collaboration between local jurisdictions should be encouraged.

### **Staff Comments:**

#### Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. To review the proposed changes, please see Attachment A.

The committee may also wish to consider clarifying language around regulatory authority and funding to assist cities with these efforts. The resolution asks that new investments from the state be sent to the CPUC to increase their role in managing and maintaining railroad rights-of-ways and potentially to cities to expand their new responsibility.

The committee may wish to specify MOUs as an existing mechanism for cities to collaborate and agree with railroad operators and the CPUC on shared responsibilities and costs.

### **Support:**

The following letters of concurrence were received:

City of Bell Gardens  
City of Bell  
City of Commerce  
City of Cudahy  
City of El Segundo  
City of Glendora  
City of La Mirada  
City of Paramount  
City of Pico Rivera  
City of Huntington Park  
City of Long Beach  
City of Lynwood  
City of Montebello

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE ~~NECESARY~~ NECESSARY FUNDING FOR ~~CUPC~~ THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE ~~QAULTY~~ QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC ~~SAFETLY~~ SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate

Concurrence of five or more cities/city officials

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

**WHEREAS**, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

**WHEREAS**, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the ~~California Public Utilities Commission~~ CPUC for operational safety and maintenance; and

**WHEREAS**, the ~~California Public Utilities Commission (CPUC)~~ is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

**WHEREAS**, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

**WHEREAS**, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

**WHEREAS**, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

**WHEREAS**, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

**WHEREAS**, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well as a betterment to rail safety.

**RESOLVED**, at the League of California Cities, General Assembly, assembled at the League Cal Cities Annual Conference on September 24, 2021, in Sacramento, that ~~the~~ Cal Cities League calls for the Governor and the Legislature to work with ~~the~~ Cal Cities League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. ~~The~~ Cal Cities League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.