

**CITY OF SELMA
COUNCIL SPECIAL MEETING
September 7, 2021**

PURSUANT TO EXECUTIVE ORDER N-29-20 ISSUED BY GOVERNOR GAVIN NEWSOM, THE PUBLIC HAD THE OPTION TO CALL +1 301 715 8592 ID: 852 5822 5136 TO PROVIDE COMMENTS ON AGENDA ITEMS. THE COUNCIL CHAMBER WAS OPEN FOR THE PUBLIC AS WELL.

The special meeting of the Selma City Council was called to order at 4:02 p.m. in the Council Chambers. Council members answering roll call were: Guerra, Mendoza-Navarro, Trujillo, Mayor Pro Tem Cho, and Mayor Robertson.

Also present were Legal Counsel Lerner, Legal Counsel Van Bindsbergen, Legal Counsel Sanchez, Interim City Manager Jimenez, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

CLOSED SESSION: Mayor Robertson recessed the meeting into Closed Session at 5:43 p.m. to discuss the following:

Conference with Legal Counsel; Pending Litigation (Gov. Code § 54956.9(d)(1))

1. Name of Case: Ethel Fierro, et. al. v. City of Selma
Case No. Fresno Superior Court Case No. 20CECG03525
2. Name of Case: Hard v. City of Selma
Case No. Fresno Superior Court Case No. 20CECG03254

Public Employee Performance Evaluation

Title: Legal Counsel (Lozano Smith) Pursuant to Government Code 54957

Public Employee Performance Evaluation

Title: Interim City Manager Pursuant to Government Code 54957

Public Employee Dismissal/Release (Government Code Section 54957(b)(1))

Mayor Robertson then reconvened the meeting from closed session at 5:44 p.m. Legal Counsel Lerner provided the following reportable action:

A motion was made by Council member Trujillo and seconded by Council member Mendoza-Navarro to hire Lozano and Smith for all aspects of city legal work and begin the 30-day termination clause with Liebert Cassidy Whitmore's current agreement with the City. The motion carried with the following vote:

AYES:	Trujillo, Mendoza-Navarro, Cho
NOES:	Guerra, Robertson
ABSTAIN:	None
ABSENT:	None

A motion was made by Council member Guerra and seconded by Mayor Robertson to terminate the Interim City Manager agreement with Ralph Jimenez. The motion did not carry with the following vote:

AYES: Guerra, Robertson
NOES: Mendoza-Navarro, Trujillo, Cho
ABSTAIN: None
ABSENT: None

It was Council consensus to continue the City Council Workshop Session Financial Update Presentation and Discussion item to a future special meeting.

ADJOURNMENT: There being no further business, the meeting was adjourned at 5:48 p.m.

Respectfully submitted,

Reyna Rivera
City Clerk

**CITY OF SELMA
COUNCIL REGULAR MEETING
September 7, 2021**

PURSUANT TO EXECUTIVE ORDER N-29-20 ISSUED BY GOVERNOR GAVIN NEWSOM, THE PUBLIC HAD THE OPTION TO CALL +1 301 715 8592 ID: 852 5822 5136 TO PROVIDE COMMENTS ON AGENDA ITEMS. THE COUNCIL CHAMBER WAS OPEN FOR THE PUBLIC AS WELL.

The regular meeting of the Selma City Council was called to order at 6:00 p.m. in the Council Chambers. Council members answering roll call were: Guerra, Mendoza-Navarro, Trujillo, Mayor Pro Tem Cho and Mayor Robertson.

Also present were Legal Counsel Lerner, Interim City Manager Jimenez, Assistant City Manager Moreno, Community Development Director Santillan, Fire Chief Petersen, Community Services Director Kirchner, Police Commander Garza, Public Works Director Ferrell, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

INVOCATION: Pastor Joe Alvarez of Iglesia Antioquia led the invocation. Mayor Robertson then held a moment of silence was held for Mr. Nick Rosales, Mr. Charles Jensen, Mr. Ramon Lopez and David Guy.

ORAL COMMUNICATIONS: Public comments were received by Mrs. Victoria Delgadillo and Mrs. Rose Robertson.

CONSENT CALENDAR: Council member Guerra requested to pull agenda item 1.c, for separate discussion. Mayor Robertson requested to pull agenda items 1.a. and 1.f. for separate discussion. Council member Trujillo motioned to approve the remainder of the Consent Calendar as written. Motion was seconded by Council member Mendoza-Navarro and carried unanimously.

- 1.a. Pulled Consideration of an Annual Agreement between the City and Liebert Cassidy Whitmore to Provide Special Services through the Central San Joaquin Valley Risk Management Authority (CSJVRMA)
- b. 2021-49R Consideration of a Resolution authorizing the City Manager to execute agreement for the Fresno Council of Governments (Fresno COG) Regional Early Action Planning Grant Program (REAP)
- c. Pulled Consideration of a Resolution authorizing submission of a Grant Application for Alternative Fuel Vehicles with San Joaquin Valley Air Pollution Control District
- d. 2021-51R Approval of 2021/2022 List of Projects for Congestion Mitigation and Air Quality Improvement Program (CMAQ) and Adoption of Resolution Supporting and Implementing AB 1012 Timely Use of Funds on Federal-Aid Projects

- e. Approved Consideration of the Notice of Completion for CML-5096(039), Selma Alley Improvement Project authorizing the final payment, and retention on this project be released to Don Berry Construction
- f. Pulled Consideration of the check register dated August 30, 2021

CONSENT CALENDAR AGENDA ITEMS 1.a. CONSIDERATION OF AN ANNUAL AGREEMENT BETWEEN THE CITY AND LIEBERT CASSIDY WHITMORE TO PROVIDE SPECIAL SERVICES THROUGH THE CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY (CSJVRMA) and 1.c. CONSIDERATION OF A RESOLUTION AUTHORIZING SUBMISSION OF A GRANT APPLICATION FOR ALTERNATIVE FUEL VEHICLES WITH SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT and 1.f. CHECK REGISTER DATED AUGUST 30, 2021: Public comment was received from Mrs. Victoria Delgadillo. After Council discussion, motion was made by Council member Guerra to approve ANNUAL AGREEMENT BETWEEN THE CITY AND LIEBERT CASSIDY WHITMORE TO PROVIDE SPECIAL SERVICES THROUGH THE CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY (CSJVRMA) & RESOLUTION NO. 2021-50R, AUTHORIZING SUBMISSION OF A GRANT APPLICATION FOR ALTERNATIVE FUEL VEHICLES WITH SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT & CHECK REGISTER DATED AUGUST 30, 2021. Motion was seconded by Council member Mendoza-Navarro and carried unanimously.

- 2. Discussion Only Council request to discuss the Lozano Smith Opinion on the 2018 Fresno County Rural Transit Agency Property Purchase APN 390-190-15S

Mayor Robertson stated that he requested this item on the agenda and discussed the matter. He then read for the record the Lozano Smith Opinion on the matter.

“Mayor & Council,

We were asked to advise on the legality of the August 29, 2018 Council action (sitting as the RDA Successor Agency adopting Successor Agency to the Selma Redevelopment Agency Resolution No. 2018-5) to approve a sale of former RDA property (1821 Pacific Avenue, APN 390-190-15s) used for fire training to the Fresno County Rural Transit Agency (FCRTA) for the development of a new FCRTA maintenance facility. We are advised that the council undertook the sale based on several factors:

FCRTA advances public transportation options to rural communities like Selma and the Maintenance Facility promotes those services.

- 1. FCRTA was to pay \$150,000 for the property.*
- 2. An Economic Impact Report from the Fresno County Economic Development Corporation indicating approximately 60 new jobs to be created and over \$7,000,000 in economic benefit from the Maintenance Facility development.*

3. *FCRTA leasing the site back to the City for \$1 annually for two years to serve as a City fire training site.*

A Broker Price Opinion (not a formal appraisal) dated November 7, 2018 was also submitted which reviewed three comparable parcels and set a price valuation range of between \$183,000-\$213,000 for the 3.67 acre parcel.

The question posed to us is whether the sale agreement is legally valid. Courts typically defer to legislative actions of local bodies like the Council. A trier-of-fact reviewing a challenge to the sale would defer to the legislative decision, absent a violation of statute or an abuse of discretion. Here, the fact that the deal involved multiple public benefit terms would allow a court to defer to the council decision to arrive at a discounted purchase price of \$150,000 even absent a formal appraisal.

If Council has concern with the absence of a formal appraisal, it can adopt a policy requiring formal appraisals for future sales of city parcels. But the reliance on the Economic Impact Report and the setting of the sale price based on the anticipated public benefit are valid basis to support the valuation and defend a gift of public fund challenge.

Finally, there was a concern that the Broker Opinion had been provided by a sitting Planning Commissioner. While the facts may give rise to a potential conflict for the commissioner (if they received compensation for the opinion) to vote on any matters related to the Site, it would not serve as a basis to set aside the sale."

At this point in the meeting, public comments were received from Mrs. Victoria Delgadillo Mr. Jim Avalos, and Mr. Robert Cervantes. There being no further public comments, it was stated that this item was for informational purposes only and did not require any Council action.

3. 2021-4 Consideration of an Ordinance amendment to Various Sections of Chapter 10, of Title X of the Selma Municipal Code relating to Truck/Trailer/RV Parking on Residential Streets and Other Public Rights-of-Way

Community Development Director Santillan reported on the item for Council. Public comments were received from Mrs. Victoria Delgadillo and Mr. Franco Atkinson. There being no further comments, Mayor Robertson closed the public hearing at 8:28 p.m. After Council discussion, a motion was made by Council member Guerra and seconded by Council member Trujillo to INTRODUCE AND WAIVE THE FIRST READING OF AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 10 OF TITLE X RELATING TO TRUCK/TRAILER/RV PARKING ON RESIDENTIAL STREETS AND OTHER PUBLIC RIGHT-OF-WAYS. Motion carried unanimously.

4. Continued Consideration of a Resolution approving a request to enter into an Agreement with RRM Design, Inc. for Professional Architectural and Engineering Services on the Rockwell Pond Park Project

Council consensus was to continue this item to a future meeting.

DEPARTMENT REPORTS: Interim City Manager reported on an upcoming meeting with the development community.

Community Development Director Santillan provided a building and planning update for Council.

Fire Chief Petersen provided updates on staff deployments to assist agencies during the fire season. He also updated Council on the ambulance division.

Community Services Director Kirchner reported on the upcoming Bringing Broken Neighborhoods Back to Life event and that the testing site at Pioneer Village has increased their hours.

COUNCIL REPORTS: Council member Mendoza-Navarro reported on attending the following events: Concert in the Park event, meeting with Senator Hurtado, Project Hope Festival, and the concert at Pioneer Village. She also reported that she celebrated her 22nd anniversary with the Housing Authority.

Council member Trujillo reported on attending the following: Concert in the Park event, Project Hope Festival, and reported that for the past two years he has been helping youth in Guadalajara, Mexico. He also discussed the need to improve the Pioneer Village parking lot.

Council member Guerra reported on attending the recent Chamber event and a meeting with Board of Supervisor Buddy Mendes. She also reported that her granddaughter was born on September 5, 2021.

Mayor Pro Tem Cho reported on attending the Concert in the Park event and invited everyone to the upcoming Raisin Festival.

Mayor Robertson reported on speaking to the Selma Bandits Football team and discussed the need for increased patrols.

ORAL COMMUNICATION: Public comments were received by Mrs. Char Tucker, Mrs. Victoria Delgadillo and Mrs. Rose Robertson.

ADJOURNMENT: There being no further business, the meeting was adjourned at 7:35 p.m.

Respectfully submitted,

Reyna Rivera
City Clerk

**CITY OF SELMA
COUNCIL SPECIAL MEETING
September 10, 2021**

PURSUANT TO EXECUTIVE ORDER N-29-20 ISSUED BY GOVERNOR GAVIN NEWSOM, THE PUBLIC HAD THE OPTION TO CALL +1 301 715 8592 ID: 814 3857 0286 TO PROVIDE COMMENTS ON AGENDA ITEMS. THE COUNCIL CHAMBER WAS OPEN FOR THE PUBLIC AS WELL.

The special meeting of the Selma City Council was called to order at 9:00 a.m. in the Council Chambers. Council members answering roll call were: Guerra, Mendoza-Navarro, Trujillo, Mayor Pro Tem Cho, and Mayor Robertson.

Also present were Legal Counsel Lerner, Interim City Manager Jimenez, Assistant City Manager Moreno, Community Development Director Santillan, Community Services Director Kirchner, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public twenty-four hours prior to this meeting.

FINANCIAL UPDATE PRESENTATION AND DISCUSSION: Assistant City Manager Moreno provided a power point presentation regarding the City of Selma's Debt Management Policy, Rockwell Pond Park Budget and Project Funding, and American Rescue Plan Act Funds. He also introduced Eric Scriven, Principal, NHA Advisors who provided and discussed a power point presentation regarding CalPERS cost management strategies. Public comment was received from Mr. Cliff Tutelian.

RECESS: Mayor Robertson recessed the meeting for a break at 10:48 a.m. At 10:54 a.m., Mayor Robertson reconvened the meeting.

FINANCIAL UPDATE PRESENTATION AND DISCUSSION: Public comment was received from Mr. Dwight Nelson. At this point in the meeting, Assistant City Manager Moreno summarized the presentation and received consensus from Council to 1) Schedule another workshop regarding pension obligations bonds and 2) direct City Staff to present a cost analysis for sewer infrastructure, a new park, a new fire station, and Stillman Avenue when park gets developed specifically for the purpose of utilizing funding from the American Rescue Plan Act Funds.

CONTINUED - CONSIDERATION OF A RESOLUTION APPROVING A REQUEST TO ENTER INTO AN AGREEMENT WITH RRM DESIGN, INC. FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES ON THE ROCKWELL POND PARK PROJECT: Community Services Director Kirchner reported on the matter for Council. Mr. Jerry Avalos, Vice President Vanir Construction Management, Inc. discussed the park project. Public comment was received from Ms. Theresa Salas and Mr. Frank Hoyt. After much discussion, motion was made by Council member Trujillo and seconded by Council member Guerra to approve RESOLUTION NO.

2021-52R APPROVING A REQUEST TO ENTER INTO A CONTRACT AGREEMENT WITH RRM DESIGN. The motion carried with the following vote:

AYES: Trujillo, Guerra, Mendoza-Navarro, Cho, Robertson
NOES: None
ABSTAIN: None
ABSENT: None

CONSIDERATION OF A RESOLUTION TO CREATE THE POSITION OF DEPUTY CITY MANAGER: After discussion, public comment was received from Ms. Theresa Salas. A motion was made by Mayor Pro Tem Cho to APPROVE RESOLUTION NO. 2021-53R CREATING THE POSITION OF DEPUTY CITY MANAGER. The motion was seconded by Council member Mendoza-Navarro and carried with the following vote:

AYES: Cho, Mendoza-Navarro, Guerra, Trujillo
NOES: Robertson
ABSTAIN: None
ABSENT: None

ADJOURNMENT: There being no further business, the meeting was adjourned at 11:58 a.m.

Respectfully submitted,

Reyna Rivera
City Clerk

**CITY OF SELMA
COUNCIL SPECIAL MEETING
September 20, 2021**

PURSUANT TO EXECUTIVE ORDER N-29-20 ISSUED BY GOVERNOR GAVIN NEWSOM, THE PUBLIC HAD THE OPTION TO CALL +1 301 715 8592 ID: 846 6188 6398 TO PROVIDE COMMENTS ON AGENDA ITEMS. THE COUNCIL CHAMBER WAS OPEN FOR THE PUBLIC AS WELL.

The special meeting of the Selma City Council was called to order at 5:30 p.m. in the Council Chambers. Council members answering roll call were: Guerra, Mendoza-Navarro, Trujillo, Mayor Pro Tem Cho, and Mayor Robertson.

Also present were Legal Counsel Lerner, Interim City Manager Jimenez, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

POTENTIAL CONFLICT OF INTEREST: Mayor Robertson announced that he had a potential conflict of interest with the closed session and would be recusing himself from that discussion.

At this point in the meeting, Mayor Robertson left the Council Chambers at 5:32 p.m.

CLOSED SESSION: Legal Counsel Lerner recessed the meeting into Closed Session at 5:33 p.m. to discuss the following:

Government Code Section 54956.9

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure to Litigation Pursuant to Paragraph (2) or (3) of Subdivision (d) of Section 54956.9: One Case

Per the Brown Act, the facts and circumstances that might lead to litigation are based on receipt of a letter dated August 30, 2021 from attorney John Kinsey on behalf of Mayor Robertson with a demand to correct alleged Brown Act Violation. A copy of the referenced letter is available upon request to the City Clerk.

Mayor Robertson then reconvened the meeting from closed session at 6:03 p.m. Legal Counsel Lerner advised that there was no reportable action.

ADJOURNMENT: There being no further business, the meeting was adjourned at 6:05 p.m.

Respectfully submitted,

Reyna Rivera
City Clerk

**CITY OF SELMA
COUNCIL REGULAR MEETING
September 20, 2021**

PURSUANT TO EXECUTIVE ORDER N-29-20 ISSUED BY GOVERNOR GAVIN NEWSOM, THE PUBLIC HAD THE OPTION TO CALL +1 301 715 8592 ID: 846 6188 6398 TO PROVIDE COMMENTS ON AGENDA ITEMS. THE COUNCIL CHAMBER WAS OPEN FOR THE PUBLIC AS WELL.

The regular meeting of the Selma City Council was called to order at 6:06 p.m. in the Council Chambers. Council members answering roll call were: Guerra, Mendoza-Navarro, Trujillo, Mayor Pro Tem Cho and Mayor Robertson.

Also present were Legal Counsel Lerner, Interim City Manager Jimenez, Assistant City Manager Moreno, Deputy City Manager Santillan, Fire Chief Petersen, Community Services Director Kirchner, Police Commander Garza, Public Works Director Ferrell, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

INVOCATION: Pastor Lisa Satterberg of Take It By Force Global Church Ministries led the invocation.

ORAL COMMUNICATIONS: Public comments were received by Mrs. Char Tucker, Mr. Steve Johnson, Mr. Stuart Skogland, Mrs. Andrea Fairbanks, Ms. Theresa Salas, and Pastor Franco Atkinson.

PRESENTATION IN APPRECIATION OF CREEK FIRE: Sheriff Margaret Mims stepped forward to recognize the Selma Police Department for providing mutual aid assistance, from September 6, 2020 to early October 2020, consisting of law enforcement personnel, equipment, and materials to assist with law enforcement services in connection with the Creek Fire.

1ST ANNUAL WALK WITH CHARLES JENSEN: Council member Guerra discussed the first event in honor of Christian Charles Jensen and invited everyone to attend the upcoming event.

CONSENT CALENDAR: Council member Guerra requested to pull agenda item 1.a., for separate discussion. Mayor Robertson requested to pull agenda items 1.b. and 1.f. for separate discussion. Council member Guerra motioned to approve the remainder of the Consent Calendar as written. The motion was seconded by Council member Mendoza-Navarro and carried unanimously.

- 1.a. Pulled Approval of 1st Amendment to Lease Agreement with Selma Business Park, LLC for Central Valley Training Center facility

- b. Pulled Approval of 2021/2022 List of Projects for Surface Transportation Block Grant Program (STBG) and Adoption of Resolution Supporting and Implementing AB 1012 Timely Use of Funds on Federal-Aid Projects
- c. 2021-55R Consideration of a Resolution Authorizing Portal-to-Portal Overtime for the Division Chief Position While Responding on Out-of-County Assignments
- d. Approved Approval of an Agreement between the City and ALTA Language Services, Inc.
- e. Approved Approval of the 1st Amendment to the Community Development Block Grant (CDBG) agreement for fiscal year 2020-2021
- f. Pulled Consideration of the check register dated September 16, 2021

CONSENT CALENDAR AGENDA ITEMS 1.a. APPROVAL OF 1ST AMENDMENT TO LEASE AGREEMENT WITH SELMA BUSINESS PARK, LLC FOR CENTRAL VALLEY TRAINING CENTER FACILITY and 1.b. APPROVAL OF 2021/2022 LIST OF PROJECTS FOR SURFACE TRANSPORTATION BLOCK GRANT PROGRAM (STBG) AND ADOPTION OF RESOLUTION SUPPORTING AND IMPLEMENTING AB 1012 TIMELY USE OF FUNDS ON FEDERAL-AID PROJECTS and 1.f. CHECK REGISTER DATED SEPTEMBER 16, 2021: After Council discussion, motion was made by Council member Guerra to approve 1ST AMENDMENT TO LEASE AGREEMENT WITH SELMA BUSINESS PARK, LLC FOR CENTRAL VALLEY TRAINING CENTER FACILITY & 2021/2022 LIST OF PROJECTS FOR SURFACE TRANSPORTATION BLOCK GRANT PROGRAM (STBG) AND ADOPTION OF RESOLUTION NO. 2021-54R SUPPORTING AND IMPLEMENTING AB 1012 TIMELY USE OF FUNDS ON FEDERAL-AID PROJECTS & CHECK REGISTER DATED SEPTEMBER 16, 2021. Motion was seconded by Council member Mendoza-Navarro and carried unanimously.

- 2. Discussion Continued Public Hearing - Consideration on a Resolution declaring an Abandoned Sign at 1630 2nd Street, Selma, California, an Illegal On-Premises Advertising Display and a Public Nuisance and Ordering the Property Owner to Abate the Nuisance

Deputy City Manager Santillan reported on the matter for Council. Mayor Robertson then opened the public hearing at 6:38 p.m. Public comment was received from Ms. Theresa Salas. There being no further comments, Mayor Robertson closed the public hearing at 6:39 p.m. After discussion, motion was made by Council member Guerra and seconded by Council member Trujillo to approve RESOLUTION NO. 2021-56R DECLARING A PUBLIC NUISANCE AND ORDERING ABATEMENT OF AN ILLEGAL ON-PREMISES ADVERTISING DISPLAY. The motion carried unanimously.

3. 2021-4 Consideration of Options for Fall 2021 Community Clean-up Week Event

Deputy City Manager Santillan reported on the item for Council. Waste Management representatives Liz Gomez and Michael Rivera provided input on the requirements needed for the clean-up location. Public comment was received from Ms. Theresa Salas, Mrs. Victoria Delgadillo, Mr. Nathan Salt, and Mrs. Rose Robertson. After further discussion, Council consensus was issued to table the item to the October 4, 2021 Council meeting.

4. Continued 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

Interim City Manager Jimenez reported on the item for Council. Public comment was received by Mrs. Victoria Delgadillo. After discussion, motion was made by Council member Guerra and seconded by Mayor Pro Tem Cho to 1) appoint Legal Counsel Lerner and Legal Counsel Wes Carlson as voting delegate and alternate for the League of California Cities annual conference and 2) Direct delegates to support the League's Resolutions. The motion was carried unanimously.

DEPARTMENT REPORTS: Deputy City Manager Santillan reported on the upcoming special Council meeting and the Central Valley Training Center graduation.

Assistant City Manager Moreno reported that the presentation regarding rate increases for PG&E would be scheduled for a future meeting.

Public Works Director Ferrell discussed the recent traffic signal project.

Police Commander Garza reported on the public participation and the increased public engagement. Mayor Robertson requested a staffing report.

Community Services Director Kirchner reported on the upcoming Senior Center Resource Fair and that the mural project agenda item will be placed on the agenda for the

COUNCIL REPORTS: Council member Mendoza-Navarro reported on attending the Selma United Church event and advised on an upcoming meeting with Congressman Valadao's office.

Council member Trujillo reported on attending the following: Bringing Broken Neighborhood Back to Life event, Selma United Church event and the annual Chamber Car Show.

Council member Guerra reported on attending the the following: Business Improvement District meeting, Caltrans ribbon cutting, Selma Kingsburg Fowler County Sanitation

District meeting, and Fundraising event for American Cancer Support event. She also inquired on the Super 8 Motel.

Mayor Pro Tem Cho reported on attending the Caltrans ribbon cutting, annual Chamber Car Show. She advised on the upcoming Walmart ribbon cutting and the Central Valley Training Center graduation event.

Mayor Robertson reported on attending the Caltrans ribbon cutting, Business Improvement District meeting, and the Fundraising event for American Cancer Support event.

ORAL COMMUNICATION: Public comments were received by Mrs. Victoria Delgadillo and Mrs. Rose Robertson.

ADJOURNMENT: There being no further business, the meeting was adjourned at 7:48 p.m.

Respectfully submitted,

Reyna Rivera
City Clerk

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

December 6, 2021

ITEM NO: 1.d.

SUBJECT: Consideration of a Resolution Authorizing the City to Continue with Teleconferenced Public Meetings Pursuant to Assembly Bill 361

RECOMMENDATION: Staff recommends that Council approve the resolution authorizing the City to continue with teleconferenced public meetings pursuant to Assembly Bill 361.

DISCUSSION: On September 16, 2021, the California legislature passed Assembly Bill ("AB") 361, which amends Government Code Section 54953 and permits a local agency to use teleconferencing to conduct its meetings in any of the following circumstances: (A) the legislative body holds a state of emergency, and meeting during a proclaimed state or local officials have imposed or recommended measures to promote social distancing; (B) the legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or (C) the legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

In order for the City Council to use teleconferencing as allowed by AB 361 after October 1, 2021, it must first adopt findings in a resolution, allowing the City Council to conduct teleconferenced meetings for a period of thirty (30) days. In addition, AB 361 requires the City to make specified findings every 30 days thereafter. City Council initially approved Resolution No. 2021-57R on September 27, 2021 and subsequently Resolution No. 2021-60R on October 18, 2021 and Resolution No. 2021-67R on November 15, 2021.

Ralph Jimenez, Interim City Manager

RESOLUTION NO. 2021 –__R

**A RESOLUTION OF THE CITY OF SELMA, CALIFORNIA AUTHORIZING
CONTINUED USE OF REMOTE TELECONFERENCING PROVISIONS (AB 361)**

WHEREAS, the City Council of the City of Selma (“City Council”) is committed to open and transparent government, and full compliance with the Ralph M. Brown Act (“Brown Act”); and

WHEREAS, the Brown Act generally requires that a public agency take certain actions in order to use teleconferencing to attend a public meeting virtually; and

WHEREAS, the City Council recognizes that a local emergency persists due to the worldwide COVID-19 pandemic; and

WHEREAS, the California Legislature has recognized the ongoing state of emergency due to the COVID-19 pandemic and has responded by creating an additional means for public meetings to be held via teleconference (inclusive of internet-based virtual meetings); and

WHEREAS, on September 16, 2021, the California legislature passed Assembly Bill (“AB”) 361, which amends Government Code, section 54953 and permits a local agency to use teleconferencing to conduct its meetings in any of the following circumstances: (A) the legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing; (B) the legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or (C) the legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, in order for the City Council to use teleconferencing as allowed by AB 361 after October 1, 2021, it must first adopt findings in a resolution, allowing the City Council to conduct teleconferenced meetings for a period of thirty (30) days; and

WHEREAS, the City Council initially approved Resolution No. 2021-57R on September 27, 2021; and

WHEREAS, on October 18, 2021, the City Council approved Resolution No. 2021-60R; and

WHEREAS, on November 15, 2021, the City Council approved Resolution No. 2021-67R; and

WHEREAS, Governor Gavin Newsom declared a state of emergency for the State of California due to the COVID-19 pandemic in his order entitled “Proclamation of a State of Emergency,” signed March 4, 2020; and

WHEREAS, the California Occupational and Safety Health Administration (OSHA) continues to recommend certain social distancing requirements, as described in detail in California Code of Regulations Title 8, section 3205 Covid Prevention; and

WHEREAS, the Fresno County Department of Public Health supports the well-being of its communities and County residents and recommends ways to slow the spread of COVID-19 including through social distancing (i.e., “staying at least 6 feet (about 2 arm lengths) from others who don’t live with you” and by avoiding crowds. The Fresno County Department of Public Health states “[t]he more people you are in contact with, the more likely you are to be exposed to COVID-19.”

WHEREAS, the City Council hereby finds that the state and local emergencies have caused and will continue to cause imminent risks to the health or safety of attendees; and

WHEREAS, the City Council is conducting its meetings through the use of telephonic and internet-based services so that members of the public may observe and participate in meetings and offer public comment.

NOW THEREFORE, BE IT RESOLVED, that the recitals set forth above are true and correct and fully incorporated into this Resolution by reference.

BE IT FURTHER RESOLVED, that the City Council is conducting meetings during a state of emergency and OSHA recommends measures to promote social distancing; and/or

BE IT FURTHER RESOLVED, that the City Council has determined that given the state of emergency, holding in-person only meetings would present imminent risks to the health or safety of attendees.

BE IT FURTHER RESOLVED, that the actions taken by the City Council through this resolution shall be applied to all City committees governed by the Brown Act unless otherwise desired by that committee.

BE IT FURTHER RESOLVED, the City Council authorizes the City Manager or their designee(s) to take all actions necessary to conduct City Council meetings in accordance with Government Code section 54953(e) and all other applicable provisions of the Brown Act, using teleconferencing for a period of thirty (30) days from the adoption of this Resolution after which the City Council will again reconsider the circumstances of the state of emergency.

PASSED AND ADOPTED by the Selma City Council on this 6th day of December 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

Scott Robertson, Mayor

Reyna Rivera, City Clerk

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

December 6, 2021

ITEM NO: 1.e.

SUBJECT: Consideration of a Commercial Lease Agreement between the City of Selma and Matteo and Rosa DeSantis, and authorize the City Manager or designee to execute all documents

RECOMMENDATION: Staff recommends that Council approve the Commercial Lease Agreement between the City of Selma and Matteo and Rosa DeSantis, and authorize the City Manager or designee to execute all documents.

DISCUSSION: Beginning in January 2022, the Selma Fire Department will have completed the integration of all emergency medical transport services within its Emergency Medical Services (EMS) Division. At that time, the EMS Division will be responsible for 2 24-hour ambulances and 1 12-hour ambulance. To house the personnel on the 24-hour ambulances, the City will enter into a Commercial Lease Agreement with Matteo and Rosa DeSantis to utilize the property at 1231 Rose Ave. This is the location that is currently being used by American Ambulance for the same purpose. The cost to lease this property was anticipated and budgeted for in the 2021/2022 budget.

<u>COST:</u> <i>(Enter cost of item to be purchased)</i>		<u>BUDGET IMPACT:</u> <i>(Enter amount this non-budgeted item will impact this years' budget – if budgeted, enter NONE).</i>
\$2,040/ Month		None
<u>FUNDING:</u> <i>(Enter the funding source for this item – if fund exists, enter the balance in the fund).</i>		<u>ON-GOING COST:</u> <i>(Enter the amount that will need to be budgeted each year – if one-time cost, enter NONE).</i>
Funding Source: Ambulance Fund Fund Balance:		\$2,040/Month plus a 5% escalator each year

Robert Petersen, Fire Chief
Ralph Jimenez, Interim City Manager

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salesperson and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **THIS disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

☐ Buyer ☐ Seller ☒ Lessor ☐ Lessee _____ Date: _____

Matteo & Rosa De Santis

☐ Buyer ☐ Seller ☐ Lessor ☒ Lessee _____ Date: _____

Agent KW Commercial DRE Lic. # 01864461
Real Estate Broker (Firm)

By: _____ DRE Lic. # 01945284 Date: _____
(Salesperson or Broker-Associate) Jared Ennis

THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether "Seller" means the transferor in a real property transaction and includes an owner is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows:

(a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

(c) **CONFIRMATION:** The following agency relationships are confirmed for this transaction.

Seller's Brokerage Firm	DO NOT COMPLETE, SAMPLE ONLY	License Number
Is the broker of (check one): <input type="checkbox"/> the seller; or <input type="checkbox"/> both the buyer and seller. (dual agent)		
Seller's Agent	DO NOT COMPLETE, SAMPLE ONLY	License Number
Is (check one): <input type="checkbox"/> the Seller's Agent. (salesperson or broker associate); or <input type="checkbox"/> both the Buyer's Agent and the Seller's Agent. (dual agent)		
Buyer's Brokerage Firm	DO NOT COMPLETE, SAMPLE ONLY	License Number
Is the broker of (check one): <input type="checkbox"/> the buyer; or <input type="checkbox"/> both the buyer and seller. (dual agent)		
Buyer's Agent	DO NOT COMPLETE, SAMPLE ONLY	License Number
Is (check one): <input type="checkbox"/> the Buyer's Agent. (salesperson or broker associate); or <input type="checkbox"/> both the Buyer's Agent and the Seller's Agent. (dual agent)		

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

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AD-3.01, Revised 10-22-2020

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. (b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. (d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. (b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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STANDARD MULTI-TENANT OFFICE LEASE - GROSS

1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only November 18, 2021, is made by and between Matteo & Rosa De Santis Trustees of the Mateo De Santis 2001 Trust ("Lessor") and City of Selma

(collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain portion of the Project (as defined below), commonly known as (street address, suite, city, state): 1231 Rose Ave, Selma, CA 93662

Selma CA ("Premises"). The Premises are located in the County of Fresno, and consist of approximately 950 rentable square feet and approximately 950 usable square feet. In addition to Lessee's right to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." The Project consists 10,819 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking:** many unreserved and 2 reserved vehicle parking spaces at a monthly cost of \$ per unreserved space and \$ per reserved space. (See Paragraph 2.6)

1.3 **Term:** 3 years and 0 months ("Original Term") commencing January 9, 2022 ("Commencement Date") and ending January 31, 2025 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing January 9, 2022 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$ 1,770.00 per month ("Base Rent"), payable on the first day of each month commencing January 9, 2022. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 51

1.6 **Lessee's Share of Operating Expense Increase:** eight 90/100 percent (8.900 %) ("Lessee's Share"). In the event that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

- (a) **Base Rent:** \$ 1,313.23 for the period 1/9/2022-1/31/2022
- (b) **Security Deposit:** \$ 2,655.00 ("Security Deposit"). (See also Paragraph 5)
- (c) **Parking:** \$ 0 for the period 1/9/2022-1/31/2022
- (d) **Other:** \$ 270.00 for CAM charges (Garbage, Taxes, Landscaping, Ins, Management)
- (e) **Total Due Upon Execution of this Lease:** \$ 4,238.23

1.8 Agreed Use: Professional Office Space

(See also Paragraph 6)

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OFG-21.30, Revised 10-22-2020

KW Commercial Central CA, 740 W Alluvial Ave #102 Fresno, CA 93711

Phone: 5593028698

Fax: 5594329324

Jared Ennis

1231 Rose Ave,

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1.9 **Base Year; Insuring Party.** The Base Year is 2022. Lessor is the "Insuring Party". (See also Paragraphs 4.2 and 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15 and 25)

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm KW Commercial

License No. 01864461 Is the broker of (check one): ☒ the Lessor; or ☐ both the Lessee and Lessor (dual agent).

Lessor's Agent Jared Ennis

License No. 01945284 Is (check one): ☒ the Lessor's Agent (salesperson or broker associate); or ☐ both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm KW Commercial

License No. 01864461 Is the broker of (check one): ☒ the Lessee; or ☐ both the Lessee and Lessor (dual agent).

Lessee's Agent Kevin Land

License No. 01516541 Is (check one): ☒ the Lessee's Agent (salesperson or broker associate); or ☐ both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or _____ % of the Base Rent) for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease shall be guaranteed by _____ ("Guarantor"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 6 a.m. to 8 p.m., Mondays through Fridays (except Building Holidays) and 6 a.m. to 8 p.m. on Saturdays (except Building Holidays). "Building Holidays" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and _____.

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

☐ Janitorial services

☐ Electricity

☐ Other (specify): _____

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☒ an Addendum consisting of Paragraphs 50 through 53 ;

☐ a plot plan depicting the Premises;

☐ a current set of the Rules and Regulations;

☐ a Work Letter;

☐ a janitorial schedule;

☒ other (specify): 54. Arbitration and 55. Option to Extend

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and warrants that the existing electrical, plumbing, ~~fire sprinkler~~, lighting, heating, ventilating and air conditioning systems ("HVAC"), ~~and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any,~~ other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premises; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

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1231 Rose Ave,

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to nonvoluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. ~~The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.~~

2.6 Vehicle Parking. So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.

2.7 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roofs, roadways, walkways, driveways and landscaped areas.

2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use commercially reasonable efforts to deliver exclusive possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the "Operating Expense Increase", in accordance with the following provisions:

(a) "Base Year" is as specified in Paragraph 1.9.

(b) "Comparison Year" is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first 12 months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.

(c) The following costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, are defined as "Operating Expenses":

(i) Costs relating to the operation, repair, and maintenance in neat, clean, safe, good order and condition, but not the replacement (see subparagraph (g)), of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, tenants or occupants of the Project, ~~including elevators and escalators,~~ tenant directories, fire detection systems including ~~sprinkler system~~ maintenance and repair.

(cc) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of trash disposal, ~~janitorial~~ and security services, pest control services, and the costs of any environmental inspections;

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

- (iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;
 - (v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;
 - (vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;
 - (vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;
 - (viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;
 - (ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.
 - (x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.
- (d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.
- (e) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(c) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.
- (f) Lessee's Share of Operating Expense Increase is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expense Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such Year exceed Lessee's Share, Lessee shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such Year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense Increases, notwithstanding that the Lease term may have terminated before the end of such Comparison Year.
- (g) Operating Expenses shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, ~~elevators~~, fences that have a useful life for accounting purposes of 5 years or more.
- (h) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building,

will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

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OFG-21.30, Revised 10-22-2020

1231 Rose Ave,

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1(e)) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.** Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to abuse or misuse. In addition, Lessee rather than the Lessor shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any similar improvements within the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed \$2000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with asbuilt plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150%

of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Insurance Premiums. The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. ~~If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.~~

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("**Rental Value Insurance**"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(c) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee

Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair

or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definitions.** As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. "**Real Property Taxes**" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.**

11.1 **Services Provided by Lessor.** Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. ~~Lessor shall also provide janitorial services to the Premises and Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.~~

11.2 **Services Exclusive to Lessee.** Notwithstanding the provisions of paragraph 11.1, Lessee shall pay for all water, gas, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2(vi), if a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 **Hours of Service.** Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 **Excess Usage by Lessee.** Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

11.6 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee ~~by an amount greater than 25% of such Net Worth~~ as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "**Net Worth of Lessee**" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; the vacating of the Premises prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism; or failure to deliver to Lessor exclusive possession of the entire Premises in accordance herewith prior to the expiration or termination of this Lease.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee 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 such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are

located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvement for lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed. The provisions of this paragraph are intended to supersede the provisions of any earlier agreement to the contrary.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by ~~regular~~, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, ~~or by facsimile transmission~~, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, ~~or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid.~~ Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, ~~or transmitted by facsimile transmission or by email~~ shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: **To the Lessor:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. **To the Lessee and the Lessor:** a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. **To the Lessee:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. **To the Lessee and the Lessor:** a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being 150% of the Base Rent payable during such last full month. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. ~~Except for ordinary "For Sublease" signs which may be placed only on the Premises,~~ Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply.

39.1 **Definition. "Option"** shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease ~~either the Premises or other property of Lessor;~~ (c) the right to purchase, ~~the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.~~

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. **Reservations.**

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable nonmonetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☒ is ☐ is not attached to this Lease.

49. **Accessibility; Americans with Disabilities Act.**

(a) The Premises:

☒ Have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

☐ Have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ Have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

~~In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.~~

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. **SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.**
2. **RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.**

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: _____

Executed at: _____

On: _____

On: _____

By LESSOR:

Matteo & Rosa De Santis Trustees of the

By LESSEE:

City of Selma

By: _____

Name Printed: Matteo & Rosa De Santis

Title: _____

Phone: (559) 313-0302

Fax: _____

Email: angeladesantis1@gmail.com

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

Address: 7800 E Muscat Ave Fresno, Ca 93725

Address: 1710 Tucker St, Selma, CA 93662

Federal ID No.: _____

Federal ID No.: _____

BROKER

KW Commercial

BROKER

KW Commercial

Att: Jared Ennis

Title: _____

Address: 740 W Alluvial Ave #102, Fresno, CA 93711

Att: Kevin Land

Title: _____

Address: 740 W Alluvial Ave #102, Fresno, CA 93711

Phone: (559) 302-8698

Fax: _____

Email: Jared@CentralCaCommercial.com

Federal ID No.: _____

Broker DRE License #: 01864461

Agent DRE License #: 01945284

Phone: (559) 359-4035

Fax: _____

Email: Kevin@CentralCaCommercial.com

Federal ID No.: _____

Broker DRE License #: 01864461

Agent DRE License #: 01516541

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ADDENDUM

Date: November 18, 2021

By and Between

Lessor: Matteo & Rosa De Santis Trustees of the

Lessee: City of Selma

Property Address: 1231 Rose Ave, Selma, CA 93662

Selma CA 93662

(street address, city, state, zip)

Paragraph 50-53

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

50. UTILITIES: All utility services including electricity, water, trash, and gas shall be paid by the LESSOR upfront, and reimbursed monthly by LESSEE based off their pro-rata share; current estimated amount is in paragraph 1.7 (d).

51. RENT ADJUSTMENTS: The monthly base rent per paragraph 1.5 and 1.7 (a) for each month of the adjustment periods specified below shall be increased to the following amounts on the dates set forth below:

Year:	Base Rent:	CAM:	Total:
Year 1:	\$1,770	\$270	\$2,040
Year 2:	\$1,912	\$297	\$2,208
Year 3:	\$2,065	\$327	\$2,391

52. TENANT IMPROVEMENTS: LESSEE shall take the space in as-is where-is condition. If LESSEE wants to improve the space all changes will need approval from LESSOR. LESSOR will rekey unit at the sole cost and expense of the LESSOR.

53. PARKING: LESSEE is entitled to 2 parking spaces reserved in the rear of the unit.

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ADD-1-03, Revised 10-22-2020

KW Commercial Central CA, 740 W Alluvial Ave #102 Fresno, CA 93711

Phone: 5593028698

Fax: 5594329324

Jared Ennis

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1231 Rose Ave,



ARBITRATION AGREEMENT Standard Lease Addendum

Dated: November 18, 2021

By and Between

Lessor: Matteo & Rosa De Santis Trustees of the

Lessee: City of Selma

Property Address: 1231 Rose Ave, Selma, CA 93662

Selma CA 93662

(street address, city, state, zip)

Paragraph 54 _____

A. ARBITRATION OF DISPUTES:

Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

B. DISPUTES EXCLUDED FROM ARBITRATION:

The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law 4. Any claim or dispute that is within the jurisdiction of the Small Claims Court and 5. All claims arising under Paragraph 39 of this Lease.

C. APPOINTMENT OF AN ARBITRATOR:

All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration before: ☐ a retired judge of the applicable court of jurisdiction (e.g., the Superior Court of the State of California) affiliated with Judicial Arbitration & Mediation Services, Inc. ("JAMS"), ☒ the American Arbitration Association ("AAA") under its commercial arbitration rules, ☐ _____

, or as may be otherwise mutually agreed by Lessor and Lessee (the "Arbitrator"). In the event that the parties elect to use an arbitrator other than one affiliated with JAMS or AAA then such arbitrator shall be obligated to comply with the Code of Ethics for Arbitrators in Commercial Disputes (see: http://www.adr.org/aaa/ShowProperty?nodeId=JCM/ADRSTG_003867). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have agreed to use JAMS they may agree on a retired judge from the JAMS panel. If they are unable to agree within ten days, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

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ARB-3.03, Revised 10-22-2020

KW Commercial Central CA, 740 W Alluvial Ave #102 Fresno, CA 93711

Phone: 5593028698

Fax: 5594329324

Jared Ennis

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1231 Rose Ave,

D. ARBITRATION PROCEDURE:

1. **PRE-HEARING ACTIONS.** The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1282.6).

2. **THE DECISION.** The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1286.2). The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

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PAGE 2 OF 2

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ARB-3.03, Revised 10-22-2020



OPTION(S) TO EXTEND STANDARD LEASE ADDENDUM

Dated: November 18, 2021

By and Between

Lessor: Matteo & Rosa De Santis Trustees of the

Lessee: City of Selma

Property Address: 1231 Rose Ave, Selma, CA 93662

Selma CA 93662

(street address, city, state, zip)

Paragraph 55

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease for 2 additional 12 month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 3 but not more than 6 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:
(Check Method(s) to be Used and Fill in Appropriately)

☐ **Cost of Living Adjustment(s) (COLA)**

a. On (Fill in COLA Dates): _____

~~the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI-W (Urban Wage Earners and Clerical Workers) or ☐ CPI-U (All Urban Consumers), for (Fill in Urban Area):~~

~~All Items (1982-1984 = 100), herein referred to as "CPI".~~

~~b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): ☐ the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month").~~

~~The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.~~

PAGE 1 OF 3

INITIALS

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OE-6.02, Revised 10-22-2020

KW Commercial Central CA, 740 W Alluvial Ave #102 Fresno, CA 93711

Phone: 5593028698

Fax: 5594329324

Jared Ennis

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1231 Rose Ave,

e. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

☐ II. **Market Rental Value Adjustment(s) (MRV)**

a. On (Fill in MRV Adjustment Date(s)) _____

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an independent third party ☐ appraiser or ☐ broker ("Consultant" check one) of their choice to act as an arbitrator. (Note: the parties may not select either of the Brokers that was involved in negotiating the Lease). The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, i.e. the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but not limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

☒ III. **Fixed Rental Adjustment(s) (FRA)**

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):

February 1, 2025

February 1, 2026

The New Base Rent shall be:

\$2,589.00

\$2,803.00

☐ IV. **Initial Term Adjustments.**

The formula used to calculate adjustments to the Base Rate during the original Term of the Lease shall continue to be used during the extended term.

B. NOTICE:

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.

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OE-6.02, Revised 10-22-2020

CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
78374	11/18/2021	Printed	A&S PUMP SERVICE	RELOCATE PUMP FROM PINE TO ORANGE, REPAIR LIFT PUMP ORANGE & OAK		3,684.42
78375	11/18/2021	Printed	ACTION TOWING AND DIVE TEAM	EVIDENCE TOWING -OCT 2021		217.00
78376	11/18/2021	Printed	ADVENTIST HEALTH TULARE	BLOOD/ALCOHOL ANALYSIS -PD		271.00
78377	11/18/2021	Printed	ALLSTAR FIRE EQUIPMENT	ID BRACKET HARDWARE		123.48
78378	11/18/2021	Printed	ALTA LANGUAGE SERVICES, INC.	LANGUAGE TEST		68.00
78379	11/18/2021	Printed	ARAMARK UNIFORM	UNIFORMS/TOWELS/FIRST AID KITS 10/28/21		286.29
78380	11/18/2021	Printed	CHRISTINA ARIAS	CSJVRMA QUARTERLY MEETINGS MILEAGE REIMBURSEMENT		25.09
78381	11/18/2021	Printed	AT&T	INTERNET SERVICE - CVTC	R	100.24
78382	11/18/2021	Printed	AT&T	TELEPHONE 10/4/21-11/3/21		1,285.45
78383	11/18/2021	Printed	AT&T	TELEPHONE 10/4/21-11/3/21		153.56
78384	11/18/2021	Printed	AT&T	TELEPHONE 10/4/21-11/3/21		118.12
78385	11/18/2021	Printed	AT&T	TELEPHONE 10/12/21-11/11/21		43.77
78386	11/18/2021	Printed	AT&T	TELEPHONE 10/12/21-11/11/21		94.90
78387	11/18/2021	Printed	AT&T MOBILITY	TELEPHONE -MDT'S 10/1-10/31/21		438.11
78388	11/18/2021	Printed	MIA YAHIRA UNIKA AYON / MAMAMIAS TREATS	STRAWBERRY CHEESECAKE CUPS FOR SENIOR DANCE	G	300.00
78389	11/18/2021	Printed	BENNY BACA / COOL AIR SPECIALTY	INSTALLED MERV13 FILTERS, FALL SERVICE		6,170.00
78390	11/18/2021	Printed	BANNER PEST CONTROL INC	TREAT INTERIOR & EXTERIOR -PD		65.00
78391	11/18/2021	Printed	MATT BEGINES	WATER HEATER FOR STATION 1 REIMBURSEMENT		492.80
78392	11/18/2021	Printed	JAY WESLEY BROCK / TOP DOG TRAINING	K9 BOARD AND CARE 5/5-11/5/21		3,600.00
78393	11/18/2021	Printed	CALIFITNESS INC.	REPAIRS ON STATION MACHINES		198.95
78394	11/18/2021	Printed	CALIFORNIA STATE CONTROLLERS	AUDIT CONFIRMATION FEE		150.00
78395	11/18/2021	Printed	CALIFORNIA WATER SERVICE	WATER SERVICE -OCTOBER 2021		23,754.60
78396	11/18/2021	Printed	CARROT-TOP INDUSTRIES, INC.	US FLAGS		569.50
78397	11/18/2021	Printed	ROD CARSEY	PLAN CHECKS -OCTOBER 2021		2,904.30
78398	11/18/2021	Printed	CENTRAL SANITARY SUPPLY	JANITORIAL SUPPLIES		515.21
78399	11/18/2021	Printed	ELVIS CERVANTES	AMBULANCE OVERPAYMENT REIMB		100.00
78400	11/18/2021	Printed	CITY OF FRESNO	PERISHABLE SKILLS PROGRAM 11/22- 11/24/21	R	485.00
78401	11/18/2021	Printed	CITY OF FRESNO	PERISHABLE SKILLS PROGRAM 11/22- 11/24/21	R	485.00
78402	11/18/2021	Printed	COLLECTIBLES MGMT RESOURCES	COLLECTION FEES		9,269.29
78403	11/18/2021	Printed	COMCAST	INTERNET SERVICE -NOV 2021		821.45
78404	11/18/2021	Printed	COMCAST	PD TO FCSO -NOV 2021		690.74
78405	11/18/2021	Printed	CORELOGIC SOLUTIONS LLC	REALQUEST SERVICES -OCT 2021		481.25
78406	11/18/2021	Printed	DATA TICKET, INC.	PARKING CITATION PROCESSING - SEPT 21		200.00
78407	11/18/2021	Printed	DATAPATH LLC	LAPTOPS FOR SENIOR CENTER, NETCARE FOR NOV 21, FIBER FOR FIRE ST 2		17,172.72
78408	11/18/2021	Printed	DEPARTMENT OF JUSTICE	FINGERPRINTS -OCT 21		296.00
78409	11/18/2021	Printed	DEPARTMENT OF TRANSPORTATION	DAMAGED TRAFFIC SIGNAL 99 & FLORAL		315.04
78410	11/18/2021	Printed	DEPARTMENT OF TRANSPORTATION	SIGNALS & LIGHTING JUL-SEPT 21		2,266.11
78411	11/18/2021	Printed	DR LANDSCAPE & SUNNYSIDE POOLS	REFUND PERMIT 21-0658		750.36
78412	11/18/2021	Printed	ERENE SOLIMAN, PSY.D.	PRE-EMPLOYMENT PSYCHOLOGICAL EXAMS		400.00
78413	11/18/2021	Printed	FRESNO COUNTY EDC	CENTRAL VALLEY TRAINING CENTER 9/1/21-9/30/21	R	14,849.92
78414	11/18/2021	Printed	FRESNO COUNTY TAX COLLECTOR	PROPERTY TAX 2021/2022		3,950.89
78415	11/18/2021	Printed	FRESNO OXYGEN	OXYGEN RENTALS		144.66
78416	11/18/2021	Printed	GATEWAY ENGINEERING, INC.	DINUBA/MCCALL TRAFFIC SIGNAL	R	10,520.00
78417	11/18/2021	Printed	GCS ENVIRONMENTAL EQUIPMENT	ACTUATOR PARTS		869.43
78418	11/18/2021	Printed	GEIL ENTERPRISES INC	JANITORIAL SERVICE -NOV 2021		3,545.00

CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
78419	11/18/2021	Printed	GLACIER REFRIGERATION & AIR	SENIOR CENTER ICE MACHINE		688.81
78420	11/18/2021	Printed	GILBERT GONZALES	PERISHABLE SKILLS TRAINING 11/22-11/24/21	R	33.00
78421	11/18/2021	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 10/13/21		2,357.52
78422	11/18/2021	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 10/20/21		290.90
78423	11/18/2021	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 10/27/21		557.50
78424	11/18/2021	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 11/3/21		373.00
78425	11/18/2021	Printed	HEALTHEDGE ADMINISTRATORS INC.	ADMINISTRATIVE FEES -NOV 21		851.46
78426	11/18/2021	Printed	HEALTHWISE SERVICES, LLC.	MEDICAL WASTE SERVICE -PD	R	150.00
78427	11/18/2021	Printed	RAUL R HERRERA JR / ECN POLYGRAPH	POLYGRAPH SERVICES 11/2-11/11/21		800.00
78428	11/18/2021	Printed	HUB INTERNATIONAL INSURANCE	PIONEER VILLAGE EVENTS		507.13
78429	11/18/2021	Printed	IRG MASTER HOLDINGS, LLC	CENTRAL VALLEY TRAINING CENTER - DEC 21 LEASE	R	10,652.93
78430	11/18/2021	Printed	JOHNSON CONTROLS SECURITY	REPLACED BATTERY SC, PV & PANEL - SALAZAR CENTER		4,941.43
78431	11/18/2021	Printed	JORGENSEN & COMPANY	FIRE EXTINGUISHER ANNUAL MAINT - SALAZAR CENTER		243.26
78432	11/18/2021	Printed	MICHAEL KAIN	MEDICAL PREMIUM REIMB -DEC 21		1,304.68
78433	11/18/2021	Printed	JEFF KESTLY	MEDICAL PREMIUM REIMB -DEC 21		204.52
78434	11/18/2021	Printed	KOEFRAN INDUSTRIES, INC.	EMPTY ANIMAL CONTROL FREEZER		163.86
78435	11/18/2021	Printed	KRAMER WORKPLACE	PERSONNEL INVESTIGATION -PD		4,275.00
78436	11/18/2021	Printed	KRAZAN & ASSOCIATES, INC.	PROPOSED FIRE STATION ENVIRONMENTAL ASSESSMENT & FINAL BILLING		7,420.00
78437	11/18/2021	Printed	LOZANO SMITH LLP	LEGAL SERVICES -SEPTEMBER 2021		33,268.92
78438	11/18/2021	Printed	JOSE MARAVILLA	AMBULANCE OVERPAYMENT REIMB		1,300.00
78439	11/18/2021	Printed	DWAYNE MCPHERSON	PERISHABLE SKILLS TRAINING 11/22-11/24/21	R	33.00
78440	11/18/2021	Printed	METRO UNIFORM	PD REVOLVING ACCT	R	263.42
78441	11/18/2021	Printed	NHA ADVISORS LLC	2021-22 CFD CONSULTING & GENERAL CONSULTING		3,768.75
78442	11/18/2021	Printed	ODELL PLANNING & RESEARCH, INC	SELMA GROVE EIR ADDENDUM PLANNING SERVICES		478.40
78443	11/18/2021	Printed	OFFICE DEPOT, INC.	OFFICE SUPPLIES		421.74
78444	11/18/2021	Printed	ORCHID INTERPRETING INC.	INTERPRETING SERVICES CVTC	R	4,664.40
78445	11/18/2021	Printed	PG&E	UTILITIES -NOVEMBER 2021		51.38
78446	11/18/2021	Printed	PG&E	UTILITIES -OCTOBER 2021		6,711.39
78447	11/18/2021	Printed	PG&E	UTILITIES -OCTOBER 2021		2,591.84
78448	11/18/2021	Printed	PITNEY BOWES GLOBAL FINANCIAL	POSTAGE MACHINE LEASE -CH 12/16/21-3/15/22		492.12
78449	11/18/2021	Printed	PRECISION EMPRISE LLC	SIDEWALK REPAIRS -PHASE 4		2,142.00
78450	11/18/2021	Printed	PRINTING SYSTEMS, INC.	AP & PR CHECKS		459.11
78451	11/18/2021	Printed	QUAD KNOPF, INC.	ON-CALL PLANNING SERVICES 7/1-10/9/21		4,415.25
78452	11/18/2021	Printed	SCOTT SANDERS	MEDICAL PREMIUM REIMB -DEC 21		1,326.20
78453	11/18/2021	Printed	SANTA MARIA CALIFORNIA NEWS	2021-6 ORG WASTE		94.52
78454	11/18/2021	Printed	SELMA LIONS CLUB	CAL RECYCLE AD REIMB	R	160.00
78455	11/18/2021	Printed	SELMA UNIFIED SCHOOL DISTRICT	FUEL -MAY 2021		18,463.00
78456	11/18/2021	Printed	SELMA UNIFIED SCHOOL DISTRICT	FUEL -JUNE 2021		18,925.73
78457	11/18/2021	Printed	SELMA UNIFIED SCHOOL DISTRICT	FUEL -JULY 2021		20,871.80
78458	11/18/2021	Printed	SELMA UNIFIED SCHOOL DISTRICT	FUEL -AUGUST 2021		19,435.29
78459	11/18/2021	Printed	SELMA UNIFIED SCHOOL DISTRICT	FUEL -SEPTEMBER 2021		16,924.19
78460	11/18/2021	Printed	SISCO	AMBULANCE OVERPAYMENT REIMB		1,098.17
78461	11/18/2021	Printed	SITEONE LANDSCAPE SUPPLY, LLC.	IRRIGATION SUPPLIES		1,721.53
78462	11/18/2021	Printed	JESSE G. SOLIS / ELITE CHARTER & TOURS	SENIOR TRIP -HARRAH'S CASINO	R	1,300.00
78463	11/18/2021	Printed	SPARKLETTS	WATER SERVICE -CVTC	R	39.99
78464	11/18/2021	Printed	STATEWIDE TRAFFIC SAFETY AND	BARRICADES & CONES W/ CITY OF SELMA		4,579.98
78465	11/18/2021	Printed	STERLING CODIFIERS INC.	ORDINANCE CODIFICATION 2021-4		143.19

CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
78466	11/18/2021	Printed	STRYKER SALES CORPORATION	COILED HOSE -FD		76.71
78467	11/18/2021	Printed	GAGANJOT K TOOR	AMBULANCE OVERPAYMENT REIMB		1,829.20
78468	11/18/2021	Printed	TOWNSEND PUBLIC AFFAIRS, INC.	CONSULTING FEES -NOVEMBER 21		3,500.00
78469	11/18/2021	Printed	U.S. BANK EQUIPMENT FINANCE	COPY MACHINE LEASES -NOV 21		2,263.49
78470	11/18/2021	Printed	VALLEY SHREDDING LLC	DOCUMENT DESTRUCTION SERVICE		20.00
78471	11/18/2021	Printed	VINCENT COMMUNICATIONS INC	REPAIR HEADSETS & SPEAKERS		1,190.57
78472	11/18/2021	Printed	WASTE MANAGEMENT-USA WASTE	CITY CLEAN UP 10/1/21-10/31/21		5,704.41
TOTAL						329,787.34

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

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

December 6, 2021

ITEM NO: 1.g.

SUBJECT: Consideration of Amendment 1 with Fresno County Economic Development Corporation (Fresno EDC) for the Central Valley Training Center

RECOMMENDATION: Authorize Mayor to Execute Amendment 1 with Fresno EDC for Central Valley Training Center.

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 December 2022, which requires an extension of the City's existing contract with Fresno EDC. The extension/amendment requires the shortening of the program from 16 weeks to 12 weeks in order to be competitive and in line with other pre-apprentice programs as well as serving an additional fourth cohort. The Fresno EDC is requesting to include verbiage that allows for additional extensions to their contract and the Rate Schedule and Payment sections of the agreement are amended to include the contract extension from the High Speed Rail Authority.

DISCUSSION:

Allowing the EDC to extend their contract retains a benefit to program management and the public by allowing established processes and marketing to continue. Not extending their contract would force the City to re-bid the opportunity for the critical workforce development aspect of the contract and delay the anticipated next cohort in January. The Fresno EDC was the only respondent to the initial request for Proposal.

RECOMMENDATION:

Authorize Mayor to Execute Amendment 1 with Fresno EDC for Central Valley Training Center.

Fernando Santillan, Deputy City Manager
Ralph Jimenez, Interim City Manager

Attachments:

Letter from EDC
Fresno EDC PSA Amendment 1
Professional Service Agreement with Fresno EDC
City of Selma and High Speed Rail Authority Contract Amendment 2



November 19, 2021

Mr. Fernando Santillan, AICP
Deputy City Manager
City of Selma
1710 Tucker Street
Selma, California 93662

Re: Professional Services Agreement between the City of Selma and Fresno County Economic Development Corporation

Dear Mr. Santillan:

The Fresno County Economic Development Corporation (EDC) is grateful for the success of our partnership hosting the Central Valley Training Center (CVTC) in the City of Selma. Sixty students have graduated from CVTC with 13 residing in the City of Selma.

Additional funding has been secured from the California High Speed Rail Authority for a one year period. The EDC hereby requests that the current Agreement be extended for the period of December 1, 2021 – December 31, 2022. The terms and conditions of the renewed contract would remain the same with the exception of classroom instruction decreasing from 16 weeks to 12 weeks. The EDC is also requesting that the renewal contract allow for additional extensions as funding is secured which will allow for future classes to be held in the City of Selma.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Lee Ann Eager".

Lee Ann Eager
President & CEO

AMENDMENT NO. 1

TO CONTRACT FOR PROFESSIONAL SERVICES WITH FRESNO EDC.

This amendment No. 1 to the Contract for Professional Services ("Agreement"), is made and entered into this 6th day of December 2021, ("Effective Date") by and between the City of Selma a California municipal corporation ("Client" or "City") and Fresno EDC ("Consultant"). The Client and Consultant are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, on December 1, 2019 the City Council approved the Agreement with the Consultant, to provide services related to the Central Valley Training Center, a workforce development program in construction pre-apprenticeship; and

WHEREAS, the City Council approved the Agreement for a period of two years, and the Agreement expired on November 30, 2021; and

WHEREAS, The California High Speed Rail Authority has amended the agreement number HSR19-28 with the City of Selma to extend the term to December 31, 2022, and for a total amount not to exceed one million dollars (\$1,000,000); and

WHEREAS, the Client and Consultant desire to amend the term of the Agreement, Scope of Service, Payment and Rate Schedule to provide for the Central Valley Training Center activities; and

WHEREAS, for the reasons set forth herein, the Client and Consultant desire to enter into this Amendment No.1 as set forth below.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid Agreement, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, shall remain in full force and effect except as otherwise hereinafter provided:

Section 1 Term

Section 1, Term, shall be revised to read in its entirety as follows:

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than December 31, 2022, unless sooner terminated pursuant to the provisions of this

Agreement. Agreement may be extended up to three (3) times by the Selma City Manager for up to twelve (12) months per each approved extension pursuant to funding availability and agreement by both parties.

Section 4 **Payment**

Section 4 (a), Payment, shall be revised to read in its entirety as follows:

The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule") attached hereto and incorporated herein by this reference as though set forth in full based upon actual time spent on above tasks. This amount shall not exceed \$683,504.03, for services rendered by the Consultant or any subcontractor, for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

Section 14 **Notices**

Section 14, Notices, shall be provided to the City of Selma as stated with a written copy to the updated Legal contact as follows:

Mary F. Lerner
Lozano Smith Attorneys at Law
7404 North Spalding Ave.
Fresno, CA 93720

Exhibit A **Scope of Services**

Exhibit A Scope of Services Task 2 Item 3 shall read in its entirety as follows:

The pre-apprenticeship curriculum will provide at least twelve (12) weeks of customized classroom instruction and hands-on instructional project work. Contractor will offer a minimum of four (4) sessions per year.

Exhibit A Scope of Services Task 2 Item 7 shall add the following Key Component of the Curriculum:

Rail/Train Safety

Exhibit B **Rate Schedule**

Exhibit B, Rate Schedule, shall be revised in accordance with the City of Selma's extended agreement with the California High Speed Rail Authority.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 to the Agreement as of the Effective Date.

"CITY"
CITY OF SELMA

"CONSULTANT"
Fresno County EDC

By: _____
Scott Robertson, Mayor

By: _____
Lee Ann Eager, President/CEO

Attest:

By: _____
Reyna Rivera, City Clerk

Approved as to form:

By: _____
Mary F. Lerner, City Attorney

Attachments: Professional Service Agreement

STANDARD AGREEMENT - AMENDMENT

STD 213A (Rev. 4/2020)

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 1 PAGES

AGREEMENT NUMBER

HSR19-28

AMENDMENT NUMBER

02

Purchasing Authority Number

2665

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

California High-Speed Rail Authority

CONTRACTOR NAME

City of Selma

2. The term of this Agreement is:

START DATE

April 22, 2020

THROUGH END DATE

December 31, 2022

3. The maximum amount of this Agreement after this Amendment is:

\$1,832,125.00; One-Million, Eight-Hundred Thirty-Two Thousand, One-Hundred Twenty-Five Dollars, and Zero Cents

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

1. STD213, Section 2 is amended to extend the term of the Agreement and shall read as follows: "The term of this Agreement is April 22, 2020, through December 31, 2022."

2. STD213, Section 3 is amended to add \$1,000,000.00 to the contract value and shall read as follows: "The maximum amount of this Agreement after this Amendment is \$1,832,125.00; One-Million, Eight-Hundred Thirty-Two Thousand, One-Hundred Twenty-Five Dollars, and Zero Cents."

3. Exhibit A, Scope of Work, Section 2, Contract Management/Notices is replaced in its entirety and shall read as follows:

"2. Contract Management/Notices

All inquiries and notices during the term of this Agreement will be directed to the representatives identified below:

Authority

Contract Manager Victoria Sandoval

Address: 1111 H Street

Fresno, CA 93721

Phone: (559) 445-6767

e-mail: victoria.sandoval@hsr.ca.gov

Contractor

Contract Manager: Fernando Santillan

Address: 1710 Tucker Street

Selma, CA 93662

Phone: (818) 823-7205

email: fernandos@cityofselma.com

Contract Managers may be changed without amendment, as specified in Exhibit D, Section 2."

4. Exhibit A, Scope of Work, Section 4, Tasks, Subsection 4.2.3 is replaced in its entirety and shall read as follows:

"The pre-apprenticeship curriculum will provide at least twelve (12) weeks of customized classroom instruction and hands-on instructional project work. The Contractor will offer a minimum of three (3) class sessions per year.

5. Attachment 3 – Training Facility Budget for December 1, 2021 through December 31, 2022 is attached hereto.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

City of Selma

CONTRACTOR BUSINESS ADDRESS

1710 Tucker Street

CITY

Selma

STATE

CA

ZIP

93662

PRINTED NAME OF PERSON SIGNING

Fernando Santillan

TITLE

Deputy City Manager

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STANDARD AGREEMENT - AMENDMENT

STD 213A (Rev. 4/2020)

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 1 PAGES

AGREEMENT NUMBER

HSR19-28

AMENDMENT NUMBER

02

Purchasing Authority Number

2665

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

California High-Speed Rail Authority

CONTRACTING AGENCY ADDRESS

770 L Street Suite 620

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Brian P. Kelly

TITLE

Chief Executive Officer

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

ATTACHMENT 3 - TRAINING FACILITY BUDGET

Tracking Students				23.00	23	23	23	43	43	43	63	63	63	83	83	83
Name and title		hourly rate	Total contracted Hours	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22
Lee Ann Eager, CEO EDC	\$40,017.51	166.74	240	3078.27	3078.27	3078.27	3078.27	3078.27	3078.27	3078.27	3078.27	3078.27	3078.27	3078.27	3078.27	3078.27
Sherry Neil, COO, EDC	\$27,209.00	75.28	360	2093.00	2093.00	2093.00	2093.00	2093.00	2093.00	2093.00	2093.00	2093.00	2093.00	2093.00	2093.00	2093.00
Andrea Reyes, VP Business Services, EDC	\$60,567.00	63.09	960	4659.00	4659.00	4659.00	4659.00	4659.00	4659.00	4659.00	4659.00	4659.00	4659.00	4659.00	4659.00	4659.00
Renee Nuanes, Economic Support Specialist	\$11,349.52	47.29	240	873.04	873.04	873.04	873.04	873.04	873.04	873.04	873.04	873.04	873.04	873.04	873.04	873.04
Idalia Hinojosa, Workforce Training/retention, EDC	\$39,728.00	47.29	840	3056.00	3056.00	3056.00	3056.00	3056.00	3056.00	3056.00	3056.00	3056.00	3056.00	3056.00	3056.00	3056.00
Paul Thorn, Controller, EDC	\$18,213.78	75.92	240	1401.06	1401.06	1401.06	1401.06	1401.06	1401.06	1401.06	1401.06	1401.06	1401.06	1401.06	1401.06	1401.06
Outreach/Marketing/Mileage, EDC	\$49,998.00	625	160	3846.00	3846.00	3846.00	3846.00	3846.00	3846.00	3846.00	3846.00	3846.00	3846.00	3846.00	3846.00	3846.00
Office/Program Supplies, EDC	\$5,359.90	428.8	13	412.30	412.30	412.30	412.30	412.30	412.30	412.30	412.30	412.30	412.30	412.30	412.30	412.30
Drug Testing per student	\$3,500.16	291.68	12	No cohort	291.68	291.68	291.68	291.68	291.68	291.68	291.68	291.68	291.68	291.68	291.68	291.68
Student Graduation Kits (4 graduating classes)	\$40,000.00	10,000	4	n/a			10,000			10,000			10,000			10,000
Chuck Rosas, Director, *FMKT	\$79,508.04	76.45	1040	no cohort	6625.67	6625.67	6625.67	6625.67	6625.67	6625.67	6625.67	6625.67	6625.67	6625.67	6625.67	6625.67
Brittani Kelley, Training Manager FMKT	\$48,796.32	47.01	1038	no cohort	4066.36	4066.36	4066.36	4066.36	4066.36	4066.36	4066.36	4066.36	4066.36	4066.36	4066.36	4066.36
Insurance per month	\$3,250.00	250	12	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00
Various, Laborer Instructor	\$44,004.00	42.31	1040	no cohort	3667.00	3667.00	3667.00	3667.00	3667.00	3667.00	3667.00	3667.00	3667.00	3667.00	3667.00	3667.00
Danny Solorio, Journeyman Instructor 1, FMKT	\$36,000.00	50.00	1440	no cohort	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00
TBD, Journeyman Instructor 2, FMKT	\$36,000.00	50.00	1440	no cohort	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00	3000.00
D. Muhammad or M. Stevens, TFC Instructor, *VAC	\$55,003.20	65.48	840	No cohort	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60
Need Name, Case Manager, VAC	\$55,003.20	65.48	840	no cohort	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60	4583.60
Amalia Martinez, Program Manager, VAC	\$29,996.40	35.71	840	no cohort	2499.70	2499.70	2499.70	2499.70	2499.70	2499.70	2499.70	2499.70	2499.70	2499.70	2499.70	2499.70
Fernando Santillan, Administrator, City of Selma	\$51,468.95	130.08	396	3959.15	3959.15	3959.15	3959.15	3959.15	3959.15	3959.15	3959.15	3959.15	3959.15	3959.15	3959.15	3959.15
Fernando Santillan, Contract Oversight, City of Selma	\$31,291.00	130.08	231	2407.00	2407.00	2407.00	2407.00	2407.00	2407.00	2407.00	2407.00	2407.00	2407.00	2407.00	2407.00	2407.00
Equipment per month	\$32,947.80	2,484.75	12	No cohort	5615.55	2484.75	2484.75	2484.75	2484.75	2484.75	2484.75	2484.75	2484.75	2484.75	2484.75	2484.75
Materials per month	\$28,317.00	2359.75	12	No cohort	2359.75	2359.75	2359.75	2359.75	2359.75	2359.75	2359.75	2359.75	2359.75	2359.75	2359.75	2359.75
Utilities per month	\$20,800.00	1600.00	13	1600.00	1600.00	1600.00	1600.00	1600.00	1600.00	1600.00	1600.00	1600.00	1600.00	1600.00	1600.00	1600.00
Lease per month	\$151,671.00	11,667.00	13	11667.00	11667.00	11667.00	11667.00	11667.00	11667.00	11667.00	11667.00	11667.00	11667.00	11667.00	11667.00	11667.00
TOTALS	\$999,999.78			39301.82	79594.73	76463.93	86463.93	76463.93	76463.93	86463.93	76463.93	76463.93	86463.93	76463.93	76463.93	86463.93

FY 21/22	\$521,216.20
FY 22/23	\$478,783.58
TOTAL	\$999,999.78

*FMKT=Fresno, Madera, Kings Trade Union

*VAC = Valley Apprenticeship Connections

Cohort 4 – 1/03/2022 – 3/25/2022

Cohort 5 – 4/04/2022 – 6/24/2022

Cohort 6 – 7/05/2022 – 9/23/2022

Cohort 7 – 10/03/2022 – 12/23/2022

CITY OF SELMA

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of December 1, 2019 ("Effective Date"), between the City of Selma, a municipal corporation ("City") and Fresno County Economic Development Corporation ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, City desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than November 30, 2021, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the City. The Services shall be performed by Consultant, unless prior written approval is first obtained from the City. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) City shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing a Training Program, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the

Political Reform Act (Government Code Section 81000 *et seq.*)). During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

3. MANAGEMENT

City's City Manager shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Three Hundred Ninety-Nine Thousand Nine Hundred Ninety-Five (\$399,995) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

5. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the City pursuant to Section 4 of this Agreement.

6. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office, and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to City all right, title, and interest,

including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

7. INDEMNIFICATION

(a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) **DUTY TO DEFEND.** In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall have an immediate duty to defend the City at Consultant's cost or at City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

8. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

9. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

11. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

12. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during

his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order. (b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Selma
1710 Tucker Street
Selma, CA 93662
Attention: City Manager

With a Copy To: Neal Costanzo
Costanzo & Associates
575 E. Locust Ave
Fresno, CA 93720

To Consultant:

Fresno County EDC
906 N. Street, Suite 120
Fresno, CA 93721

15. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the City and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

16. GOVERNING LAW/ATTORNEYS' FEES

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Fresno County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein

and upon each party's own independent investigation of any and all facts such party deems material.

18. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

21. WAIVER

The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

22. REMEDIES


Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

23. AUTHORITY TO EXECUTE THIS AGREEMENT


The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

"CITY"
City of Selma

By: 
Teresa Gallavan, City Manager

"CONSULTANT"
Fresno County EDC

By: 
Lee Ann Eager, President/CEO

Attest:

By: 
Reyna Rivera, City Clerk

Approved as to form:

By: 
Neal Costanzo, City Attorney

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Rate Schedule
	Exhibit C	Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

It is understood among the parties, that the Contractor will develop a training center and provide a training program (Program) in the City of Selma with the oversight from the City's identified Project Manager. The program will serve at risk and disconnected young adults, and veterans from the cities within the Counties of Fresno, Kings, Tulare, Kern, Madera and Merced County for the purpose of workforce development through career opportunities for the High-Speed Rail Project. Applicants will be required to have a Memorandum of Understanding with the Building Trades.

Responsibilities of the Contractor:

1. The Contractor is to adhere to all rules and regulations within the attached High Speed Rail Authority (Authority) contract.
2. The Contractor will be responsible for carrying out work as outlined in the task section.
3. Approval, authorization, certification, consent, decision, exemption, filing, lease (except facility lease for one year), license, permit, agreement, concession, grant, franchise, registration, or filing, required by or with any governmental entity in order to design and implement the training facility.
4. Verifying and affirmatively certifying to the City that all expenses incurred and submitted to the City for payment are allowable costs under the terms of this Agreement with the City.
5. Procuring and administering any agreement for design and/or permitting of the training center.
6. Applicant shall comply with all applicable State, federal, and local rules and regulations, including but not limited to, the City's agreement with the California High Speed Rail Authority.
7. The City reserves the right to reject all bids. Any award of contract by the City is contingent upon approval of an agreement between the City and the California High Speed Rail Authority, and the City's lease of property to facilitate the project.

Schedule

1. Performance of the work described in this Section commence upon no later than thirty (30) days from receipt of a Notice to Proceed (NTP) for each task and sub-task. Unless terminated as provided herein, the work shall continue until earlier of (i) completion of the work or (ii) expiration of the term, unless otherwise extended in writing.

Task 1 - Outreach and Recruitment

Local High-Speed Rail Business Support: The Contractor recognizes the need to coordinate service and resources with the City, Authority, and local partners and shall create a team, to be called the "High-

Speed Rail Coordination Team", to better assist public outreach and coordination with the City and Authority.

1. Provide outreach and recruitment services to women, minorities, veterans, ex-offenders, and other underrepresented individuals residing in Fresno, King, Tulare, Madera, Merced, and Kern Counties. Implement Outreach workshops, develop marketing material, market training facility in local media venues, partner with local community colleges and high schools to recruit students, and partner with nonprofits that target underrepresented individuals.
2. Recruit an initial class of 35-40 students of Fresno, King, Tulare, Madera, Merced, and Kern County residents.
3. Business recruitment will involve marketing, informational workshops and targeted outreach. A wide range of marketing collateral will be used including television, radio, social media, and print advertising to market the program, highlighting the program's success with company and job-seeker testimonials.

Task 2 - Pre-Apprenticeship Training

1. Provide hands-on pre-apprenticeship highway and construction training along with industry specific certifications.
2. Create and develop curriculum and course work with the various skilled labor trades.
3. The pre-apprenticeship curriculum will provide at least sixteen (16) weeks of customized classroom instruction and hands-on instructional project work. Contractor will offer a minimum of three (3) class sessions per year.
4. Training will include both group and individual instruction.
5. Hands-on shop training will be conducted and supervised by skilled craft-persons (full journey-man) in the trade being performed.
6. A list of equipment, tools, instruments, materials, textbooks, and supplies necessary for the pre-apprenticeship training and job placement services will be provided to the City for purchase.
7. Key components of the curriculum will include, but are not necessarily limited to:
 - Orientation to the construction industry and the apprenticeship structure
 - Construction related physical fitness training and job safety
 - Applied math for construction purposes
 - Surveying and blueprint reading
 - Tool and material identification
 - Fundamentals of structural steel and ironwork
 - Fundamentals of framing, form, foundation work, and cement work
 - Basic electrical and wiring work
 - Basic elements of plumbing
 - Hazardous waste and lead abatement training
 - Confined space training
 - On-line training in emerging environmental technologies

- Computer Assisted Drafting (CAD)

Task 3 - Job Placement and Counseling

1. The Contractor will provide complete job search, counseling, and placement services to all students who graduate from the Program, including coordination with the City, Authority, and its Consultants, Contractors and subcontractors to fulfill skilled labor needs for the Phase 1 segment of the HSR Project.
2. Meet and greet events will be conducted in order to connect graduates of the Program with potential employers.
3. Counseling will include guidance on job search efforts, however, students will be expected to conduct job search efforts on their own.

Task 4 - Job Retention Assistance

1. The Contractor will provide job retention assistance and follow-up services to all placements from the Program.
2. Once placement is made, initial follow-up will occur on start date, with additional checking on a monthly basis to continue for a full year post placement. Check-ins may be conducted in person or by telephone.
3. If staff find that a student faces a barrier to retaining employment, staff will assist the student in accessing resources to help them remain employed. If a student loses employment, staff will assist with identifying other employment options and helping the student to gain other employment.

Task 5 - Mentoring

1. As part of job retention assistance and follow-up services, the Contractor will provide on the job mentoring to ensure continued participation and success of Program graduates.

Task 6 - Performance Measures and Contract Management

1. Administrative duties shall include, but not be limited to, the following: documentation, progress reports, task deliverables, and preparation of the Final Report.
2. A subcontractor is defined as a firm or individual experts or consultants with expertise to supplement the Contractor's expertise. The Contractor shall manage and coordinate all subcontracts and is responsible for the quality of all subcontractor work and activities. The City will assign all work to the Contractor.

REPORTS

The Contractor shall provide monthly progress reports with the information necessary to update the City on the status of the Program and the fulfillment of mitigation measures outlined in the Authority Agreement.

1. The monthly report shall contain the following:
 - Number of students enrolled in the program for the report month.
 - Number of hours of training received by each student during the report month.

- Number of students placed into jobs during the month, listed by zip code, occupation, employer, or apprenticeship program address and phone number.
- An audit of the expenditures of the funds provided to the Contractor pursuant to this Agreement.

2. The Contractor shall provide a Final Report to the City's Contract Manager within sixty (60) days of the earlier of: a) completion of all Contractor's obligations under this Agreement; b) the expenditure of all the funds provided to the Contractor under this Agreement; or c) termination of the Agreement pursuant to its terms. The Final Report will summarize all pertinent activities and accomplishments during the full course of the program.

The Final Report will include:

- Findings, conclusions, and recommendations from the Program.
- Quantified data qualified for measurement purposes to include placement and retention data for the Program, and for post-Program employment.

3. In handling all data, the Contractor shall follow guidelines as set forth in the California Information Practices Act of 1977. Data collected for the purposes of reporting shall not be held or reported in a manner that is personally identifiable. Data shall be self-reported and stored separately from any personally identifiable information that the Contractor may have about participants of the program.

EXHIBIT B
RATE SCHEDULE

Director	56,632
Project/Program Manager (2)	86,068
Retention Specialist	32,754
Outreach	67,574
Marketing	58,967
Instructors (2)	98,000

TOTAL	<u>399,995</u>
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Note: Work will commence upon receipt of Notice to Proceed (NTP) from the City of Selma.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the City.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000.00 per occurrence, \$4,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$2,000,000.00 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$2,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees and volunteers.

Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

Timely notice of claims. Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/03/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Cal-Valley Insurance Services, Inc. 5070 N. Sixth St. #155 License #0733383 Fresno CA 93710		CONTACT NAME: Joseph Lara PHONE (A/C, No, Ext): (559) 225-1300 FAX (A/C, No): (559) 225-8966 E-MAIL ADDRESS: Josephl@calvalleyinsurance.com	
INSURED Economic Development Corp 906 N Street #120 Fresno CA 93721		INSURER(S) AFFORDING COVERAGE INSURER A: National Fire Insurance Co. of Hartford NAIC # 20478 INSURER B: Market Insurance 38970F INSURER C: Lloyds of London 10200 INSURER D: INSURER E: INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 19/20 BOP **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: Cyber	Y	B2098042965	09/12/2019	09/12/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$ 1,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		B2098042965	09/12/2019	09/12/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED \$ RETENTION \$ <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE					EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A Y	MWC0021593-08	01/01/2019	01/01/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability (E & O)		MPL2275672.19	06/20/2019	06/20/2020	Each Claim Limit \$1,000,000 Aggregate Limit \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is Listed as Additional Insured with regards to General Liability per form SB-300119-A (Attached). Waiver of Subrogation per workers' Compensation Form WC040306 (0484)

CERTIFICATE HOLDER The City of Selma 1710 Tucker Street Selma CA 93662	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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**BLANKET ADDITIONAL INSURED
AND
LIABILITY EXTENSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM
BUSINESSOWNERS COMMON POLICY CONDITIONS

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<u>2. Definition of "written contract."</u>
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I. BLANKET ADDITIONAL INSURED PROVISIONS

A. ADDITIONAL INSURED – BLANKET VENDORS

Who Is An Insured is amended to include as an additional insured any person or organization (referred to below as vendor) with whom you agreed under a "written contract" to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:
 - a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - b. Any express warranty unauthorized by you;
 - c. Any physical or chemical change in the product made intentionally by the vendor;
 - d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
 - h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) The exceptions contained in Subparagraphs d. or f.; or
 - (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This insurance does not apply to any Insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
 3. This provision 2. does not apply to any vendor included as an insured by an endorsement issued by us and made a part of this Policy.
 4. This provision 2. does not apply if "bodily injury" or "property damage" included within the "products-completed operations hazard" is excluded either by the provisions of the Policy or by endorsement.

B. MISCELLANEOUS ADDITIONAL INSUREDS

1. **Who Is An Insured** is amended to include as an Insured any person or organization (called additional Insured) described in paragraphs 3.a. through 3.j. below whom you are required to add as an additional insured on this policy under a "written contract":
2. However, subject always to the terms and conditions of this policy, including the limits of insurance, we will not provide the additional insured with:
 - a. A higher limit of insurance than required by such "written contract";
 - b. Coverage broader than required by such "written contract" and in no event greater than that described by the applicable paragraph a. through k. below; or
 - c. Coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard." But this paragraph c. does not apply to the extent coverage for such liability is provided by paragraph 3.j. below.

Any coverage granted by this endorsement shall apply only to the extent permitted by law.

3. Only the following persons or organizations can qualify as additional insureds under this endorsement:

a. Controlling Interest

Any persons or organizations with a controlling interest in you but only with respect to their liability arising out of:

- (1) such person or organization's financial control of you; or
- (2) Premises such person or organization owns, maintains or controls while you lease or occupy these premises;

provided that the coverage granted to such additional insureds does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.



b. Co-owner of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability for "bodily injury", "property damage" or "personal and advertising injury" as co-owner of such premises.

c. Grantor of Franchise

Any person or organization that has granted a franchise to you, but only with respect to such person or organization's liability for "bodily injury", "property damage", or "personal and advertising injury" as grantor of a franchise to you.

d. Lessor of Equipment

Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by your maintenance, operation or use of such equipment, provided that the "occurrence" giving rise to such "bodily injury" or "property damage" or the offense giving rise to such "personal and advertising injury" takes place prior to the termination of such lease.

e. Lessor of Land

Any person or organization from whom you lease land, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the ownership, maintenance or use of that specific part of the land leased to you, provided that the "occurrence" giving rise to such "bodily injury" or "property damage" or the offense giving rise to such "personal and advertising injury", takes place prior to the termination of such lease. The insurance hereby afforded to the additional insured does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

f. Lessor of Premises

An owner or lessor of premises leased to you, or such owner or lessor's real estate manager, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the ownership, maintenance or use of such part of the premises leased to you, and provided that the "occurrence" giving rise to such "bodily injury" or "property damage" or the offense giving rise to such "personal and advertising injury", takes place prior to the termination of such lease. The insurance hereby afforded to the additional insured does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

g. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee, or receiver's liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the ownership, maintenance, or use of a premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

h. State or Political Subdivisions

A state or government agency or subdivision or political subdivision that has issued a permit or authorization, but only with respect to such government agency or subdivision or political subdivision's liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of:

(1) The following hazards in connection with premises you own, rent, or control and to which this insurance applies:

- (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- (b) The construction, erection, or removal of elevators; or
- (c) The ownership, maintenance or use of any elevators covered by this insurance; or

(2) The permitted or authorized operations performed by you or on your behalf. But the coverage granted by this paragraph does not apply to:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or government agency or subdivision or political subdivision; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard."

With respect to this provision's requirement that additional insured status must be requested under a "written contract", we will treat as a "written contract" any governmental permit that requires you to add the governmental entity as an additional insured.

i. Trade Show Event Lessor

With respect to your participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom you are required to include as an additional insured, but only with respect to such person or organization's liability for "bodily injury", "property damage", or "personal and advertising injury" cause by:

- a. Your acts or omissions; or
- b. Acts or omissions of those acting on your behalf;

in the performance of your ongoing operations at the trade show premises during the trade show event.

j. Other Person or Organization

Any person or organization who is not an additional insured under paragraphs a. through i. above. Such additional insured is an insured solely for "bodily injury", "property damage" or "personal and advertising injury" for which such additional insured is liable because of your acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

- (1) For "bodily injury", "property damage", or "personal and advertising injury" arising out of the rendering or failure to render any professional services;
- (2) For "bodily injury" or "property damage" included in the "products-completed operations hazard." But this provision (2) does not apply to such "bodily injury" or "property damage" if:
 - (a) It is entirely due to your negligence and specifically results from your work for the additional insured which is the subject to the "written contract"; and
 - (b) The "written contract" requires you to make the person or organization an additional insured for such "bodily injury" or "property damage"; or
- (3) Who is afforded additional insured coverage under another endorsement attached to this policy.

C. ADDITIONAL PROVISIONS PERTINENT TO ADDITIONAL INSURED COVERAGE

With respect only to additional insured coverage provided under paragraphs A. and B. above:

- 1. The **BUSINESSOWNERS COMMON POLICY CONDITIONS** are amended to add the following to the Condition entitled **Other Insurance**:

This insurance is excess of all other insurance available to an additional insured whether primary, excess, contingent or on any other basis. However, if a "written contract" requires that this insurance be either primary or primary and noncontributing, then this insurance will be primary and non-contributory relative solely to insurance on which the additional insured is a named insured.

- 2. Under **Liability and Medical Expense Definitions**, the following definition is added:

"Written contract" means a written contract or agreement that requires you to make a person or organization an additional insured on this policy, provided the contract or agreement:

- a. Is currently in effect or becomes effective during the term of this policy; and
- b. Was executed prior to:



- (1) The "bodily injury" or "property damage"; or
 - (2) The offense that caused the "personal and advertising injury";
- for which the additional insured seeks coverage.

II. LIABILITY EXTENSION COVERAGES

It is understood and agreed that this endorsement amends the **Businessowners Liability Coverage Form**. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement to such provision do not apply.

A. Bodily Injury – Expanded Definition

Under **Liability and Medical Expenses Definitions**, the definition of "Bodily Injury" is deleted and replaced by the following:

"Bodily injury" means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the physical injury, sickness or disease.

B. Broad Knowledge of Occurrence

Under **Businessowners Liability Conditions**, the Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended to add the following:

Paragraphs a. and b. above apply to you or to any additional insured only when such "occurrence," offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This paragraph applies separately to you and any additional insured.

C. Estates, Legal Representatives and Spouses

The estates, heirs, legal representatives and spouses of any natural person insured shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives and spouses only for claims arising solely out of their capacity as such and, in the case of a spouse, where such claim seeks damages from marital common property, jointly held property, or property transferred from such natural person insured to such spouse. No coverage is provided for any act, error or omission of an estate, heir, legal representative or spouse outside the scope of such person's capacity as such, provided however that the spouse of a natural person Named Insured and the spouses of members or partners of joint venture or partnership Named Insureds are insureds with respect to such spouses' acts, errors or omissions in the conduct of the Named Insured's business.

D. Legal Liability – Damage To Premises

- 1. Under **B. Exclusions, 1. Applicable to Business Liability Coverage**, Exclusion k. **Damage To Property**, is replaced by the following:

k. Damage To Property

"Property damage" to:

- 1. Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of

such property for any reason, including prevention of injury to a person or damage to another's property;

2. Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
3. Property loaned to you;
4. Personal property in the care, custody or control of the insured;
5. That particular part of any real property on which you or any contractors or subcontractors working directly or indirectly in your behalf are performing operations, if the "property damage" arises out of those operations; or
6. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph 2 of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs 1, 3, and 4, of this exclusion do not apply to "property damage" (other than damage by fire or explosion) to premises:

- (1) rented to you;
- (2) temporarily occupied by you with the permission of the owner, or
- (3) to the contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to Damage To Premises Rented To You as described in Section D – Liability and Medical Expenses Limits of Insurance.

Paragraphs 3, 4, 5, and 6 of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph 6 of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

2. Under **B. Exclusions, 1. Applicable to Business Liability Coverage**, the following paragraph is added, and replaces the similar paragraph, if any, beneath paragraph (14) of the exclusion entitled **Personal and Advertising injury**:

Exclusions **c, d, e, f, g, h, i, k, l, m, n, and o**, do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner or to the contents of premises rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to this coverage as described in **Section D. Liability And Medical Expenses Limits Of Insurance**.

3. The first Paragraph under item 5. **Damage To Premises Rented To You Limit** of the section entitled **Liability And Medical Expenses Limits Of Insurance** is replaced by the following:

The most we will pay under Business Liability for damages because of "property damage" to any one premises, while rented to you or temporarily occupied by you with the permission of the owner, including contents of such premises rented to you for a period of 7 or fewer consecutive days, is the Damage to Premises Rented to You limit shown in the Declaration.

E. Personal and Advertising Injury – Discrimination or Humiliation

1. Under **Liability and Medical Expenses Definitions**, the definition of "personal and advertising injury" is amended to add the following:
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:
 - (1) Not done intentionally by or at the direction of:
 - (a) The insured; or



- (b) Any "executive officer," director, stockholder, partner, member or manager (if you are a limited liability company) of the insured; and
 - (2) Not directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person or person by any insured.
- 2. Under B. Exclusions, 1. Applicable to Business Liability Coverage, the exclusion entitled **Personal and Advertising Injury** is amended to add the following additional exclusions:
 - (15) Discrimination Relating to Room, Dwelling or Premises**

Caused by discrimination directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured.
 - (16) Employment Related Discrimination**

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any insured.
 - (17) Fines or Penalties**

Fines or penalties levied or imposed by a governmental entity because of discrimination.
- 3. This provision (**Personal and Advertising Injury – Discrimination or Humiliation**) does not apply if **Personal and Advertising Injury Liability** is excluded either by the provisions of the Policy or by endorsement.

F. Personal and Advertising Injury - Broadened Eviction

Under **Liability and Medical Expenses Definitions**, the definition of "Personal and advertising injury" is amended to delete Paragraph c. and replace it with the following:

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room dwelling or premises that a person or organization occupies committed by or on behalf of its owner, landlord or lessor.

G. Waiver of Subrogation – Blanket

We waive any right of recovery we may have against:

- a. Any person or organization with whom you have a written contract that requires such a waiver.

All other terms and conditions of the Policy remain unchanged.

Memorandum of Understanding

This Memorandum of Understanding (MOU) is between the Fresno Madera Kings Tulare Building & Construction Trades Council (FMKT-BTC) and the Fresno County Economic Development Corporation (EDC) for purposes of administering the Central Valley Training Center (CVTC). The duration of this MOU is for a period not to exceed 24 months.

The working relationship role and responsibilities will consist of the following:

Fresno Madera Kings Tulare Building & Construction Trades Council:

- FMKT-BTC agrees to support the Central Valley Training Center (CVTC) in their continued efforts in securing grant funds for the initiation of their program.
- FMKT-BTC agrees to consider and review CVTC's pre-apprenticeship candidates that are referred to the pre-apprenticeship multi-craft construction building trades program.
- FMKT-BTC currently runs for the Fresno Regional Workforce Investment Board (FRWIB).
- FMKT-BTC will work with the CVTC to review and approve entry-level informational pre-apprenticeship criteria, curriculum and assessment developed by the CVTC.

Fresno EDC/Central Valley Training Center:

- CVTC will refer participants that meet the entry-level pre-apprenticeship applicant requirements as approved by the FMKT-BTC
- CVTC will refer participants to FMKT-BTC multi-craft pre-apprenticeship training program that have successfully completed a pre pre-apprenticeship program.
- CVTC will assist the FMKT-BTC, when possible, in identifying candidates who meet the "National Targeted Hiring Policy" criteria.
- CVTC will promote the needs of the FMKT-BTC.

Terms:

Either party to this MOU may terminate this MOU without cause with a 30-day written notice to the other party.

Amendment and Modification:

This MOU shall not be modified or amended in any way except in writing to include the written addendum and the changed agreement between the FMKT-BTC and the Fresno EDC.

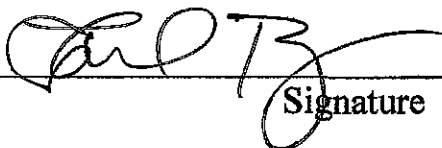
Hold Harmless Clause:

This MOU is strictly limited to and primarily outlines the willingness to support the goals of the other. This MOU has no funding and/or monetary expectations throughout its duration.

Authorized Representatives' Signatures:

Building Trades Representative:

Chuck Riojas, Financial Secretary/Treasurer


Signature

9.30.19
Date

Fresno County Economic Development Corporation Representative:

Lee Ann Eager, President/CEO


Signature

9-30-19
Date

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

December 6, 2021

ITEM NO: 2.

SUBJECT: Consideration of a Purchase and Sale Agreement between the City of Selma and the First Christian Church of Selma and authorize the City Manager or designee to execute all documents and take all actions necessary to complete the purchase

RECOMMENDATION: Staff recommends that Council approve the Purchase and Sale Agreement between the City of Selma and the First Christian Church of Selma and authorize the City Manager or designee to execute all documents and take all actions necessary to complete the purchase.

BACKGROUND: It is recognized that the Selma Fire Department is in need of a new fire station that will replace the current fire station at Floral and 'A' Street, which was built sometime in the 1950s. The location at Floral and 'A' Street has been determined by staff to be less than ideal for a new station. In its current location, fire department response times in the Northern part of the City are often in excess of the four minute national standard. The new station should be in a location that will allow for response times that meet national standards, while taking into account future growth within the City.

DISCUSSION: Staff has spent the past several years evaluating potential locations that would be suitable for a new fire station. At least three locations were evaluated in the North and Northwest part of the City. One location stood out as ideal for the purpose of building a new fire station. The location is an empty lot, consisting of 4.2 acres, located on the Northwest corner of Thompson and Huntsman. The property is large enough to accommodate multiple City projects. The property is currently owned by the First Christian Church of Selma. Staff has met with representatives of the First Christian Church of Selma to discuss the possibility of the City purchasing this property. After several meetings and proposals, The First Christian Church of Selma has agreed to sell the property to the City of Selma for \$546,000.00 plus closing costs. In preparing to purchase this property, several inspections have been completed to ensure suitability of the property. A Phase I Environmental Site Assessment was completed, and based on those results, a Phase II Limited Subsurface Survey was completed. Based on the results of the two inspections, the property to be purchased shows no evidence of recognized environmental concerns. Funding for this purchase will come from Ambulance Fund reserves, and was accounted for in the Fiscal year 2021/2022 budget for capital improvement projects. The property is large enough to provide the City with options for future projects, including the construction of a new fire station.

<u>COST:</u> <i>(Enter cost of item to be purchased)</i>		<u>BUDGET IMPACT:</u> <i>(Enter amount this non-budgeted item will impact this years' budget – if budgeted, enter NONE).</i>
\$546,000.00 Plus closing costs		None
<u>FUNDING:</u> <i>(Enter the funding source for this item – if fund exists, enter the balance in the fund).</i>		<u>ON-GOING COST:</u> <i>(Enter the amount that will need to be budgeted each year – if one-time cost, enter NONE).</i>
Funding Source: Ambulance Fund Fund Balance: \$3,194,287.32		None

RECOMMENDATION: Staff recommends that Council approve the Purchase and Sale Agreement between the City of Selma and the First Christian Church of Selma and authorize the City Manager or designee to execute all documents and take all actions necessary to complete the purchase.

Robert Petersen, Fire Chief
Ralph Jimenez, Interim City Manager

PURCHASE AND SALE AGREEMENT

(City of Selma, Fresno County, California APN: 358-473-335)

This PURCHASE AND SALE AGREEMENT ("Agreement"), dated as of _____, 2021 ("Effective Date"), is by and between First Christian Church of Selma ("Seller"), and the City of Selma, a municipal corporation, ("Purchaser"), with reference to the following facts. Seller and Purchaser are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Seller is the fee owner of approximately 4.2 acres of vacant real property, zoned multifamily, located at 3433 Thompson Avenue (Assessor's Parcel Number: 358-473-335) Fresno County, California, more particularly described in the Legal Description attached hereto as Exhibit A, and incorporated herein ("Property"); and all rights, privileges, easements and appurtenances to the Property, if any, including, without limitation, all of Seller's right, title and interest, if any, in and to all minerals, oil, gas and other hydrocarbon substances, development rights and water stock relating thereto; and all of Seller's right, title and interest in and to any easements and other appurtenances used or connected with the beneficial use or enjoyment of the Property.

B. Seller desires to sell, and Purchaser desires to purchase the Property for the purpose of putting it to a government use, on the terms and conditions set forth below.

TERMS & CONDITIONS

In consideration of the foregoing recitals, which are hereby incorporated by this reference, and of the covenants and provisions contained in this Agreement, the Parties agree as follows:

1. **Agreement to Sell and Purchase Property.** Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, subject to the terms and conditions of this Agreement, the Property, as defined in Section 2 below.

2. **Property.** The Property shall include the land and all improvements located thereon, if any, as more specifically defined in Exhibit A.

3. **Purchase Price.** The purchase price for the Property ("Purchase Price") shall be FIVE HUNDRED FORTY-SIX THOUSAND AND 00/100 DOLLARS (\$546,000.00), which the Seller and Purchaser agree to be the fair market value of the Property. The Purchase Price shall be paid in cash, by certified check or by wire transfer of immediately available funds, plus or minus closing pro-rations, adjustments, and costs related to the closing.

4. **Escrow.** Withing five (5) days following execution of this Agreement by both Purchaser and Seller, the Parties shall open an escrow with Chicago Title, located at 1398 Draper St, Kingsburg, CA 93631 ("Title Company") _____ as escrow officer ("Escrow Officer") and deposit this Agreement with the Title Company. This Agreement, when signed by both parties and deposited with the Title Company, will be the joint escrow instructions. Purchaser and Seller must sign any other form instructions required by Title Company that are not inconsistent with the terms of this Agreement.

4.1 **Closing Deliveries by Seller.** Seller hereby covenants and agrees to deliver or cause to be delivered to Purchaser on the Closing Date the following instruments and documents, the delivery of each of which shall be a condition precedent to the Closing for the benefit of Purchaser:

4.1.1 **Deed.** An executed grant deed in the form attached hereto as Exhibit B ("Deed").

4.1.2 **Non-Foreign Certification.** Seller shall deliver a certification duly executed by Seller under penalty of perjury in the form of, and upon the terms set forth in, the Transferor's Certification of Non-Foreign Status ("FIRPTA Certificate"), setting forth Seller's address and federal tax identification number and certifying that Seller is a "United States Person" and that Seller is not a "foreign person" in accordance with and/or for the purpose of the provisions of Sections 7701 and 1445 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

4.1.3 **Closing Statement.** An executed settlement statement reflecting the pro-rations and adjustments required under Section 7.

4.1.4 **Closing Documents.** Any additional tax forms, recordation forms, 1099s or other documents as may be reasonably required to consummate the transaction contemplated by this Agreement.

4.1.5 Cash Pro-rations. The amount, if any, required of Seller under Section 7.

4.2 Closing Deliveries by Purchaser. Purchaser hereby covenants and agrees to deliver or cause to be delivered on the Closing Date the following instruments and documents, the delivery of each of which shall be a condition precedent to the closing for the benefit of Seller:

4.2.1 Purchase Price. Purchaser shall deliver the Purchase Price in accordance with Section 3.

4.2.2 Preliminary Change of Ownership Report. Purchaser shall deliver a Preliminary Change of Ownership Report completed in the manner required in Fresno County.

4.3 Additional Closing Items. Each party shall also execute and deliver such other documents, certificates and instruments as may customarily be required in transactions of this type. The items required to be submitted pursuant to this Section and Sections 4.1 and 4.2 are referred to herein collectively as the "Closing Items."

5. **Possession**. Unless this Agreement is terminated pursuant to the terms hereof, the Seller shall deliver and the Purchaser shall accept possession of the Property on the Closing Date, without any rights of tenants or any other party in possession.

6. **Conditions to Closing**. Seller's obligation to sell and Purchaser's obligation to purchase the Property shall be subject to and expressly conditioned upon satisfaction (or waiver) of the following conditions precedent to the Closing set forth in Sections 6.1 through 6.4, which shall be exclusively for the benefit of Seller and Purchaser.

6.1 Conditions Precedent for the Close of Escrow. After the Effective Date, the Purchaser shall have a 45-day due diligence period, which may be extended by agreement of the parties, to complete the following: (1) Purchaser approval of Phase I and, if Purchaser chooses, Phase II Environmental Site Assessments; (2) Purchaser inspections of the Property; and (3) compliance with the California Environmental Quality Act.

6.2 Access to the Property. The Seller agrees that the Purchaser, and the Purchaser's authorized agents, shall have full access to the Property prior to the Close of Escrow for purposes of carrying out such testing, surveying, and other related activities as the Purchaser, and the Purchaser's authorized agents, may elect in order to satisfy the Purchaser's due diligence referenced in Section 6.1 above.

6.3 Condition of Issuance of Policy of Title Insurance. At the Close of Escrow, the Title Company shall be prepared to issue the Owner's Title Policy as specified in Section 7.2.

6.4 Parties' Remedies in the Event of Unsatisfied Condition. In the event any condition precedent to the Close of Escrow has not been satisfied, the Party benefitted by such condition shall have the right, in its sole discretion, to either (a) waive the condition and proceed with the Close of Escrow, or (b) terminate this Agreement, in which case the Parties shall have no further obligation hereunder.

7. **Prorated and Adjusted Items.** The following items shall be prorated and/or adjusted using a 365-day year as follows:

7.1 Taxes. All general and special real property taxes and assessments shall be paid by Seller prior to the Closing.

7.2 Other Costs. Seller shall pay all water, sewer, telephone, and all other applicable utility charges incurred on or before the Closing Date with respect to the Property. After the Closing, Purchaser shall pay all such charges. Seller shall pay the applicable transfer taxes, the cost of recording any curative instruments and the cost of a CLTA standard coverage owner's title policy. Purchaser shall pay the cost of recording the Deed conveying title to the Property, if any, and the cost of any extended coverage or ALTA owner's title policy and the cost of any title endorsements. Escrow fees shall be shared equally by the parties. Each party shall pay its own legal fees.

8. **Closing.** Consummation of this sale and purchase ("Closing") shall take place within thirty (30) days following the Opening of Escrow, or as it may be extended by one or more Extend Contingency Periods, unless this Agreement has been duly and timely terminated pursuant to the provisions of this Agreement. Closing shall take place at the offices of the Escrow Holder and coordinated through their affiliate offices. As used herein, "Closing Date" means the date and time on which the Deed is recorded in the Official Records of the County.

8.1 Outside Closing Date. In no event shall the Closing occur later than one hundred twenty (120) days following the Opening of Escrow (the "Outside Closing Date").

9. **Pre-Closing Covenants.** Seller shall between the date hereof and the Closing Date, unless otherwise consented to in writing by Purchaser:

10.1 Maintain the Property in compliance with all applicable laws and in its present condition, reasonable wear and use excepted.

10.2 Not suffer or permit any new easements, encumbrances, liens or security interests to attach to the Property, or transfer or convey the Property or any portion or portions of the Property.

10.3 Not enter into or amend any contracts or agreements pertaining to the Property, which would survive the Closing and be binding upon Purchaser.

10. **Risk of Loss.**

11.1 Condemnation. If before the Closing Date any action or proceeding is commenced for the condemnation or exercise of the rights of eminent domain with respect to the Property or any portion of the Property, or if Seller is notified by the duly authorized officer of a duly empowered condemning authority of the intent to commence such action or proceeding ("Condemnation") and if such Condemnation would materially and adversely affect the use or operation of the Property, have the effect of decreasing the square footage of the buildable area at the Property, or reduce or eliminate access to the Property, then Purchaser may either (a) terminate this Agreement, or (b) proceed with the Closing without modifying the terms of this Agreement and without reducing the Purchase Price, on the condition that Seller must assign and turn over, and Purchaser will be entitled to keep, all awards for the Condemnation that accrue to Seller; provided, however, if any award is rendered specifically to compensate Seller for Seller's lost goodwill, such an award shall belong to Seller. Seller may not negotiate, resist, or stipulate to any Condemnation without Purchaser's written consent. Seller must notify Purchaser of any notice of Condemnation of all or any portion of the Property within five (5) days after the receipt of such notice, and Purchaser must exercise its option(s) as provided in this Section within fifteen (15) days after receipt of such notice. If necessary, the Closing Date will be extended to give Purchaser the full 15-day period to make such election. Notwithstanding the foregoing,

if any condemnation action is commenced prior to the Closing Date, Purchaser shall have the right to terminate this Agreement.

11.2 Damage and Destruction. If before the Closing Date any damage or destruction of the Property, or any portion of it, occurs, then within three (3) days after determination of the amount of the Insurance Proceeds (defined below) to be received with respect to such loss, Purchaser must elect, by written notice to Seller, either to: (a) terminate this Agreement; or (b) receive an assignment of the Insurance Proceeds with respect to such loss and proceed to Closing without any reduction in the Purchase Price (in which event the Closing shall occur within thirty (30) days after such election). If Purchaser shall fail to provide such written notice of election within ten (10) days after determination of the amount of the Insurance Proceeds to be received with respect to such loss, then Purchaser shall be deemed to have elected to terminate this Agreement. As used herein, "Insurance Proceeds" means the proceeds from any and all insurance maintained by Seller with respect to the Property and/or to such loss, including without limitation fire and casualty and liability insurance.

11. **Representations and Warranties of Seller**. Seller represents and warrants to Purchaser that, to Seller's actual knowledge, except as set forth or otherwise disclosed in this Agreement, or in any exhibit to this Agreement, or in any schedule of exceptions attached to this Agreement:

12.1 This Agreement has been duly authorized and executed on behalf of Seller. As of the Opening of Escrow, this Agreement constitutes a valid and binding agreement, enforceable in accordance with its terms. As of the Opening of Escrow, Seller has obtained all consents, releases and permissions and has given all required notifications related to the transaction herein contemplated and required under any covenant, agreement, encumbrance, law or regulation to which Seller is a party or by which Seller is bound.

12.2 Seller is the fee simple owner of the Property. Seller is not a party to any contract, agreement or commitment to sell, convey, assign, transfer or otherwise dispose of any portion or portions of the Property.

12.3 Seller has not received notice of violation of any applicable law, ordinance, regulation, order or requirement relating to Seller's operation or use of the Property.

12.4 To Seller's actual knowledge: (i) neither the Property nor any part thereof is in breach of any environmental laws; (ii) no part of the Property has ever been used as a landfill, dump, toxic waste disposal site or storage area; (iii) there are no underground storage tanks at the Property, or,

with respect to removed tanks, at the time of removal, any contaminated soil was removed; and (iv) the Property free of any Hazardous Materials that would trigger response or remedial action under any environmental laws or any existing common law theory based on nuisance or strict liability. This warranty is limited to matters of which Seller has actual knowledge, and Purchaser acknowledges that Seller has not made any affirmative investigation as to environmental issues affecting the Property in connection with this Agreement. As used in this Agreement, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

12.5 There is no litigation pending or to the actual knowledge of Seller, threatened, against or by Seller or the Property which relates to, or if decided adversely, could have a material adverse effect upon, the Property (including condemnation or similar proceedings).

12.6 Except as disclosed in writing to Purchaser by Seller as part of the Materials, there are no leases, licenses or other occupancy or use agreements, written or oral, in effect in which Seller has granted any party rights to possession or use of the Property or any portion thereof, nor has Seller given any party an option or right of first refusal to purchase any portion of the Property.

12.7 Except as disclosed in writing to Purchaser by Seller as part of the Materials, the Property is not subject to any operating, maintenance or repair contract or other agreements that will bind the Property or Purchaser after the Closing ("Service Contracts").

12.8 Except as disclosed in the Materials, Seller has no actual knowledge of any violations of health, environmental or other applicable law, ordinance, code, order or regulation in any respect with regard to the Property.

12.9 Seller is not aware of any inaccuracy or incompleteness of any of the documents, materials or reports contained in the Materials.

12.10 To Seller's actual knowledge and except for matters of record as of the date hereof, there are no bonds or assessments or charges for any public improvements or utilities made against the Property which remain unpaid (or which will remain unpaid by Seller as of the Closing Date).

12.11 No representation, statement or warranty by Seller contained in this Agreement or in any exhibit attached hereto contains or will contain any untrue statements or omits, or will omit, a material fact necessary to make the statement of fact therein recited not misleading. If, after Seller's execution hereof and prior to the Closing, any event occurs or condition exists of which Seller becomes aware which renders any of the representations contained herein untrue or misleading, Seller shall promptly notify Purchaser in writing.

All representations and warranties contained in this Agreement shall be deemed remade as of the Closing Date, except in the event of a change in circumstances not within the control of Seller affecting any representations or warranties set forth herein, in which case Seller shall provide written notice to Purchaser regarding such changed circumstances within a reasonable time following such change (not to exceed five (5) Business Days) following the date the Seller obtains actual knowledge of the changed circumstance), and prior to the Closing. As used herein, "actual knowledge" of Seller refers to the actual knowledge of Seller's employees and agents directly involved in the negotiation and/or drafting of this Agreement, and those responsible for the acquisition or maintenance of the Property.

12. **Assignment.** This Agreement shall not be assigned by any party hereto to any person or entity without the express written consent of Seller.

13. **Binding Effect.** The covenants herein shall bind and inure to the benefit of the executors, administrators, successors and assigns of the respective parties.

14. **Brokers.** Purchaser and Seller each represents and warrants to the other that it has not engaged the services of any real estate broker, salesperson, agent or finder, nor done any other act nor made any statement, promise or undertaking, which would result in the imposition of liability for the payment of any real estate brokerage commission, finder's fee or otherwise in connection with the transaction described in this Agreement. In the event that any person or entity perfects a claim for a brokerage commission, finder's fee or otherwise, based upon any agreement, statement or act, the Party through whom such person or entity makes such a claim shall be responsible therefor and shall defend, indemnify and hold the other Party and the property harmless from and against such claim and all loss, costs and expense associated therewith, including attorneys' fees.

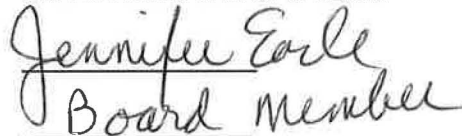
15. **Integration; Merger; Amendment; Survival of Representations.** Seller and Purchaser have not made any covenants, warranties or representations not set forth in this Agreement. This Agreement constitutes the entire Agreement between the parties. Except as otherwise provided herein, all representations, warranties and covenants set forth in this Agreement shall survive closing. This instrument shall as to all prior drafts or forms exchanged between the parties or executed by the parties, be the sole effective instrument between them as to the provisions set forth in this Agreement. None of the terms and provisions hereof shall be altered or amended unless in writing and signed by the parties.

16. **Execution in Counterparts and by Fax/Email.** This document may be validly executed and delivered by facsimile transfer/e-mail and/or portable document format (collectively, "Electronic Copy"). Any signer who executes this document and transmits this document by Electronic Copy intends that the Electronic Copy of their signature is to be deemed an original signature for all purposes. Any such Electronic Copy printout and any complete photocopy of such Electronic Copy printout are hereby deemed to be an original counterpart of this document. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. **Notices.** All notices shall be in writing and delivered personally, by overnight air courier service, by facsimile transmission or email, or by U.S. certified or registered mail, return receipt requested, postage prepaid, to the parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally, one (1) Business Day after depositing with an overnight air courier, or five (5) Business Days after depositing in the mail immediately, upon transmission (as confirmed by electronic confirmation of transmission generated by the sender's machine) for any notice given by facsimile or email:

If to Seller:

First Christian Church of Selma


Board member

Phone: (559) 896-2691

Email:

2026 Arrants Street

Selma CA 93662

If to Purchaser:

City of Selma

1710 Tucker St.

Selma, CA 93662

Attn: City Manager

Phone: (559) 891-2200

Email: RalphJ@CityofSelma.com

with a copy to: Mary Lerner, City Attorney

Lozano Smith LLP
7404 North Spalding
Fresno, CA 93720-3370

Email: mlerner@lozanosmith.com

18. **Governing Law.** This Agreement shall be construed according to the laws of the State of California.

19. **Attorney's Fees.** In the event any action or suit is brought by a party hereto against another party hereunder by reason of any breach of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorneys' fees, expert witness fees, accounting and engineering fees, and any other professional fees resulting therefrom.

20. **Time is of the Essence.** The Parties agree time is of the essence of this Agreement.

21. **Expenses.** Seller and Purchaser shall pay their respective expenses, legal fees and costs in connection with the preparation of this Agreement and other agreements and documents related to this Agreement and the transactions contemplated herein.

22. **Severability.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

23. **Construction.** In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against a party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates

24. **Qualification; Authority.** Each individual executing this Agreement on behalf of a party which is an entity, represents, warrants and covenants to the other party that (a) such person is duly

authorized to execute and deliver this Agreement on behalf of such entity in accordance with authority granted under the organizational documents of such entity, and (b) such entity is bound under the terms of this Agreement.

25. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall be deemed but one and the same instrument, and a facsimile or e-mailed PDF copy of such execution shall be deemed an original.

26. **Miscellaneous.**

26.1 Execution of Documents. The parties agree to execute such instructions to Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

26.2 Inducement. The making, execution and delivery of this Agreement by the parties hereto have been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

26.3 Incorporation of Exhibits. The exhibits attached hereto are incorporated herein by reference.

26.4 Relationship of Parties. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intention of the parties to merely create the relationship of Seller and Purchaser with respect to the Property to be conveyed as contemplated hereby.

26.5 Survival of Warranties. It is the express intention and agreement of the parties to this Agreement that all covenants, representations and warranties made by Seller in this Agreement shall survive this Agreement, the recordation of the Deed and the Closing for a period of twelve (12) months.

26.6 Limitation of Liability. The parties agree that neither the holders of beneficial interests nor the trustees, officers, members, employees or agents of either party or any assignee or

affiliate of either party shall be personally liable under the Agreement and all parties hereto shall look solely to the assets of the entity, for the payment of any claim or the performance of any obligation of either under this Agreement.

26.7 **Force Majeure.** If either Party is delayed or prevented from performing any act required in this Agreement by reason of any event beyond the reasonable control of either Party, including without limitation, by labor disputes, fire, unusual delay in deliveries, weather or acts of God, terrorism, delay in the issuance of permits or approvals, acts of governmental entities, unavoidable casualties or any other such causes beyond such Party's control, then the time herein fixed for completion of such obligation(s) shall be extended by the number of days that such Party has been delayed.

27. **1031 Exchange.** Both Seller and Purchaser agree to reasonably cooperate with each other in the event that either or both wish to participate in a 1031 exchange. Any party initiating an exchange shall bear all costs of such exchange.

28. **Independent Review.** The Parties have had the opportunity to obtain, and have obtained, independent legal or other professional advice with regard to this Agreement. The Parties acknowledge that the terms of this Agreement have been read and fully explained and that those terms are fully understood and voluntarily accepted.

29. **Voluntary Agreement.** The Seller and Purchaser represent that they have read this Agreement in full and understand and voluntarily agree to all of its provisions. Both the Seller and Purchaser further declare that, prior to signing this Agreement, they availed themselves of relevant data, through sources of their own selection, including a legal representative, in deciding whether to execute this Agreement.

30. **Entire Agreement.** This Agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, nor agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.

31. **Amendments.** This Agreement may not be amended or modified except in writing signed by each of the Parties to the Agreement.

32. **Interpretation.** This Agreement shall be construed as to its fair meaning and not strictly for or against either Party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

SELLER:

First Christian Church of Selma

By: Jennifer Earle
Board Member Its 11/11/21

PURCHASER:

CITY OF SELMA,
a California municipal corporation

Ralph Jimenez, Interim City Manager

ATTEST:

Reyna Rivera, City Clerk

APPROVED AS TO FORM:

Mary Lerner, City Attorney

LOZANO SMITH LLP

J:\wdocs\03492\004\AGT\00888991.DOC

EXHIBIT A
DESCRIPTION OF PROPERTY

[Attached]

EXHIBIT "A"

LEGAL DESCRIPTION

The land described herein is situated in the State of California, County of Fresno, City of Selma, described as follows:

The South half of the Southeast quarter of the Southeast quarter of the Northwest quarter of Section 31, Township 15 South, Range 22 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, according to the Official Plat thereof.

Excepting therefrom the South 7 feet thereof.

Also Excepting therefrom that portion of the South half of the Southeast quarter of the Southeast quarter of the Northwest quarter of Section 31, Township 15 South, Range 22 East, Mount Diablo Base and Meridian, for public street purposes per Grant Deed recorded February 19, 2020, as Document No. 2020-0021247 more particularly described as follows;

COMMENCING at the Center Quarter Corner of said Section 31; thence along the South line of the Northwest Quarter of said section 31, North 89°31'20" West, a distance of 659.29 feet; thence Leaving said South line, North 00°03'46" East, a distance of 7.00 feet to a point on the North right-of-way line of Huntsman Avenue, and the TRUE POINT OF BEGINNING;

Thence Leaving said North right-of-way line, North 00°03'46" East, 23.00 feet; thence South 89°31'20" East, 592.17 feet to the beginning of a tangent curve concave to the Northwest, having a Radius of 25.00 feet, through a central angle of 90°20'50" with an arc length of 39.42 feet; thence North 00°07'50" East, 274.70 feet, thence South 89°31'17" East, 22.00 feet to a point on the West right-of-way line of Thompson Avenue; thence South 00°07'50" West along said West right-of-way line, 329.85 feet to a point on said North right-of-way line of Huntsman Avenue; thence North 89°31'20" West along said North right-of-way line 639.30 feet to the TRUE POINT OF BEGINNING.

Also Excepting therefrom an undivided 1/2 interest in all oil, gas, and/or minerals in and under said land, together with the right to enter upon said land to remove said oil, gas and/or minerals as reserved in Deed recorded March 16, 1937 in Book 1575 Page 65 of Official Records.



EXHIBIT B
GRANT DEED

FREE RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

City Manager

City of Selma

Selma, CA 93245

APN: 358-473-335

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXEMPT FROM RECORDING FEE PER GOV. CODE § 27383

GRANT DEED

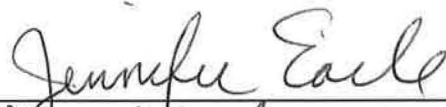
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, First Christian Church of Selma ("Grantor"), hereby grants to the CITY OF SELMA, a California municipal corporation ("Grantee"), all of its respective rights, title, and interest in the real property hereinafter referred to as the "Property" in the City of Selma, Fresno County, State of California, as more particularly described in Attachment 1 attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf as of the date written below.

Dated: _____

GRANTOR

First Christian Church of Selma,



Board Member, Its _____

Dated: 11/11/21

GRANTEE

CITY OF SELMA,
a California municipal corporation,

Ralph Jimenez, Interim City Manager

ATTEST:

Reyna Rivera, City Clerk

APPROVED AS TO FORM:

Mary Lerner, City Attorney

LOZANO SMITH LLP

Attachment 1 to Grant Deed
Legal Description of the Property

[Attached]

EXHIBIT "A"

LEGAL DESCRIPTION

The land described herein is situated in the State of California, County of Fresno, City of Selma, described as follows:

The South half of the Southeast quarter of the Southeast quarter of the Northwest quarter of Section 31, Township 15 South, Range 22 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, according to the Official Plat thereof.

Excepting therefrom the South 7 feet thereof.

Also Excepting therefrom that portion of the South half of the Southeast quarter of the Southeast quarter of the Northwest quarter of Section 31, Township 15 South, Range 22 East, Mount Diablo Base and Meridian, for public street purposes per Grant Deed recorded February 19, 2020, as Document No. 2020-0021247 more particularly described as follows;

COMMENCING at the Center Quarter Corner of said Section 31; thence along the South line of the Northwest Quarter of said section 31, North 89°31'20" West, a distance of 659.29 feet; thence Leaving said South line, North 00°03'46" East, a distance of 7.00 feet to a point on the North right-of-way line of Huntsman Avenue, and the TRUE POINT OF BEGINNING;

Thence Leaving said North right-of-way line, North 00°03'46" East, 23.00 feet; thence South 89°31'20" East, 592.17 feet to the beginning of a tangent curve concave to the Northwest, having a Radius of 25.00 feet, through a central angle of 90°20'50" with an arc length of 39.42 feet; thence North 00°07'50" East, 274.70 feet, thence South 89°31'17" East, 22.00 feet to a point on the West right-of-way line of Thompson Avenue; thence South 00°07'50" West along said West right-of-way line, 329.85 feet to a point on said North right-of-way line of Huntsman Avenue; thence North 89°31'20" West along said North right-of-way line 639.30 feet to the TRUE POINT OF BEGINNING.

Also Excepting therefrom an undivided 1/2 interest in all oil, gas, and/or minerals in and under said land, together with the right to enter upon said land to remove said oil, gas and/or minerals as reserved in Deed recorded March 16, 1937 in Book 1575 Page 65 of Official Records.



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

December 6, 2021

ITEM NO: 3.

SUBJECT: Review/Presentation Regarding Rockwell Pond Park Conceptual Design and Project Budget

RECOMMENDATION: Following a presentation and review of the Rockwell Pond Park conceptual design and budget, direct staff with a specific meeting date to return to the City Council for approval of a final project design and budget.

BACKGROUND: After receiving community input from two Community Forums and in consideration of the amenities outlined within our Proposition 68 Rockwell Pond Park Grant (Grant), RRM Design has coordinated with staff and Vanir Construction regarding development of a Park conceptual design and budget. The conceptual design is presented today to further discussion and consideration.

As previously discussed with the Council, the Grant requires the City to have open space that includes two soccer/football fields with lights, two basketball courts with lights, a water spray park, two picnic shelters, restrooms, parking, walking/jogging trails, and an ADA accessible playground. Although the City is required to include these features, additional amenities can be included and the size of the park can be expanded without negatively affecting the grant.

RRM Design representatives will present the Rockwell Pond Park conceptual design/budget and are available to address the Council's questions. In addition, staff will present the design items/suggestions received from the two Community Forums. These items/suggestions include purchasing an additional 5 acres of land that lies between the western park boundary line and De Wolf Avenue for additional parking, a dog park, pickleball courts, exercise/workout stations, security fencing, and expanded facility lighting.

RRM Design representatives and staff will also present the estimated park budget figures for the conceptual design, as well as the above-mentioned items/suggestions discussed during the Community Forums. Following the presentation staff, RRM Design, and Vanir Construction will be available to answer questions. Based on input and direction from the City Council, staff will prepare a final design and project budget for consideration at a future City Council meeting. After the final design and park budget is approved, the next phase would include going out to bid for construction companies.

Mikal Kirchner, Director of Recreation
Fernando Santillan, Deputy City Manager
Ralph Jimenez, Interim City Manager

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

December 6, 2021

ITEM NO: 4.

SUBJECT: Consideration of an Employment Agreement with Fernando Santillan for City Manager Services

DISCUSSION: Pursuant to Chapter 18 of Title 1 of the City's Municipal Code, the City Manager serves as the administrative head of the City, under the direction and control of the City Council. The City recently underwent a recruitment for a City Manager, and the City Council directed the City Attorney's office to negotiate an Employment Agreement ("Agreement") with Fernando Santillan. The terms of the proposed agreement will be presented and discussed as regular business.

RECOMMENDATION: Staff recommends that the City Council approve the Employment Agreement with Fernando Santillan.

Ralph Jimenez, Interim City Manager

ITEM NO: 5.

SUBJECT: Approve Resolution authorizing City Manager to execute Professional Service Agreement with OpenGov for Electronic Permitting Software

RECOMMENDATION: Adopt Resolution authorizing City Manager to execute Professional Service agreement with OpenGov for Electronic Permitting Software and certify competitive procurement process compliance.

BACKGROUND: The City of Selma was awarded a Local Early Action Planning Grant (LEAP) to supplement the requested funding allocated through SB2 which included the permitting software. An additional \$69,215 from the General Fund was budgeted in 2021-22 FY, per Council direction on February 16, 2021. This will provide a total of \$218,939 for procurement and implementation of at least three years of service for a new Electronic Permitting Software.

SB2: \$25,000
LEAP \$124,724
General Fund: \$69,215
Total: \$218,939

DISCUSSION: City of Selma posted the Request for Proposals from September 15, 2021 to October 6, 2021. This was posted to the website and sent directly to nine (9) potential respondents. Three (3) proposals were received and evaluated by a panel of staff members that are directly affected by the software upgrade. Scores were as follows for the three proposals: Redmark Technologies - 304, Tyler Technologies – 339, OpenGov - 462. It is the recommendation of staff to enter into a Professional Service Agreement with OpenGov. Their proposal for a five-year period of service and implementation is \$159,600. Staff will ensure the grant funding is used in accordance with the grant terms to pay for the additional two years of service and/or augment additional related software needs such as additional data migration or a Geographic Information System (GIS).

The development and implementation phase will take approximately eight months. Staff anticipates a go-live date in Summer 2022.

Fernando Santillan, Deputy City Manager
Ralph Jimenez, City Manager

RESOLUTION NO. 2021-____R

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA
APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A
PROFESSIONAL SERVICE AGREEMENT WITH OPENGOV INC. FOR PERMITTING
SOFTWARE**

WHEREAS, the City of Selma is in need of an updated and user-friendly permitting system to streamline services and to better communicate with the public; and

WHEREAS, the City has budgeted and prepared for the cost of an upgrade to permitting software with support from SB2 and LEAP grant awards (“Grant Awards”).

WHEREAS, pursuant to the terms and conditions of the Grant Awards, the City is required to use a fair and competitive procurement process to select the vendor for the permitting software; and

WHEREAS, on September 15, 2021, the City issued its Request for Proposals for the permitting software, in response to which, OpenGov Inc. submitted the highest-ranking responsive proposal.

NOW, THEREFORE, the City Council of the City of Selma does hereby resolve as follows:

1. The foregoing recitals are true and correct.
2. The City Council hereby approves the proposal by OpenGov Inc. with a five-year cost of \$159,600.00 in accordance with the terms of the Professional Services Agreement, attached hereto as Attachment ‘1.’
3. The City Manager, or his designee, is authorized to execute the Agreement and any and all necessary documents and make all necessary expenditures related to the same on behalf of the City.
4. The City Council certifies that services under the Agreement were procured pursuant a good faith competitive process.

The foregoing resolution was duly approved by the Selma City Council at a regular meeting held on the 6th day of December 2021 by the following vote, to wit:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

Scott Robertson, Mayor

ATTEST:

Reyna Rivera, City Clerk

CITY OF SELMA
PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of December 6, 2021 ("Effective Date"), between the City of Selma, a municipal corporation ("City") and OpenGov, Inc. ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, City desires to engage Consultant to perform the Professional Services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

WHEREAS, Consultant shall provide the Software Services pursuant to the terms and conditions set forth herein, if applicable and the Software Services Agreement attached hereto as Exhibit A ("SSA") and incorporated herein by reference. Any capitalized words or terms used but not defined herein shall have the meaning assigned to them in the SSA.

WHEREAS, In addition, except as provided otherwise in this Agreement, the parties are bound by the Consultant's Order Form attached to this Agreement as Exhibit B (the "Order Form") and made a part of this Agreement. Execution of this Agreement by the parties will be deemed to be execution of the Order Form by the parties.

WHEREAS, the City intends to fund the services contemplated by this Agreement with the State of California LEAP and SB2 planning grant funding. In order to use the funds under LEAP and SB2, the City must abide by the terms and conditions of LEAP and SB2, which are attached to this Agreement as Exhibits D and E. The Consultant's signature below does not subject Consultant to the terms of LEAP or SB2, and does not create a direct contractual relationship with City under LEAP or SB2, but signifies Consultant's agreement to the terms in this Agreement as they apply to City.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than December 31, 2026 unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

(a) Consultant shall perform the Professional Services described and set forth in Exhibit C, attached hereto and incorporated herein as though set forth in full. ("Statement of Work"). Professional Services, other than those specifically described in the Statement of Work, shall not be performed

without prior written approval of the City. The Professional Services shall be performed by Consultant, unless prior written approval is first obtained from the City.

(b) City shall have the right to request, in writing, changes to the Professional Services as set forth in the Statement of Work. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Professional Services in a manner reasonably satisfactory to the City and in a professional and workman-like manner.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Professional Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Professional Services. All Professional Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Professional Services shall be qualified and licensed to perform such services.

3. PRECEDENCE OF AGREEMENT DOCUMENTS

In the event of any conflict, the terms of this Agreement shall take precedence over all other agreements and other documents relating the Software Services and Professional Services, including, but not limited to, the Software Services Agreement (Exhibit A), the Consultant's Order Form (Exhibit B), and the Statement of Work (Exhibit C).

4. MANAGEMENT

City's City Manager shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Professional Services or the compensation due to Consultant.

5. PAYMENT

(a) The City agrees to pay Consultant Software Services Fee and the Professional Services Fee in accordance with the Order Form, attached hereto and incorporated herein by this reference. This amount shall not exceed (\$159,600) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore. Except to the extent otherwise expressly stated in this Agreement or in an Order Form, all obligations to pay the fees set forth in the Order Form are non-cancelable and all payments are non-refundable. All fees are due annually in advance.

6. SUSPENSION OR TERMINATION OF AGREEMENT

If either party materially breaches any term of the Agreement and fails to cure such breach within thirty (30) days after notice by the non-breaching party (ten (10) days in the case of non-payment), the non-breaching party may terminate the Agreement. With respect to software services provided by Consultant under the Agreement, the City will be responsible for payment of any portion of the annual software services fee due, and any payment made for software services shall be non-refundable. With respect to professional services that may be provided by the Consultant pursuant to a Statement of Work, the City will be responsible for payment of any portion of the professional services completed prior to termination of the Agreement.

7. NON-APPROPRIATION; LACK OF AVAILABLE FUNDS

The parties acknowledge that the services under this Agreement are to be funded with State LEAP and SB2 planning grant funds. If, during the term of this Agreement, or any renewal term, if applicable, the State terminates or reduces such funding to the City, then City may elect to terminate this Agreement, at its sole discretion, by giving thirty (30) days' prior written notice of termination to Consultant. Upon termination of the Agreement under this section, the City shall have no further liability to pay any funds to the Consultant or to furnish any other consideration under this Agreement, and the Consultant shall not be obligated to perform any provisions of this Agreement or to provide services intended to be funded pursuant to this Agreement. If partial funds are appropriated or provided, the City shall have the option to either terminate this Agreement with no liability to the City or offer an Agreement amendment to the Consultant to reflect the reduced amount. The City represents and warrants that (i) as of the Effective Date, it has appropriated the funds for this

Agreement for the current fiscal year and (ii) it shall not use the foregoing right to terminate for nonappropriation as a means to terminate for convenience.

8. MAINTENANCE OF RECORDS

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees upon three (3) days' prior written notice and during Consultant's normal business hours to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all Contractor retains all right, title, and interest in the Software Services and all Intellectual Property Rights in the Software Services. The look and feel of the Software Services, including any custom fonts, graphics and button icons, are the property of Contractor, and the City may not copy, imitate, or use them, in whole or in part, without Contractor's prior written consent. Subject to the City's obligations under this Agreement, Contractor hereby grants to the City a non-exclusive, royalty-free license during the Term to use the Software Services. For the avoidance of doubt, "Intellectual Property Rights" means, all intellectual property rights including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature.

9. INDEMNIFICATION; LIMITATION OF LIABILITY

Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of an uncured material breach of this Agreement connected with, or result from any negligent or willful act, error, or omission of Consultant or any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors, in the performance of or failure to perform Consultant's obligations under this Agreement. For purposes of this section 9, a material breach has not been cured if any third party has been harmed (whether such harm is known to that party or not) or liability has otherwise arisen, as a result of or relating to the breach.

By Type. NEITHER PARTY, NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR (C) FOR

ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

By Amount. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CITY TO CONSULTANT (OR, IN THE CASE OF CITY, PAYABLE) FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

Limitation of Liability Exclusions. The limitations of liability set forth above do not apply to, and each party accepts liability to the other for: (a) claims based on either party's intentional breach of its Confidentiality obligations, (b) claims arising out of fraud or willful misconduct by either party and (c) either party's unauthorized use, distribution, or disclosure of the other party's intellectual property.

No Limitation of Liability by Law. Because some jurisdictions do not allow liability or damages to be limited to the extent set forth above, some of the above limitations may not apply to City.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

10. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit D attached hereto and incorporated herein by reference.

11. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during their tenure or for one year thereafter, shall have any interest direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order. (b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: City of Selma
1710 Tucker Street
Selma, CA 93662
Attention: City Manager

With a Copy to: City Attorney
7404 N. Spalding Ave. Fresno, CA 93720
Attention: Mary Lerner
mlerner@lozanosmith.com

To Consultant: OpenGov, Inc.
6525 Crown Blvd. #41340 San Jose, CA 95160
Attention: General Counsel legal@opengov.com

17. ASSIGNMENT

Except as set forth herein, Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Consultant may assign, upon written notice to City, its rights and obligations under this Agreement to: (i) its corporate affiliate; or (ii) any entity that acquires all or substantially all of its capital stock or its assets related to this Agreement, through purchase, merger, consolidation, or otherwise. Any other attempted assignment shall be void. In the event of such assignment by Consultant where consent is not provided by the City, the City shall have the right to terminate the Agreement within seven (7) days from the later of (a) the date it receives written notice of such assignment, or (b) the assignment date. This Agreement shall inure to the benefit of and bind each party's permitted assigns and successors.

18. GOVERNING LAW/ATTORNEYS' FEES

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Fresno County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to

reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

19. ENTIRE AGREEMENT

This Agreement and Exhibits A-D attached hereto contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

20. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

21. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

22. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

23. WAIVER

The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

24. REMEDIES

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The

exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

25. AUTHORITY TO EXECUTE THIS AGREEMENT

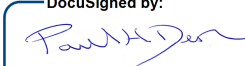
The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of OpenGov.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

“CITY”
City of Selma

By: Ralph Jimenez, Interim City Manager

“CONSULTANT”
OpenGov Inc.

DocuSigned by:

A7E3687D6FFE426...

By: Paul H. Denton

Attest:

By: Reyna Rivera, City Clerk

Approved as to form:

By: Mary F Lerner, City Attorney

Attachments

Exhibit A: Software Service Agreement
Exhibit B: Order Form
Exhibit C: Statement of Work
Exhibit D: Insurance Requirements
Exhibit E: SB2 Grant Terms
Exhibit F: LEAP Grant Terms

EXHIBIT A

OPENGOV SOFTWARE SERVICES TERMS

These Software Services Terms (these “Software Terms”) are an Exhibit to the Professional Service Agreement (“Agreement”), that is entered into by OpenGov, Inc., a Delaware corporation, with a principal place of business at 6525 Crown Blvd #41340, San Jose, CA 95160 (“OpenGov”) and the City of Selma at 1710 Tucker Street, Selma, CA 93662, (“Customer”), as of the date of the Agreement (the “Effective Date”). These Software Terms set forth the terms under which Customer will be permitted to use OpenGov’s hosted software services. In the event of a conflict between these Software Terms and the Agreement, the Agreement shall prevail.

1. DEFINITIONS

“Customer Data” means data that is provided by Customer to OpenGov pursuant to these Software Terms (for example, by email or through Customer’s software systems of record). Customer Data shall not include any confidential personally identifiable information.

“Documentation” means the documentation for the Software Services at the Customer Resource Center page found at <https://opengov.zendesk.com>.

“Feedback” means suggestions, comments, improvements, ideas, or other feedback or materials regarding the Software Services provided by Customer to OpenGov, including feedback provided through online developer community forums.

“Initial Term” means the initial license term specified in number of years on the Order Form, commencing on the Effective Date.

“Intellectual Property Rights” means all intellectual property rights including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature.

“Order Form” means OpenGov’s Software Services order form that: (a) specifies the Software Services provided by OpenGov; (b) references these Software Terms; and (c) is signed by authorized representatives of both parties.

“Renewal Term” means each additional renewal period, which shall be for a period of equal duration as the Initial Term, for which this Software Terms is extended pursuant to Section 7.2.

2. SOFTWARE SERVICES, SUPPORT AND PROFESSIONAL SERVICES

2.1 Software Services. Subject to the terms and conditions of these Software Terms, OpenGov will use commercially reasonable efforts to perform the software services identified in the applicable Order Form entered into by OpenGov and Customer (“Software Services”).

2.2 Support & Service Levels. Customer support is available by email to support@opengov.com or by using the chat messaging functionality of the Software Services, both of which are available during OpenGov’s standard business hours. Customer may report issues any time. However, OpenGov will address issues during business hours. OpenGov will provide support for the Software Services in accordance with the Support and Software Service Levels found at <https://opengov.com/service-sla>, as long as Customer is entitled to receive support under the applicable Order Form and these Software Terms.

2.3 Professional Services.

(a) If OpenGov or its authorized independent contractors provides professional services to

Customer, such as implementation services, then these professional services will be described in a statement of work (“SOW”) agreed to by the parties (the “Professional Services”). Unless otherwise specified in the SOW, any pre-paid Professional Services Fees must be utilized within one (1) year from the Effective Date. Any unused pre-paid Professional Services Fees shall be forfeited.

(b) Unless the SOW provides otherwise, all reasonable travel expenses, pre-approved by Customer and incurred by OpenGov in performing the professional services will be reimbursed by Customer. Travel expenses include cost of coach airfare travel round trip from the individual’s location to Customer’s location, reasonable hotel accommodations, ground transportation and meals.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Restrictions. Customer may not use the Software Services in any manner or for any purpose other than as expressly permitted by the Software Terms. Customer shall not, and shall not permit or enable any third party to:

- (a) use or access any of the Software Services to build a competitive product or service;
- (b) modify, disassemble, decompile, reverse engineer or otherwise make any derivative use of the Software Services (except to the extent applicable laws specifically prohibit such restriction);
- (c) sell, license, rent, lease, assign, distribute, display, host, disclose, outsource, copy or otherwise commercially exploit the Software Services;
- (d) perform or disclose any benchmarking or performance testing of the Software Services;
- (e) remove any proprietary notices included with the Software Services;
- (f) use the Software Services in violation of applicable law; or
- (g) transfer any confidential personally identifiable information to OpenGov or the Software Services platform.

3.2 Responsibilities. Customer shall be responsible for obtaining and maintaining computers and third party software systems of record (such as Customer’s ERP systems) needed to connect to, access or otherwise use the Software Services. Customer also shall be responsible for:

- (a) ensuring that such equipment is compatible with the Software Services,
- (b) maintaining the security of such equipment, user accounts, passwords and files, and
- (c) all uses of Customer user accounts by any party other than OpenGov.

4. INTELLECTUAL PROPERTY RIGHTS; LICENSE GRANTS; ACCESS TO CUSTOMER DATA

4.1 Software Services. OpenGov retains all right, title, and interest in the Software Services and all Intellectual Property Rights in the Software Services. The look and feel of the Software Services, including any custom fonts, graphics and button icons, are the property of OpenGov and Customer may not copy, imitate, or use them, in whole or in part, without OpenGov’s prior written consent. Subject to Customer’s obligations under these Software Terms, OpenGov hereby grants to Customer a non-exclusive, royalty-free license during the Term to use the Software Services.

4.2 Customer Data. Customer retains all right, title, and interest in the Customer Data and all Intellectual Property Rights therein. Customer hereby grants to OpenGov a non-exclusive, royalty-free license to, and permit its partners (which include, without limitation the hosting providers of the Software Services) to, use, store, edit and reformat the Customer Data, and to use Customer Data for purposes of sales,

marketing, business development, product enhancement, customer service, or for analyzing such data and publicly disclosing such analysis (“Insights”), provided that in all such uses Customer Data is rendered anonymous such that Customer is no longer identifiable.

4.3 Access to Customer Data. Customer may download the Customer Data from the Software Services at any time during the Term, other than during routine software maintenance periods. OpenGov has no obligation to return Customer Data to Customer.

4.4 Feedback. Customer hereby grants to OpenGov a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use and incorporate into the Software Services and Documentation Customer’s Feedback. OpenGov will exclusively own any improvements or modifications to the Software Services and Documentation based on or derived from any of Customer’s Feedback including all Intellectual Property Rights in and to the improvements and modifications.

5. CONFIDENTIALITY

5.1 Each party (the “Receiving Party”) agrees not to disclose any Confidential Information of the other party (the “Disclosing Party”) without the Disclosing Party’s prior written consent, except as provided below. The Receiving Party further agrees:

- (a) to use and disclose the Confidential Information only in connection with these Software Terms; and
- (b) to protect such Confidential Information using the measures that Receiving Party employs with respect to its own Confidential Information of a similar nature, but in no event with less than reasonable care. Notwithstanding the above, the Receiving Party may disclose Confidential Information to the extent required by law or court order, provided that prior written notice of such required disclosure and an opportunity to oppose or limit disclosure is given to the Disclosing Party.

5.2 “Confidential Information” means all confidential business, technical, and financial information of the disclosing party that is marked as “Confidential” or an equivalent designation or that should reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding the disclosure (including these Software Terms). OpenGov’s Confidential Information includes, without limitation, the software underlying the Software Services and all Documentation.

5.3 Notwithstanding the foregoing, “Confidential Information” does not include

- (a) “Public Data,” which is data that the Customer has previously released to the public, would be required to release to the public, upon request, according to applicable federal, state, or local public records laws, or Customer requests OpenGov make available to the public in conjunction with the Software Services. Confidential Information does not include;
- (b) information that has become publicly known through no breach by the receiving party;
- (c) information that was rightfully received by the Receiving Party from a third party without restriction on use or disclosure; or
- (d) information independently developed by the Receiving Party without access to the Disclosing Party’s Confidential Information.

5.4 In the event that OpenGov 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, OpenGov will as soon as practicable 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, OpenGov 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.

6. PAYMENT OF FEES

6.1 Fees; Invoicing; Payment; Expenses.

(a) Fees. The fees for the Software Services for the Initial Term and any Renewal Term ("Software Services Fees") and the fees for Professional Services ("Professional Services Fees") are set forth in the applicable Order Form. Software Services Fees and Professional Services Fees shall hereafter be referred to as "Fees". Except to the extent otherwise expressly stated in these Software Terms or in an Order Form

(I) all obligations to pay Fees are non-cancelable and all payments are non-refundable;

(II) Customer must pay all Fees due under all Order Forms and SOW within thirty (30) days after Customer receives each invoice (invoices are deemed received when OpenGov emails them to Customer's designated billing contact); and

(III) the Software Service Fee shall be due annually in advance, and (iv) Customer must make all payments without setoffs, withholdings or deductions of any kind.

(b) Annual Software Maintenance Price Adjustment. OpenGov shall increase the Fees payable for the Software Services during any Renewal Term by 5% each year of the Renewal Term.

(c) Invoicing and Payment. OpenGov will invoice the Customer according to the Billing Frequency listed on the Order Form. Customer shall pay all invoices according to the Payment Terms listed on the Order Form.

(d) Travel Expenses. Unless the SOW provides otherwise, OpenGov will invoice Customer for travel expenses, pre-approved by the Customer, incurred in connection with each SOW as they are incurred. Customer shall pay all such valid invoices within thirty (30) days of receipt of invoice. Each invoice shall include receipts for the travel expenses listed on the invoice.

(e) Customer Delays; On Hold Fee.

(I) On Hold Notice. Excluding delays caused by Force Majeure as described in Section 10.5, if OpenGov determines that Customer's personnel or contractors are not completing Customer's responsibilities described in the applicable SOW timely or accurately, OpenGov shall promptly, but in no event more than thirty (30) days from the date of such determination deliver to Customer a notice (an "On Hold Notice") that:

(A) designates the Professional Services to be provided to the Customer as "On Hold";

(B) detail Customer's obligations and responsibilities necessary for OpenGov to continue performing the Professional Services; and

(C) specify the Customer shall be invoiced for lost time in production (e.g. delayed or lost revenue resulting from rescheduling work on other projects, delay in receiving milestone payments from Customer, equipment, hosting providers and human resources idle) for a fee equal to 10% of the first year Software Service Fee (the "On Hold Fee").

(II) Effects of On Hold Notice. Upon issuing an On Hold Notice, OpenGov shall be entitled, without penalty, to:

(A) reallocate resources otherwise reserved for the performance of the

Professional Services; and

(B) stop or caused to be stopped the Professional Services to be provided to the Customer until the Customer has fulfilled its obligations as set forth in the On Hold Notice. OpenGov shall remove the “On Hold” status, only upon Customer’s fulfillment of its obligations set out in the On Hold Notice, including payment of the On Hold Fee. Upon Customer’s fulfillment of its obligations in the On Hold Notice, OpenGov may, in its sole discretion, extend the timeline to complete certain Professional Services up to six (6) weeks, depending on the availability of qualified team resources (OpenGov cannot guarantee that these team resources will be the same as those who were working on the project prior to it being placed On Hold). OpenGov shall bear no liability or otherwise be responsible for delays in the provision of the Professional Services occasioned by Customer’s failure to complete Customer’s responsibilities or adhere to a Customer schedule which were brought to the attention of the Customer on a timely basis, unless such delays result, directly or indirectly from the failure of OpenGov or its authorized independent contractors to perform the Professional Services in accordance with these Software Terms or applicable SOW.

6.2 Consequences of Non-Payment. Except as otherwise provided by law, if Customer fails to make any payments required under any Order Form or SOW, then in addition to any other rights OpenGov may have under these Software Terms or applicable law:

- (a) Customer will owe late interest penalty of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower; and
- (b) If Customer’s account remains delinquent (with respect to payment of a valid invoice) for thirty (30) days after receipt of a delinquency notice from OpenGov, which may be provided via email to Customer’s designated billing contact, OpenGov may temporarily suspend Customer’s access to the Software Service for up to ninety (90) days to pursue good faith negotiations before pursuing termination in accordance with Section 7. Customer will continue to incur and owe all applicable Fees irrespective of any such Service suspension based on such Customer delinquency.

6.3 Taxes. All Fees under these Software Terms are exclusive of any applicable sales, value-added, use or other taxes (“Sales Taxes”). Customer is solely responsible for any and all Sales Taxes, not including taxes based solely on OpenGov’s net income. If any Sales Taxes related to the Fees under these Software Terms are found at any time to be payable, the amount may be billed by OpenGov to, and shall be paid by, Customer. If Customer fails to pay any Sales Taxes, then Customer will be liable for any related penalties or interest, and will indemnify OpenGov for any liability or expense incurred in connection with such Sales Taxes. In the event Customer or the transactions contemplated by the Software Terms are exempt from Sales Taxes, Customer agrees to provide OpenGov, as evidence of such tax exempt status, proper exemption certificates or other documentation acceptable to OpenGov.

7. TERM & TERMINATION

7.1 Term.

Subject to compliance with all terms and conditions, the term of these Software Terms shall commence on the Effective Date and shall continue until the Subscription End Date specified on the Order Form

(the “Initial Term”) unless sooner terminated pursuant to Section 7.3 below.

7.2 Renewal.

Unless otherwise provided in the Agreement, these Software Terms shall automatically renew for another period of the same duration as the Initial Term (the “Renewal Term” and together with the Initial Term, the “Term”), unless either party notifies the other party of its intent not to renew these Software Terms in writing no less than thirty (30) days before the end of the Initial Term.

7.3 Termination.

If either party materially breaches any term of these Software Terms and fails to cure such breach within thirty (30) days after notice by the non-breaching party (ten (10) days in the case of non-payment), the non-breaching party may terminate these Software Terms.

7.4 Effect of Termination.

(a) In General. Upon termination pursuant to Section 7.3 or expiration of these Software Terms pursuant to Section 7.1:

- (I) Customer shall pay in full for all Software Services and Professional Services performed up to and including the effective date of termination;
- (II) all Software Services provided to Customer hereunder shall immediately terminate; and
- (III) each party shall return to the other party or, at the other party’s option, destroy all Confidential Information of the other party in its possession.

(b) Deletion of Customer Data. Unless otherwise requested pursuant to this Section

7.4(b), upon the expiration or termination of these Software Terms the Customer Data, excluding any Insights, shall be deleted pursuant to OpenGov’s standard data deletion and retention practices. Upon written request, Customer may request deletion of Customer Data, excluding any Insights, prior to the date of termination or expiration of these Software Terms. Such request must be addressed to “OpenGov Vice President, Customer Success” at OpenGov’s address for notice described at Section 10.

7.5 Survival.

The following sections of these Software Terms shall survive termination: Section 5 (Confidentiality), Section 6 (Payment of Fees), Section 7.4(b) (Deletion of Customer Data), Section 8.3 (Warranty Disclaimer), Section 9 (Limitation of Liability) and Section 10 (Miscellaneous).

8. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

8.1 By OpenGov.

(a) General Warranty. OpenGov represents and warrants that:

- (I) it has all right and authority necessary to enter into and perform these Software Terms; and
- (II) the Professional Services, if any, will be performed in a professional and workmanlike manner in accordance with the related statement of work and generally prevailing industry standards. For any breach of the Professional Services warranty, Customer’s exclusive remedy and OpenGov’s entire liability will be the re-performance of the applicable services. If OpenGov is unable to re-perform all such work as warranted, Customer will be entitled to recover all fees paid to OpenGov for the

deficient work. Customer must make any claim under the foregoing warranty to OpenGov in writing within ninety (90) days of performance of such work in order to receive such warranty remedies.

(b) Software Services Warranty. OpenGov further represents and warrants that for a period of ninety (90) days, the Software Services will perform in all material respects in accordance with the Documentation. The foregoing warranty does not apply to any Software Services that have been used in a manner other than as set forth in the Documentation and authorized under these Software Terms. OpenGov does not warrant that the Software Services will be uninterrupted or error-free. Any claim submitted under this Section 8.1(b) must be submitted in writing to OpenGov during the Term. OpenGov's entire liability for any breach of the foregoing warranty is to repair or replace any nonconforming Software Services so that the affected portion of the Software Services operates as warranted or, if OpenGov is unable to do so, terminate the license for such Software Services and refund the pre-paid, unused portion of the Fee for such Software Services.

8.2 By Customer. Customer represents and warrants that:

- (a) it has all right and authority necessary to enter into and perform these Software Terms;
- (b) OpenGov's use of the Customer Data pursuant to these Software Terms will not infringe, violate or misappropriate the Intellectual Property Rights of any third party, and (iii) the Customer has appropriated the funds for the first year of the Initial Term.

8.3 Disclaimer. OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND OPENGOV DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8.4 Indemnity. OpenGov shall indemnify and hold Customer, its elected and appointed officials, employees, and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) to the extent arising out of or in connection with a third party claim alleging that the Software Services infringes a copyright, patent (U.S. only), or a trademark of, or has caused harm to the rights of, a third party. Without limiting the aforementioned indemnity obligations, if the Software Services becomes, or in OpenGov's opinion is likely to become, the subject of an infringement claim, OpenGov may, at its option and expense, either (a) procure for Customer the right to continue using the Software Services, (b) replace or modify the Software Services so that it becomes non-infringing, or (c) terminate the licenses granted hereunder and give Customer a pro-rata refund for any pre-paid, unused fees paid by Customer. Notwithstanding the foregoing, OpenGov will have no obligation under this Section or otherwise with respect to any infringement claim based upon (i) any use of the Software Services not in accordance with this Agreement or for purposes not intended by OpenGov, (ii) any use of the Software Services in combination with other products, equipment, software, or data not supplied by OpenGov, (iii) any use of any release of the Software Services other than the most current release made available to Customer, or (iv) any modification of the Software Services by any person other than OpenGov or its authorized agents or subcontractors. Customer shall (a) promptly give notice of a claim to OpenGov; (b) give OpenGov sole control of the defense and settlement of the claim (provided that OpenGov may not settle such claim unless such settlement unconditionally releases Customer of all liability and, does not adversely affect OpenGov's business or the Software Service); (c) provide to OpenGov all available information and reasonable assistance; and (d) not compromise or settle such third-party claim. THE FOREGOING IS OPENGOV'S SOLE

OBLIGATION AND CUSTOMER EXCLUSIVE REMEDY WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION.

9. LIMITATION OF LIABILITY

9.1 By Type.

NEITHER PARTY, NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT AND THESE SOFTWARE TERMS UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY:

- (a) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS;
- (b) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR
- (c) FOR ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.2 By Amount.

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT AND THESE SOFTWARE TERMS EXCEED THE FEES PAID BY CUSTOMER TO OPENGov (OR, IN THE CASE OF CUSTOMER, PAYABLE) FOR THE SOFTWARE SERVICES UNDER THIS AGREEMENT AND THESE SOFTWARE TERMS IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

9.3 Limitation of Liability Exclusions.

The limitations of liability set forth in Sections 9.1 and 9.2 above do not apply to, and each party accepts liability to the other for:

- (a) claims based on either party's intentional breach of its obligations set forth in Section 5 (Confidentiality),
- (b) claims arising out of fraud or willful misconduct by either party and (c) either party's unauthorized use, distribution, or disclosure of the other party's intellectual property.

9.4 No Limitation of Liability by Law. Because some jurisdictions do not allow liability or damages to be limited to the extent set forth above, some of the above limitations may not apply to Customer.

10. MISCELLANEOUS

10.1 Logo Use. OpenGov shall have the right to use and display Customer's logos and trade names for marketing and promotional purposes in connection with OpenGov's website and marketing materials, subject to Customer's trademark usage guidelines provided to OpenGov.

10.2 Notice. Ordinary day-to-day operational communications may be conducted by email, live chat or telephone communications. However, for notices, including legal notices, required by the Software Terms (in Sections where the word "notice" appears), the parties must communicate more formally in

a writing given by personal delivery, by pre-paid first-class mail or by overnight courier to the address specified in the most recent Order Form (or such other address as may be specified in writing in accordance with this Section).

10.3 Anti-corruption. OpenGov has not offered or provided any bribe, kickback, illegal or improper payment, gift, or thing of value to any Customer personnel in connection with the Software Terms, other than reasonable gifts and entertainment provided Customer in the ordinary course of business. If OpenGov becomes aware of any violation of the above restriction then OpenGov shall promptly notify Customer.

10.4 Injunctive Relief. The parties acknowledge that any breach of the confidentiality provisions or the unauthorized use of a party's intellectual property may result in serious and irreparable injury to the aggrieved party for which damages may not adequately compensate the aggrieved party. The parties agree, therefore, that, in addition to any other remedy that the aggrieved party may have, it shall be entitled to seek equitable injunctive relief without being required to post a bond or other surety or to prove either actual damages or that damages would be an inadequate remedy.

10.5 Force Majeure. Neither party shall be held responsible or liable for any losses arising out of any delay or failure in performance of any part of these Software Terms, other than payment obligations, due to any act of God, act of governmental authority, or due to war, riot, labor difficulty, failure of performance by any third-party service, utilities, or equipment provider, or any other cause beyond the reasonable control of the party delayed or prevented from performing.

10.6 Severability; Waiver. If any provision of these Software Terms is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Software Terms will otherwise remain in full force and effect and enforceable. Any express waiver or failure to exercise promptly any right under these Software Terms will not create a continuing waiver or any expectation of non-enforcement. There are no third-party beneficiaries to these Software Terms.

10.7 Assignment. Except as set forth in this Section, neither party shall assign, delegate, or otherwise transfer these Software Terms or any of its rights or obligations to a third party without the other party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Either party may assign, without such consent but upon written notice, its rights and obligations under these Software Terms to:

- (a) its corporate aliate; or
- (b) any entity that acquires all or substantially all of its capital stock or its assets related to these Software Terms, through purchase, merger, consolidation, or otherwise. Any other attempted assignment shall be void. These Software Terms shall inure to the benefit of and bind each party's permitted assigns and successors.

10.8 Independent Contractors. No agency, partnership, joint venture, or employment is created as a result of these Software Terms and neither party has any authority of any kind to bind the other party in any respect.

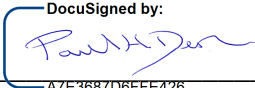
10.9 Attorneys' Fees. In any action or proceeding to enforce rights under these Software Terms, the prevailing party will be entitled to recover reasonable costs and attorneys' fees.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

“CITY”
City of Selma

“CONSULTANT”
OpenGov Inc.

By: Ralph Jimenez, Interim City Manager

DocuSigned by:


By: Paul H. Denton

Attest:

By: Reyna Rivera, City Clerk

Approved as to form:

By: Mary F. Lerner, City Attorney



OpenGov Inc.
PO Box 41340
San Jose, CA 95160
United States

Created On: 11/8/2021
Quote Expiration: 11/20/21021
Subscription Start Date: 12/6/2021
Subscription End Date: 12/5/1026

Prepared By: Andrew Kercado
Email: akercado@opengov.com
Contract Term: 60 Months

Customer Information			
Customer:	City of Selma, CA	Contact Name:	Fernando Santillan
Bill To/Ship To:	1710 Tucker Street	Email:	fernandos@cityofselma.com
	Selma, California 93662	Phone:	(559) 891-2200 ext. 3112
	United States	Contact Name:	Fernando Santillan
		Email:	fernandos@cityofselma.com
			(559) 891-2200 ext. 3112
Order Details			
Billing Frequency:	Annual	Description:	See Billing Table Below
Payment Terms:	Net Thirty (30) Days		

SOFTWARE SERVICES:

Product / Service	Start Date	End Date	Annual Term	Annual Fee
Citizen Services - 4 Service Area	12/6/2021	12/5/1026	5	\$26,000.00
Annual Subscription:				\$26,000.00

PROFESSIONAL SERVICES:

PROFESSIONAL SERVICES:	
Product / Service	Description
OpenGov Deployment	Product configuration, setup, and training described in the attached SOW.
Professional Services Total:	
	\$29,600.00

Billing Table:

Billing Date	Amount Due	
December 6, 2021	\$159,600.00	(Software Services Year 1-5 + Professional Services)

Order Form Legal Terms

Welcome to OpenGov! Thanks for using our Software Services. This Order Form is entered into between OpenGov, Inc., with its principal place of business at 6525 Crown Blvd #41340 San Jose, CA 95160 ("OpenGov"), and you, the entity identified above ("Customer"), as of the Effective Date. This Order Form includes and incorporates the OpenGov Software Services Agreement ("SSA") attached, or if no such SSA is attached, the SSA available at <https://opengov.com/terms-of-service> and the applicable Statement of Work ("SOW") incorporated herein in the event Professional Services are purchased. The Order Form, SSA and SOW shall hereafter be referred to as the "Agreement". Unless otherwise specified above, fees for the Software Services and Professional Services shall be due and payable, in advance, on the Effective Date. By signing this Agreement, Customer acknowledges that it has reviewed, and agrees to be legally bound by, the OpenGov Software Services Agreement. Each party's acceptance of this Agreement is conditional upon the other's acceptance of the terms in the Agreement to the exclusion of all other terms.

City of Selma, CA

Signature:

Name:

Title:

Date:

OpenGov, Inc. DocuSigned by:

Signature:

Name:

Title:

Date:

Paul H. Denton

CFO

11/23/2021



EXHIBIT C

Statement of Work

City of Selma, CA

Created by: Adam J. Weems
 Creation Date: 11/08/2021
 Document Number: DD-02099
 Version Number: 1

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1. Overview

1.1. Preamble

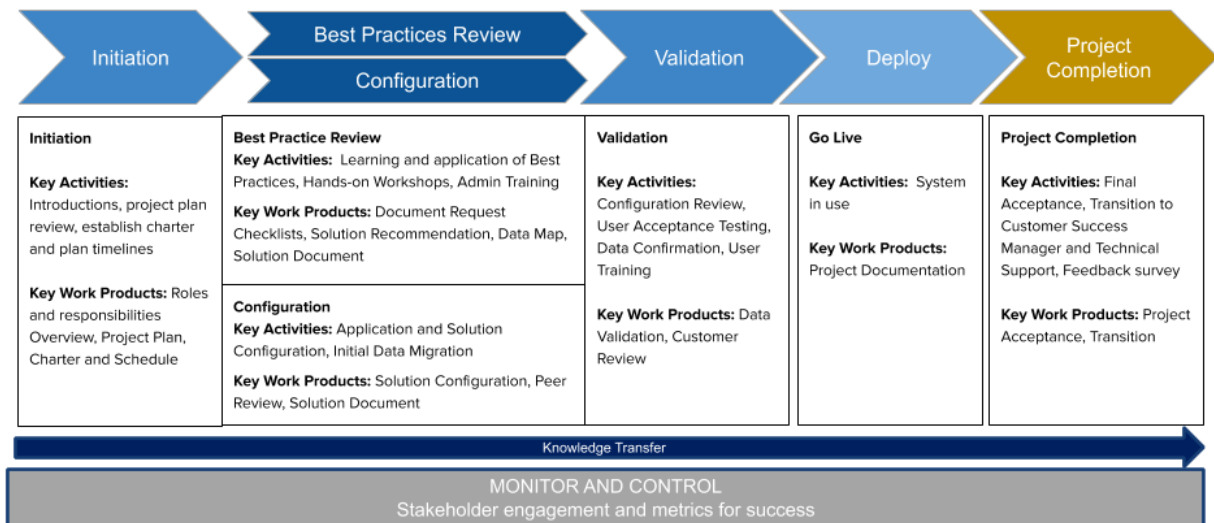
This Statement of Work (“SOW”) identifies services that OpenGov, Inc. (“OpenGov” or “we”) will perform for City of Selma, CA (“Customer” or “you”) pursuant to that order for Professional Services entered into between OpenGov and the Customer (“Order Form”) which references the Software Services Agreement or other applicable agreement entered into by the parties (the “Agreement”). For clarity, Customer’s use of the Professional Services are governed by the Agreement and not this SOW. Upon execution of the Order Form or other documentation referencing the SOW, this SOW shall be incorporated by reference into the Agreement. In the event of any inconsistency or conflict between the terms and conditions of this SOW and the Agreement, the terms and conditions of this SOW shall govern with respect to the subject matter of this SOW only. Unless otherwise defined herein, capitalized terms used in this SOW shall have the meaning defined in the Agreement. This SOW may not be modified or amended except in a written agreement signed by a duly authorized representative of each party.

1.2. OpenGov's Modern Cloud ERP

OpenGov is the leader in modern cloud ERP software for our nation's cities, counties, and state agencies. On a mission to power more effective and accountable government, OpenGov serves agencies across the United States. Built exclusively for the unique budgeting, financial management, and citizen services needs of the public sector, the OpenGov ERP Cloud enables organizations to plan more strategically and collaboratively, streamline mission-critical processes, and communicate with stakeholders more transparently.

- **Cloud ERP for local government.** OpenGov offers transformative solutions for budgeting, financial management, and citizen services with the market-leading reporting and transparency platform--allowing customers to re-allocate up to 1% of their budgets for more strategic outcomes and save thousands of hours on manual and paper-based processes.
- **A trusted and dedicated partner.** Governments nationwide partner with OpenGov to drive more effective and accountable operations and strengthen public trust. Built exclusively for state and local government, OpenGov's software, services, and expertise are backed by years of employee experience in the public sector.
- **A platform built to grow with you.** Modern cloud architecture ensures all of your users have access to the latest features and upgrades while reducing your IT burden, minimizing your cost footprint, and breaking down system and data silos. You can future-proof your investment for the next generation thanks to world-class professional services and a roadmap driven by customer feedback, you future-proof your investment for the next generation.

OpenGov Implementation Methodology



2. Methodology

OpenGov's deployment methodology, often referred to as the OpenGov Way ("OG Way"), delivers on OpenGov's mission to power more effective and accountable governments. It is an innovative, modern, and iterative approach that leads our customers to successfully deploy our products and help them successfully achieve their vision. The OG Way differentiates itself in the market by its foundation of customer empowerment. We rely on our years of experience working with governments, leading in governments, and leveraging best practices from the public and private sector in order to coach our customers through the change management needed to leverage our best practices and quality software. This methodology requires a degree of focus and engagement to ensure collaboration between both parties to produce the desired results in a timely manner. We look forward to our partnership and can't wait to show you how The OG Way will improve the way you do business and the services you're able to provide to your citizens!

Project Initiation

During project initiation, we will introduce project resources, review the products and services purchased, finalize project timelines, and conduct the kickoff meeting. Both OpenGov and Customer are responsible for assigning their Project Managers for the project. We will hold a planning meeting to review all project documents OpenGov has received to date. We'll also provide additional worksheets that need to be included. We'll set-up meetings to finalize the project plan and ensure there is a centralized location for

these documents to be stored for collaboration. Lastly, we'll determine the date for the larger kickoff meeting and discuss the agenda for this critical meeting.

Best Practice Review

- OpenGov will provide your team with access to OG University and OpenGov's Resource Center so that you can start learning.
- Provided checklists with samples of data and information that we'll need completed. We will obtain all data and integration information at this time in our standard format.
- We will review your agency-specific documents to validate your business requirements.
- We will then coach you on our best practices by showing you how our tool works in the most effective manner.
- Based on our best practices review, we'll make solution recommendations based on our domain expertise.
- We'll align with your team based on our understanding of your operating processes based on technical requirements and product functionality.
- We'll review all data and integration requirements. A data map will be mutually agreed upon and signed off on by Customer.
- We'll present a solution document to be mutually agreed upon prior to starting the configuration.

Configuration

- We will set-up the base configuration based on the mutually agreed upon solution document.
- We will mutually configure the use cases based on the mutually agreed upon solution document.
- We will migrate your data based on our mutually agreed upon data map.

Validation

- Review the completed work performed during configuration.
- The appropriate members of the Customer project team will confirm that the solution has been configured correctly based on the solution and data mapping documents by testing the use of the solution.
- Training will be provided based on the selected package, or as set forth herein.
- Any items that were configured or migrated incorrectly based on the data map and solution document will be tracked via an issue log. We will work with your team to identify deployment critical issues that will be worked out prior to launch. If the item is not included in the mutually agreed upon data map and solution document, a

mutually agreed upon change order will be discussed as defined in Section 10 Change Management of this SOW.

- The exit criteria for this phase is the sign off by the Customer's Project Manager of the configuration based on the mutually agreed upon solution and data map as defined in Section 9 Acceptance of this SOW.

Deploy

- The solution is usable by Customer.

Project Completion

- Customer is sent a project acceptance form to sign as defined in Section 9 Acceptance of this SOW.
- Customer will be asked to respond to a brief survey to provide feedback about the experience.
- Customer is introduced to Customer Support and educated on how to engage with customer support based on Customer's procured package.

3. Project Schedule

OpenGov will schedule resources for this project upon signature of the order form. Unless specifically noted, the OpenGov assigned project manager (as identified below or such alternate designated by OpenGov, the "OpenGov Project Manager") will work with Customer Project Manager to develop the project schedule for all requested deliverables under this SOW. OpenGov reserves the right to adjust the schedule based on the availability of OpenGov resources and/or Customer resources, and the timeliness of deliverables provided by the Customer.

3.1. Estimated Project Timeline

Citizen Services Sample Timeline		Month 1	Month 2	Month 3	Month 4	Month 5	Month 7	Month 8
Citizen Services Suite	Historical Migration							
	Initiation							
	Configuration							
	Validation							
GoLive Support	Reporting							
	HyperCare							

4. Roles and Responsibilities

4.1. Roles and Responsibilities Matrix

OpenGov	
Role	Role Description
Executive Sponsor (“ES”)	Responsible for ensuring alignment on project value proposition and vision. Escalation point for Customer Executive Sponsor to mitigate any risks that the project team cannot resolve. Executive Sponsor attends monthly (or other frequency) executive meetings to review deployment status, documented issue list, status and closure summary.
Project Manager (“PM”)	Responsible for the delivery of the professional services based upon the agreed upon contract and SOW within the budgeted hours and timeframe. Ensures the project is properly forecasted, assigns tasks/resources, and tracks toward project completion. Holds executive steering committee meetings and/or quarterly business reviews as appropriate to ensure project issues are properly escalated and success is achieved. Facilitates the transition to support.
Analyst (“IA”)	Responsible for helping Customer configure OpenGov’s product suites as assigned. The Analyst is the primary consultant, guiding Customer through configuration working sessions to put together successful workflows.
Subject Matter Expert (“SME”)	OpenGov Subject Matter Experts (“SMEs”) will engage in strategy, design, and execution discussions internally and with Customer during the deployment. The SME has a specific area of expertise, and depending on the scope of the project more than one SME may engage. The SME will not be on all working sessions, but will be involved per the direction of the OpenGov Project Manager.
Integration Engineer (“IE”)	Responsible for migrations, conversions, and integrations as assigned. Responsible for providing clear direction on specifications to ensure proper delivery of migration, conversions, and integrations. Clear data mapping and data validation to be provided with customer sign-offs obtained by the OpenGov Project Manager.
Account Executive	The Account Executive is responsible for the sales cycle. Aligning

("AE")	on program vision, value proposition, and contract terms. The Account Executive will facilitate project kickoff along with the OpenGov Project Manager. The Account Executive will be engaged with the customer throughout their journey with OpenGov, post-deployment and beyond.
Customer Manager ("CM")	The Customer Manager ("CM") is the primary customer relationship holder post-Deploy. The "Air Traffic Controller" or "Quarterback" of OpenGov resources with focus on long term success of Customer's partnership with OpenGov. The CM will engage with Customer to discuss adoption strategy and conduct periodic reviews to ensure Customer's key stakeholders understand all OpenGov offerings and how they align to key Customer priorities. The CM will be introduced at deployment kick-off, but will not be an active participant in deployment working sessions. As the deployment approaches closure, the CM's engagement will ramp-up, and the OpenGov Project Manager to CM meeting with Customer will occur prior to Project Completion.
Customer	
Role	Role Description
Budget Owner ("BO")	The Customer Budget Owner commits the funds to the project deployment, assesses the value to the cost (ROI), and approves changes orders. In some cases, the Budget Owner and Executive Sponsor are the same person.
Executive Sponsor ("ES")	Responsible for ensuring Customer team is aligned to core project value proposition and goals. Able to intervene if the project goes off track, and has ability to make decisions on timeline and budget when decisions are stalled. The Executive Sponsor is not expected to regularly attend deployment working sessions. Executive Sponsors, attend monthly (or other frequency) executive meetings to review deployment status, documented issue list, status and closure summary.
Project Manager ("PM")	Serves as the primary contact for OpenGov Project Initiation, Best Practice Review, Configuration, Validation, Deploy, Project Completion. Coordinates meetings and schedules. Controls communication between the Customer and OpenGov project teams.
Project Lead ("PL")	Is an internal SME in the functional area of deployment. Attends working sessions, trainings, and responsible for reviewing

	configurations. Primary OpenGov counterpart will be the Analyst.
Data and SystemsLead (“DSL”)	Responsible for mapping out data infrastructure and validating migration, conversion, integration requirements. Someone who is able to connect OpenGov team with any of Customer’s third-party data sources and vendors as needed to fulfill SOW requirements.

4.2. Governance

Project Governance provides the foundation and framework to manage deployments by assessing progress and addressing questions and challenges during the course of deployment. OpenGov follows three guiding principles for governance to maximize the deployment value with our customers:

- **Regular communication** aligned to the agreed upon project plan and timing will occur. OpenGov expects our customers to raise questions or concerns as soon as they arise. OpenGov will do the same, as we can only address items when known.
- **Executive involvement** is expected from both OpenGov and Customer. Not only may Executives be called upon to clarify expectations and/or confusion, but also to steer strategic items to maximize the value through the deployment.
- **Commitment to the direction** outlined in this SOW and critical assessment change orders to ensure they drive value.

4.3. Regular Communication Components

Meeting		Frequency	Purpose	Participants	
				OpenGov	Customer
Quarterly Management Review (“QMR”)	Engagement Review	Quarterly	Overview of Program Status, Value Realization, trends, savings reports, program improvement, technology, and discuss program adjustments	PM, ES, others as necessary	PM, PL, ES, others as necessary

	Statement Committee	Bi-Annually	<p>Review of milestones per commercial agreement, review budget and fiscal matters.</p> <p>Discuss strategic direction from deployment, alignment of OpenGov with Customer's 3-year roadmap, evaluate potential shift in strategy and impact to relationship</p>	PM, ES, AE, CM	PM, BO. ES
Executive Sponsor Meeting		Monthly / Bi-Monthly	<p>Discuss deployment:</p> <ul style="list-style-type: none"> - Strategic impacts: timing, scope, process - Value prop changes, confusion - Project specific: items that need guidance, support and/or clarity 	PM, ES, plus others as necessary	PM, ES, plus others as necessary
Weekly Deployment Updates		Weekly	<p>Summary of project actions against project plan.</p> <p>Risks and achievements highlighted in addition to asks of leadership.</p>	Project Team + ES(s)	Project Team + ES(s)

4.4. Commitment to Project Direction and Goals

This SOW is the direction agreed upon by Customer and OpenGov. Transparency of the plan is paramount for our Customers to attain the value the SOW or any subsequent change order outlines.

Should direction of the deployment become disconnected, OpenGov and Customer Project Managers will outline the gaps as they understand them and communicate the gaps to their respective Executive Sponsor(s) (or Project Teams) for discussion and resolution.

The communication path for this engagement will be outlined in the kick off meeting, documenting both phone numbers and email. The general path is:

OpenGov Project Manager → Professional Services Sr. Manager / SVP → Executive Sponsor

5. Escalation Process

The purpose of this section is to define the escalation process, should it be needed, to support closing issues that are raised, discussed to move forward with the deployment. OpenGov and Customer agree to raise concerns and follow the escalation process, resource responsibility, and documentation.

5.1. Process

- Identification of an issue impeding deployment progress, outcome or capturing the value proposition, that is not acceptable.
- Customer or OpenGov Project Manager summarizes the problem statement and impasse.
- Customer and OpenGov Project Managers will outline solution, acceptance or schedule Executive review in accordance with SLA as defined in Section 7 General Project Assumptions.
- Resolution will be documented and signed off following Executive review in accordance with SLA as defined in Section 7 General Project Assumptions.

5.2. Escalation Requirements

- OpenGov and Customer Project Managers will summarize the impasse and recommendation to present at scheduled or ad hoc executive meetings. Unless otherwise noted in this SOW, Customer Project Manager can approve how hours are used, but not where funding is required.

- Executive Sponsors attend monthly (or other frequency) executive meetings to review deployment status, documented issue list, status, and closure summary.
- Steering Committees, where applicable, will be the arbitrator to direction and issue closure. Unless otherwise noted in this SOW, the Customer Executive Sponsor must approve change orders that result in additional cost.
- Customer or OpenGov Subject Matter Experts may be requested to provide input to the issue and assist in closure. Both Customer and OpenGov will make best effort to enable those Subject Matter Experts to be available and participate.

5.3. Documentation

- Issue Escalation: Problem Statement with clear impact to the deployment and/or engagement.
- Acceptance Document: Which will include any change order(s) or other process adjustments required and summary of the resolution.
- Notes from Project Meetings, Executive Reviews, and Steering Committee meetings, as appropriate.

6. General Project Assumptions

OpenGov is excited to work with Customer on the implementation of our OpenGov ERP Cloud. In order to ensure we are able to meet the project timeline as set forth in Section 3.1 of this SOW and ensure Customer is successful in this implementation, OpenGov asks that Customer abide by the General Assumptions detailed in this SOW.

- This SOW is limited to the Implementation of the OpenGov Cloud as defined in the Project Scope. Any additional services or support will be considered out of scope.
- Customer will commit and provide access to all necessary stakeholders and subject matter experts, and other key parties whose roles are defined in Section 4.1, necessary to the successful implementation of the OpenGov ERP Cloud as defined in this SOW.
- Customer is responsible for internal change management associated with the purchase of new software.
- Response Protocol
 - OpenGov and Customer commit to responding to inquiries, updates, or any other project-related matters in no more than 10 business days throughout the course of this project. If Customer is delayed in its response, Customer acknowledges that: a) the delay may impact the project schedule; and b) any fees for Professional Services due to

OpenGov after such delay shall become due and OpenGov may invoice Customer for such prepayment.

- As set forth in Section 6.1(e) of the Agreement, if extended delays in Customer responsiveness are encountered, OpenGov may opt to put the project into an "On Hold" status, which includes causing OpenGov to stop or cause to be stopped the Professional Services to be provided to the Customer, until the Customer has fulfilled its obligations set forth in the On Hold Notice as described in the Agreement.
- The Professional Services will be provided during regular business hours (8am to 6pm Pacific Time) Monday through Friday (holidays excluded).
- SOW Expiration:
 - This SOW is valid for up to 90 days from the Creation Date, or as agreed to in writing by OpenGov and Customer.

7. Project Scope

7.1. OpenGov Reporting & Transparency Platform

7.1.1. OpenGov Reporting & Transparency Platform Project Deliverables

Deliverable	Description
OpenGov Reporting & Transparency Platform	Cloud based Reporting & Transparency Platform that includes: <ul style="list-style-type: none"> ● Stories ● Reporting ● Dashboards ● Transparency Portal

7.1.2. Project Tasks

The tasks listed below are required for OpenGov and Customer to successfully complete the OpenGov Reporting & Transparency Platform implementation.

7.1.2.1. Initiate

Functionality	Description
Provisioning R&T Platform	OpenGov will provision Customer's OpenGov entity and verify Customer has access to all purchased modules.

OpenGov University Platform Training	OpenGov will provide access to OpenGov University online training courses intended to teach users on the basics of the Reporting & Transparency Platform.
Stories Examples	OpenGov will build out an example of a Story: <ul style="list-style-type: none"> One standard story based on available templates in OpenGov.

7.1.2.2. Best Practices

Functionality	Description
Overview of Best Practice	OpenGov assesses and identifies how best to configure and map data to ensure success based on materials provided by Customer.
Stories Review	The Implementation Analyst will conduct a review of the examples created.
Solution Document	OpenGov will present a solution document to be mutually agreed upon prior to beginning configuration.

7.1.2.3. Configuration

Functionality	Description
OpenGov Reports	OpenGov will: <ul style="list-style-type: none"> Train Customer on uploading datasets to the Reporting and Transparency platform for the purposes of creating reports and saved views

7.1.2.4. Deploy

Functionality	Description
Training Stories	OpenGov will review configured story and train Customer on how to: <ul style="list-style-type: none"> Create new stories Update/Maintain current stories Publish internally and externally
Training Open	OpenGov will present configured Open Town Hall site and theme.

Town Hall	OpenGov will train Customer on Open Town Hall functionality
Training OpenGov Reports	OpenGov will review configured OpenGov reports. OpenGov will train Customer on report: <ul style="list-style-type: none"> • Configuration • Update/Maintenance • Publishing internally and externally
Training Dashboards	OpenGov will review configured Dashboards OpenGov will train Customer on Dashboard: <ul style="list-style-type: none"> • Configuration • Update/Maintenance • Publishing internally and externally
Platform Training	OpenGov will train Customer on Platform maintenance:: <ul style="list-style-type: none"> • Users • Uploading data
Sign Off	Customer will sign off that they have: <ul style="list-style-type: none"> • Configured Story • Configured OpenGov reports • Configured Dashboard • Been trained on Stories, OpenGov reports, Dashboards

7.2. OpenGov Citizen Services Suite (CIT Suite)

7.2.1. CIT Suite Project Deliverables

Functionality	Description
CIT Suite	Cloud based Permit, Licensing, Code Enforcement software for up to 5 Service Areas to include <ul style="list-style-type: none"> • Assuming 8 Record Type(s) (forms, document templates, fee schedules, workflows) built by OpenGov • CIT System Training • Configuration Training • Internal user Training • Migrations and Integrations

7.2.2. Project Tasks

The tasks listed below are required for OpenGov and Customer to successfully complete the OpenGov CIT Suite implementation.

7.2.2.1. Initiate

Functionality	Description
Creating Environment	OpenGov will provision a CIT environment and FTP site. Customer system administrator will be added to the environment following contract signing and creation.
Documentation Receipt	Customer will provide OpenGov with: <ul style="list-style-type: none"> • Existing application forms • Current workflows • Gathering all existing supporting documentation
System Training	During the CIT System Configuration, OpenGov will provide System Training designed for system administrators, which will include: <ul style="list-style-type: none"> • How to create and customize the public portal in CIT • How to create and customize CIT record types (forms, document templates, fee schedules, workflows) • How to set up inspections in CIT • How to create datasets in CIT • The basic functions of any integrations or other customizations included in the SOW • How to export a dataset from the app

7.2.2.2. Best Practice

Functionality	Description
Overview of Best Practice	OpenGov assesses and identifies how best to configure and map data to ensure success based on materials provided by Customer.
Customer Inputs	OpenGov will share what is needed to obtain from Customer and why the information drives a successful outcome.
Discuss Recommended Process Versus Current Process	OpenGov will review department specific documents. Coach the Customer on Best Practice application. OpenGov will make solution recommendations based on our domain expertise.
Solution Document	OpenGov will present a solution document to be mutually agreed upon prior to beginning configuration.

7.2.2.3. Configuration

Functionality	Description
Record Type Configuration (OpenGov - Standard)	<p>OpenGov will configure up to 8 standard record type drafts of Customer's record types in the CIT system.</p> <p>Along with Customer input OpenGov will be responsible for building:</p> <ul style="list-style-type: none"> • Customer Application Forms • Customer Workflow • Output Documents • Adding in Customer Fees <p>OpenGov will hold working sessions* between the OpenGov and Customer for the purpose of validating, reviewing, and iterating upon draft record types configuration.</p>
*Working Session	<p>All working sessions will focus on:</p> <ul style="list-style-type: none"> • Forms • Workflows • Fee structures • Attachment requirements • Permit/license/letter templates • User access • Renewal processes • Inspection checklists • Public portal
Record Type Configuration Training Sessions	<p>OpenGov will provide up to 2, 60-minute configuration training sessions to enable Customer to own configuration of their remaining Record Types.</p> <ul style="list-style-type: none"> • Sessions will focus on: <ul style="list-style-type: none"> ○ Hands-on training for building, configuring, and maintaining Record Types in CIT. ○ Best practice recommendations on Record Type: <ul style="list-style-type: none"> ■ Building ■ Configuring ■ Maintenance <p>At the end of configuration training sessions, Customer will be responsible for maintenance and configuration of all Record Types.</p>
Migrations and Integrations	
Functionality	Description

Document Migrations	<p>OpenGov will import documents attached to either migrated permits or locations provided through a Master Address Table (MAT) integration.</p> <ul style="list-style-type: none"> • Requirement: <ul style="list-style-type: none"> ○ Dependent on having a Historical Migration and/or MAT Integration ○ Customer must provide a single file (Excel, CSV, etc) with one row per document, with a unique identifier for the related permit or location, and the file's physical location (a file path or URL). ○ Customer will need to either provide a copy of the files or grant CIT access to the file locations in order to migrate them. ○ The folder structure of the documents provided must reflect the paths provided in the file. ○ Data cleanup/correction is not included
Recurring Master Address Table (MAT) Import	<p>OpenGov will import the Customer's location information from your Master Address Table (MAT) file (CSV) into CIT.</p> <p>Customer will provide a clean MAT including all of the community's location information. It must contain the parcel properties latitude/longitude coordinates, and at least 1 unique ID field. The unique ID can never change. OpenGov does not take responsibility for 'dirty' data.</p>
ESRI ArcGIS Server Integration	<p>OpenGov will integrate the CIT suite with the Customer's ArcGIS Server. Customer is responsible for providing a publicly-accessible secure ESRI REST API URL.</p> <p>Note: WFS link will not suffice</p>
GIS Flag Integration	<p>OpenGov will enable GIS Flag Integration:</p> <ul style="list-style-type: none"> • Import a list of flags into the CIT suite. Flags can be provided either on the Parcel Layer or other layer on the GIS Server through the ESRI REST API URL. • Layers must be configured as a polygon--polylines and points are not supported in this integration. <p>Dependent upon Master Address Table and ESRI ArcGIS Server Integration</p>
Accounting & Finance Export	<p>For a financial export, Customer will provide OpenGov the required format and a sample document.</p> <p>OpenGov will export the data based on the required format and put the files onto Customer's FTP as often as nightly</p>

State Contractor Integration - CA	<p>Allow for dynamic search within the application form to auto-populate a set of form fields. Data will be managed by the State of California.</p> <p>OpenGov will integrate the CIT suite with the California licensed professional dataset for use within the CIT platform and refreshed daily/weekly.</p>
Autofills	
Premium	<p>Allow for dynamic search within the application form to auto-populate a set of form fields.</p> <ul style="list-style-type: none"> • Premium autofill is used for data managed by Customer through a flat file. • Data sets larger than 100k rows are allowed. • Premium Azure search, and can be updated as often as nightly.
Internal	<p>Allow for dynamic search within the application form to auto-populate a set of form fields.</p> <ul style="list-style-type: none"> • Internal autofill is used for data managed within CIT--connecting one Record Type to another.
Advanced Reporting Support Access	
ODBC Connection	<p>OpenGov offers access to the CIT suite via an ODBC connection to a Microsoft SQL Server Database. A limited set of views will be available for Customer to access data to pull into their system.</p>

7.2.2.4. Validation

Functionality	Description
Confirmation	Customer confirms OpenGov has created 8 Record Types.
User Acceptance Testing (admin)	<p>OpenGov will require Customer to validate</p> <ul style="list-style-type: none"> • Application is working as intended <ul style="list-style-type: none"> ○ Internal processes and or workflows ○ Front End processes (Public views) • The administrator knows how to: <ul style="list-style-type: none"> ○ Make changes ○ Troubleshoot problems ○ Create or configure new Record Types

7.2.2.5. Deploy

Functionality	Description
Internal User Training	<p>OpenGov will provide 2, two-hour training sessions designed for Internal Users such as Inspectors or Intake Review staff.</p> <ul style="list-style-type: none"> Internal Users are trained to: <ul style="list-style-type: none"> Understand how to use the system to complete the tasks needed perform their roles/responsibilities Understand the functionality and workflow of the Permitting, Licensing or Code Enforcement process. Build reports in Citizen Services Explorer Module.
Sign Off	<p>Customer to complete OpenGov-provided sign off document</p> <p>Customer will provide written approval that Administrator can:</p> <ul style="list-style-type: none"> Build/Configure Troubleshoot Maintain <p>Customer will provide written approval that Internal Users:</p> <ul style="list-style-type: none"> Have been trained on: <ul style="list-style-type: none"> Functionality Tasks needed to perform their roles/responsibilities

8. Acceptance

8.1. Acceptance Process

All Deliverables require acceptance from the Customer Project Manager(s) following the completion of Deliverables and upon Project Closure. Customer is responsible for conducting any additional review or testing of such Deliverable pursuant to any applicable mutually agreed upon acceptance criteria agreed upon by the parties for such Deliverable. Upon completion of these phases, the OpenGov Project Manager shall notify the Customer Project Manager(s) and provide the necessary documents for review and sign off.

The following process will be used for accepting or acknowledging Deliverables and Project Closure:

- OpenGov shall submit the completed Deliverables to Customer to review or test against the applicable acceptance criteria. Customer shall notify OpenGov promptly

of its acceptance or rejection in accordance with the agreed upon acceptance criteria.

- Customer must accept all Deliverables that meet the applicable acceptance criteria. OpenGov Project Manager will provide the Customer Project Manager with the OpenGov Acceptance form to sign off on the Deliverable and project. Once all Deliverables required to meet a particular phase have been accepted or are deemed accepted, the phase shall be deemed complete.
- Upon completion of the phase or project, OpenGov allows Customer 10 business days to communicate that the particular Deliverable(s) does not meet Customer's requirements. Failure to communicate that the particular Deliverable(s) does not meet Customer's requirements will be deemed as acceptance and any further work provided to remedy Customer's complaint might incur additional cost.
- Customer shall provide to OpenGov a written notice detailing the reasons for rejection and the nature of the failure to meet the acceptance criteria. OpenGov shall make best effort to revise the non-conforming Deliverable(s) to meet the acceptance criteria and re-submit it to Customer for further review and testing.
- If the acceptance form is not received in accordance with Section 7 General Project Assumptions, the project phase and/or project will be considered accepted and automatically closed.

8.2. Acceptance Requirements

- All acceptance milestones and associated review periods will be tracked on the project plan.
- The Customer Project Manager will have decision authority to approve/reject all project Deliverables, Phase Acceptance and Project Acceptance.
- Any open issues shall receive a response in accordance with Section 7 General Assumptions of this SOW following the Validation Acceptance review, or as mutually agreed upon between the parties, for resolution prior to advancing on in the project.
- Both OpenGov and Customer recognize that failure to complete tasks and respond to open issues may have a negative impact on the project.
- For any tasks not yet complete, OpenGov and/or Customer will provide sufficient resources to expedite completion of tasks to prevent negatively impacting the project.

9. Change Management

This SOW and related efforts are based on the information provided and gathered by OpenGov. Customer acknowledges that changes to the scope may require additional effort



or time, resulting in additional cost. Any change to scope must be agreed to in writing or email, by both Customer and OpenGov, and documented as such via a:

- *Change Order* - Work that is added to or deleted from the original scope of this SOW. Depending on the magnitude of the change, it may or may not alter the original contract amount or completion date and be paid for by Customer. Changes might include:
 - Timeline for completion
 - Sign off process
 - Cost of change and Invoice timing
 - Signed by OpenGov and Customer Executives approving funds.

Change documentation will be mutually agreed upon as defined in Section 7 General Assumptions of this SOW. Should that not occur, the change will be added to the next Executive Sponsor agenda for closure.

Example of changes that might arise during a deployment:

- Amending the SOW to correct an error.
- Extension of work as the complexity identified exceeds what was expected by Customer or OpenGov.
- Change in type of OpenGov resources to support the SOW.

EXHIBIT D

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the City.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000.00 per occurrence, \$4,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any ~~owned~~, hired, non-owned or rented vehicles, in an amount not less than \$2,000,000.00 combined single limit for each accident.

Workers Compensation & Employers Liability. Statutory Workers Compensation and Employers Liability Coverage with limits of Bodily Injury by Accident \$1,000,000 Each Accident, Bodily Injury by Disease \$1,000,000 Policy Limit and Bodily Injury by Disease \$1,000,000 Each Employee. The policy shall contain a blanket waiver of subrogation endorsement in favor of City, its elected or appointed officers, agents, officials, employees, and volunteers.

Technology Errors & Omissions (errors & omissions) insurance.

Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$2,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Consultant shall submit to City, along with the certificate of insurance, a blanket Waiver of Subrogation endorsement in favor of the City, its elected or appointed officers, agents, employees and volunteers.

Proof of insurance. Consultant shall provide certificates of insurance, including copies of all required endorsements, to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A-(or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be blanket waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. Thirty (30) day Notice of Cancellation must be endorsed, provide their name and address as they wish for it to appear.

Additional insured status. The general liability, auto and excess liability policies shall provide or be

endorsed to provide that City and its elected or appointed officers, officials, employees, agents, and volunteers are named as additional insureds under each insurance policy.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

Timely notice of claims. Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

EXHIBIT E: SB2 GRANT TERMS

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~~EXHIBIT D~~**PGP TERMS AND CONDITIONS****1. Reporting**

- A. During the term of the Standard Agreement the Grantee shall submit, upon request of the Department, a performance report that demonstrates satisfaction of all requirements identified in this Standard Agreement.
- B. Upon completion of all objectives and deliverables required to fulfill this contract pursuant to Schedule F: Project Timeline and Budget and the Scope of Work, Exhibit A, Section 4, and as referred to in Exhibit B, Section 6, subsection K. within this Standard Agreement, the Grantee shall submit a final close out report in accordance with Section 604, subsection (b), and as instructed in Attachment 3 of the December 2018 Planning Grants Program Guidelines. The close out report shall be submitted with the final invoice by the end of the grant term as listed in Exhibit B, Section 3, subsection C.

2. Accounting Records

- A. The Grantee, its staff, contractors and subcontractors shall establish and maintain an accounting system and reports that properly accumulate incurred project costs by line. The accounting system shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.
- B. The Grantee must establish a separate ledger account for receipts and expenditures of grant funds and maintain expenditure details in accordance with the scope of work, project timeline and budget. Separate bank accounts are not required.
- C. The Grantee shall maintain documentation of its normal procurement policy and competitive bid process (including the use of sole source purchasing), and financial records of expenditures incurred during the course of the project in accordance with GAAP.
- D. The Grantee agrees that the state or designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Standard Agreement.
- E. Subcontractors employed by the Grantee and paid with moneys under the terms of this Standard Agreement shall be responsible for maintaining accounting records as specified above.

3. Audits

- A. At any time during the term of the Standard Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the award. At the

Planning Grants Program (PGP)
NOFA Date: March 28, 2019
Approved Date: October 17, 2019
Prep. Date: October 23, 2020

PERMITTING SOFTWARE PSA 46

December 6, 2021 Council Packet

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Department's request, the Grantee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The State of California has the right to review project documents and conduct audits during and over the project life.

- 1) The Grantee agrees that the Department or the Department's designee shall have the right to review, obtain, and copy all records and supporting documentation pertaining to performance of this Agreement.
 - 2) The Grantee agrees to provide the Department or the Department's designee, with any relevant information requested.
 - 3) The Grantee agrees to permit the Department or the Department's designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with statutes, Program guidelines, and this Agreement.
- B. If a financial audit is required by the Department, the audit shall be performed by an independent certified public accountant. Selection of an independent audit firm shall be consistent with procurement standards contained in Exhibit D, Section 8 subsection A. of this Standard Agreement.
- 1) The Grantee shall notify the Department of the auditor's name and address immediately after the selection has been made. The contract for the audit shall allow access by the Department to the independent auditor's working papers.
 - 2) The Grantee is responsible for the completion of audits and all costs of preparing audits.
 - 3) If there are audit findings, the Grantee must submit a detailed response acceptable to the Department for each audit finding within 90 days from the date of the audit finding report.
- C. The Grantee agrees to maintain such records for possible audit after final payment pursuant to Exhibit D, Section 3, subsection E. below, unless a longer period of records retention is stipulated.
- 1) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained by the Grantee, contractors and sub-contractors until completion of the action and resolution of all issues which arise from it. The Grantee shall include in any contract that it enters into in an amount exceeding \$10,000, the Department's right to audit the contractor's records and interview their employees.

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- 2) The Grantee shall comply with the caveats and be aware of the penalties for violation of fraud and for obstruction of investigation as set forth in California Public Contracts Code Section 10115.10.
- D. The determination by the Department of the eligibility of any expenditure shall be final.
- E. The Grantee shall retain all books and records relevant to this Agreement for a minimum of (3) three years after the end of the term of this Agreement. Records relating to any and all audits or litigation relevant to this Agreement shall be retained for five years after the conclusion or resolution of the matter.

4. Remedies of Non-performance

- A. Any dispute concerning a question of fact arising under this Standard Agreement that is not disposed of by agreement shall be decided by the Department's Housing Policy Development Manager, or the Manager's designee, who may consider any written or verbal evidence submitted by the Grantee. The decision of the Department's Housing Policy Development Manager or Designee shall be the Department's final decision regarding the dispute.
- B. Neither the pendency of a dispute nor its consideration by the Department will excuse the Grantee from full and timely performance in accordance with the terms of this Standard Agreement.
- C. In the event that it is determined, at the sole discretion of the Department, that the Grantee is not meeting the terms and conditions of the Standard Agreement, immediately upon receiving a written notice from the Department to stop work, the Grantee shall cease all work under the Standard Agreement. The Department has the sole discretion to determine that the Grantee meets the terms and conditions after a stop work order, and to deliver a written notice to the grantee to resume work under the Standard Agreement.
- D. Both the Grantee and the Department have the right to terminate the Standard Agreement at any time upon 30 days written notice. The notice shall specify the reason for early termination and may permit the grantee or the Department to rectify any deficiency(ies) prior to the early termination date. The Grantee will submit any requested documents to the Department within 30 days of the early termination notice.
- E. There must be a strong implementation component for the funded activity through this Program, including, where appropriate, agreement by the locality to formally adopt the completed planning document. Localities that do not formally adopt the funded activity could be subject to repayment of the grant.
- F. The following shall each constitute a breach of this Agreement:
 - 1) Grantee's failure to comply with any of the terms and conditions of this Agreement.
 - 2) Use of, or permitting the use of, grant funds provided under this Agreement for any

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ineligible costs or for any activity not approved under this Agreement.

- 3) Any failure to comply with the deadlines set forth in this Agreement unless approved by the Program Manager.
- G. In addition to any other remedies that may be available to the Department in law or equity for breach of this Agreement, the Department may at its discretion, exercise the following remedies:
- 1) Disqualify the Grantee from applying for future PGP Funds or other Department administered grant programs;
 - 2) Revoke existing PGP award(s) to the Grantee;
 - 3) Require the return of unexpended PGP funds disbursed under this Agreement;
 - 4) Require repayment of PGP Funds disbursed and expended under this agreement;
 - 5) Seek a court order for specific performance of the obligation defaulted upon, or the appointment of a receiver to complete the obligations in accordance with the PGP Program requirements; and
 - 6) Other remedies available at law, or by and through this agreement. All remedies available to the Department are cumulative and not exclusive.
 - 7) The Department may give written notice to the Grantee to cure the breach or violation within a period of not less than 15 days.

5. **Indemnification**

Neither the Department nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by the Grantee, its officers, employees, agents, its contractors, its sub-recipients or its subcontractors under or in connection with any work, authority or jurisdiction conferred upon the Grantee under this Standard Agreement. It is understood and agreed that the Grantee shall fully defend, indemnify and save harmless the Department and all of the Department's staff from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by the Grantee, its officers, employees, agents contractors, sub-recipients, or subcontractors under this Standard Agreement.

6. **Waivers**

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement, or to require at any time, performance by the Grantee of these provisions, shall in no way be

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construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

7. **Relationship of Parties**

It is expressly understood that this Standard Agreement is an agreement executed by and between two independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

8. **Third-Party Contracts**

- A. All state-government funded procurements must be conducted using a fair and competitive procurement process. The Grantee may use its own procurement procedures as long as the procedures comply with all City/County laws, rules and ordinances governing procurement, and all applicable provisions of California state law.
- B. Any contract entered into as a result of this Agreement shall contain all the provisions stipulated in the Agreement to be applicable to the Grantee's sub-recipients, contractors, and subcontractors. Copies of all agreements with sub-recipients, contracts, and subcontractors must be submitted to the Department's program manager.
- C. The Department does not have a contractual relationship with the Grantee's sub-recipients, contractors, or subcontractors, and the Grantee shall be fully responsible for all work performed by its sub-recipients, contractors, or subcontractors.
- D. In the event the Grantee is partnering with another jurisdiction or forming a collaborative effort between the Grantee and other jurisdictions who are grantees of the SB 2 Planning Grants Program, the Grantee acknowledges that each partner and/or all entities forming the SB 2 Planning Grants Program collaborative are in mutual written agreement with each other but are contractually bound to the Department under separate, enforceable contracts.
- E. In the event the Grantee is partnering with another jurisdiction or forming a collaborative effort with other entities that are not grantees of the SB 2 Planning Grants Program, the Department shall defer to the provisions as noted in subsections 8(B) and 8(C) of this part.

9. **Compliance with State and Federal Laws, Rules, Guidelines and Regulations**

- A. The Grantee agrees to comply with all state and federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the grant, the Grantee, its contractors or subcontractors, and any other grant activity.
- B. During the performance of this Agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program

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benefits, or be subjected to discrimination based on race, color, ancestry, national origin, sex, gender, gender identity, gender expression, genetic information, age, disability, handicap, familial status, religion, or belief, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 USC 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975 and all implementing regulations.

- C. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all agreements with its sub-recipients, contractors, and subcontractors, and shall include a requirement in all agreements with all of same that each of them in turn include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts they enter into to perform work under the PGP.
- D. The Grantee shall, in the course of performing project work, fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
- E. The Grantee shall adopt and implement affirmative processes and procedures that provide information, outreach and promotion of opportunities in the PGP project to encourage participation of all persons regardless of race, color, national origin, sex, religion, familial status, or disability. This includes, but is not limited to, a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, as required by 24 CFR 92.351.

10. Litigation

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Grantee shall notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

11. Changes in Terms/Amendments

This Agreement may only be amended or modified by mutual written agreement of both parties.

12. State-Owned Data

- A. Definitions

EXHIBIT E
—EXHIBIT D—**1) Work:**

The work to be directly or indirectly produced by the Grantee, its employees, or by and of the Grantee's contractor's, subcontractor's and/or sub-recipient's employees under this Agreement.

2) Work Product:

All deliverables created or produced from Work under this Agreement including, but not limited to, all Work and Deliverable conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six months after the termination thereof, which relates to the Work commissioned or performed under this Agreement. Work Product includes all deliverables, inventions, innovations, improvements, or other works of authorship Grantee and/or Grantee's contractor subcontractor and/or sub-recipient may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret or other legal protection.

3) Inventions:

Any ideas, methodologies, designs, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Grantee or jointly with the Grantee's contractor, subcontractor and/or sub-recipient and/or Grantee's contractor, subcontractor, and/or sub-recipient's employees with one or more employees of the Department during the term of this Agreement and in performance of any Work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of Work issued under this Agreement.

B. Ownership of Work Product and Rights

- 1)** All work Product derived by the Work performed by the Grantee, its employees or by and of the Grantee's contractor's, subcontractor's and/or sub-recipient's employees under this Agreement, shall be owned by the Department and shall be considered to be works made for hire by the Grantee and the Grantee's contractor, subcontractor and/or subrecipient for the Department. The Department shall own all copyrights in the work product.
- 2)** Grantee, its employees and all of Grantee's contractor's, subcontractor's and sub-recipient's employees agree to perpetually assign, and upon creation of each Work Product automatically assigns, to the Department, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Grantee's contractor, subcontractor and/or subrecipient from the Department. From time to time upon the Department's request, the Grantee's contractor, subcontractor and/or subrecipients, and/or its employees, shall confirm such

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assignments by execution and delivery of such assignment, confirmations or assignment or other written instruments as the Department may request. The Department shall have the right to obtain and hold in its name all copyright registrations and other evidence of rights that may be available for Work Product under this Agreement. Grantee hereby waives all rights relating to identification of authorship restriction or limitation on use or subsequent modification of the Work.

- 3) Grantee, its employees and all Grantee's contractors, subcontractors and sub-recipients hereby agrees to assign to the Department all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority thereunder and the same shall become and remain the Department's property regardless of whether such protection is sought. The Grantee, its employees and Grantee's contractor, subcontractor and /or subrecipient shall promptly make a complete written disclosure to the Department of each Invention not otherwise clearly disclosed to the Department in the pertinent Work Product, specifically noting features or concepts that the Grantee, its employees and/or Grantee's contractor, subcontractor and/or subrecipient believes to be new or different.
- 4) Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications and estimates, produced as part of this Agreement will automatically be vested in Department and no further agreement will be necessary to transfer ownership to Department.

13. Special Conditions

The State reserves the right to add any special conditions to this Agreement it deems necessary to assure that the policy and goals of the Program are achieved.

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~~EXHIBIT D~~**LEAP TERMS AND CONDITIONS****1. Reporting**

- A. During the term of this Standard Agreement ("Agreement") the Grantee shall submit, upon request of the Department, a performance report that demonstrates satisfaction of all requirements identified in this Agreement.
- B. Pursuant to Health and Safety Code Section 50515.04, subsection (a), during the term of the Agreement, the Grantee shall submit an annual report containing all required information by April 1 of the year following receipt of the Grant funds. The annual reports shall be due from the Grantee until Program funds have been expended, but no later than February 28, 2023. A Grantee may, in lieu of providing a separate annual report as identified in Health and Safety Code Section 50515.04, subsection (a), provide the information as part of its Annual Progress Report.
- C. Upon completion of all deliverables required to fulfill this Agreement pursuant to the Grantee's Attachment 1: Project Timeline and Budget as approved in the LEAP Application, the Grantee shall submit a final close out report in accordance with the January 27, 2020 LEAP NOFA. The close out report shall be submitted with the final Request for Reimbursement by September 30, 2023, in accordance with the final invoices due pursuant to Exhibit B, Section 3.

2. Accounting Records

- A. The Grantee, its staff, contractors and subcontractors shall establish and maintain an accounting system and reports that properly accumulate incurred project costs by line. The accounting system shall conform to Generally Accepted Accounting Principles (GAAP), to enable the determination of incurred costs at interim points of completion and provide support for reimbursement payment vouchers or invoices.
- B. The Grantee must establish a separate ledger account for receipts and expenditures of grant funds and maintain expenditure details in accordance with the scope of work, project timeline and budget. Separate bank accounts are not required.
- C. The Grantee shall maintain documentation of its normal procurement policy and competitive bid process (including the use of sole source purchasing), and financial records of expenditures incurred during the course of the project in accordance with GAAP.
- D. The Grantee agrees that the state or designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Agreement.
- E. Subcontractors employed by the Grantee and paid with moneys under the terms of this

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Agreement shall be responsible for maintaining accounting records as specified above. Grantee shall monitor and enforce subcontracts accordingly.

3. Audits

- A. At any time during the term of this Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the award. At the Department's request, the Grantee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The State of California has the right to review project documents and conduct audits during and over the project life.
- 1) The Grantee agrees that the Department or the Department's designee shall have the right to review, obtain, and copy all records and supporting documentation pertaining to performance of this Agreement.
 - 2) The Grantee agrees to provide the Department or the Department's designee, with any relevant information requested.
 - 3) The Grantee agrees to permit the Department or the Department's designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with statutes and this Agreement.
- B. If a financial audit is required by the Department, the audit shall be performed by an independent certified public accountant. Selection of an independent audit firm shall be consistent with procurement standards contained in Exhibit D, Section 8 subsection A. of this Agreement.
- 1) The Grantee shall notify the Department of the auditor's name and address immediately after the selection has been made. The contract for the audit shall allow access by the Department to the independent auditor's working papers.
 - 2) The Grantee is responsible for the completion of audits and all costs of preparing audits.
 - 3) If there are audit findings, the Grantee must submit a detailed response acceptable to the Department for each audit finding within ninety (90) days from the date of the audit finding report.
- C. The Grantee agrees to maintain such records for possible audit after final payment pursuant to Exhibit D, Section 3, subsection E. below, unless a longer period of records retention is stipulated.

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- 1) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained by the Grantee, contractors and sub-contractors until completion of the action and resolution of all issues which arise from it. The Grantee shall include in any contract that it enters into in an amount exceeding \$10,000.00, the Department's right to audit the contractor's records and interview their employees.
 - 2) The Grantee shall comply with the caveats and be aware of the penalties for violation of fraud and for obstruction of investigation as set forth in California Public Contracts Code Section 10115.10.
- D. The determination by the Department of the eligibility of any expenditure shall be final.
- E. The Grantee shall retain all books and records relevant to this Agreement for a minimum of three (3) years after the end of the term of this Agreement. Records relating to any and all audits or litigation relevant to this Agreement shall be retained for five (5) years after the conclusion or resolution of the matter.

4. **Remedies of Non-performance**

- A. The Department may monitor expenditures and activities of an applicant, as the Department deems necessary, to ensure compliance with Program requirements.
- B. The Department may, as it deems appropriate or necessary, request repayment of funds from an applicant, or pursue any remedies available to it by law for failure to comply with Program requirements.
- C. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the Department's Housing Policy Development Manager, or the Manager's designee, who may consider any written or verbal evidence submitted by the Grantee. The decision of the Department's Housing Policy Development Manager or Designee shall be the Department's final decision regarding the dispute.
- D. Neither the pendency of a dispute nor its consideration by the Department will excuse the Grantee from full and timely performance in accordance with the terms of this Agreement.
- E. In the event that it is determined, at the sole discretion of the Department, that the Grantee is not meeting the terms and conditions of the Agreement, immediately upon receiving a written notice from the Department to stop work, the Grantee shall cease all work under the Agreement. The Department has the sole discretion to determine that the Grantee meets the terms and conditions after a stop work order, and to deliver a written notice to the grantee to resume work under the Agreement.

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- F. Both the Grantee and the Department have the right to terminate the Agreement at any time upon thirty (30) days written notice. The notice shall specify the reason for early termination and may permit the grantee or the Department to rectify any deficiency(ies) prior to the early termination date. The Grantee will submit any requested documents to the Department within thirty (30) days of the early termination notice.
- G. There must be a strong implementation component for the funded activity through this Program, including, where appropriate, agreement by the locality to formally adopt or complete the planning document. Localities that do not formally adopt or complete the funded activity could be subject to repayment of the grant.
- H. The following shall each constitute a breach of this Agreement:
- 1) Grantee's failure to comply with any of the terms and conditions of this Agreement.
 - 2) Use of, or permitting the use of, grant funds provided under this Agreement for any ineligible costs or for any activity not approved under this Agreement.
 - 3) Any failure to comply with the deadlines set forth in this Agreement unless approved by the Program Manager.
- I. In addition to any other remedies that may be available to the Department in law or equity for breach of this Agreement, the Department may at its discretion, exercise the following remedies:
- 1) Disqualify the Grantee from applying for future Department administered grant programs.
 - 2) Revoke existing LEAP award(s) to the Grantee.
 - 3) Require the return of unexpended LEAP funds disbursed under this Agreement.
 - 4) Require repayment of LEAP Funds disbursed and expended under this Agreement.
 - 5) Seek a court order for specific performance of the obligation defaulted upon, or the appointment of a receiver to complete the obligations in accordance with the LEAP Program requirements.
 - 6) Other remedies available at law, or by and through this Agreement. All remedies available to the Department are cumulative and not exclusive.
 - 7) The Department may give written notice to the Grantee to cure the breach or violation within a period of not less than fifteen (15) days.

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~~EXHIBIT D~~**5. Indemnification**

Neither the Department nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by the Grantee, its officers, employees, agents, its contractors, its sub-recipients or its subcontractors under or in connection with any work, authority or jurisdiction conferred upon the Grantee under this Agreement. It is understood and agreed that the Grantee shall fully defend, indemnify and save harmless the Department and all of the Department's staff from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by the Grantee, its officers, employees, agents contractors, sub-recipients, or subcontractors under this Agreement.

6. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement, or to require at any time, performance by the Grantee of these provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

7. Relationship of Parties

It is expressly understood that this Standard Agreement is an agreement executed by and between two independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

8. Third-Party Contracts

- A. All state-government funded procurements must be conducted using a fair and competitive procurement process. The Grantee may use its own procurement procedures as long as the procedures comply with all City/County laws, rules and ordinances governing procurement, and all applicable provisions of California state law.
- B. Any contract entered into as a result of this Agreement shall contain all the provisions stipulated in the Agreement to be applicable to the Grantee's sub-recipients, contractors, and subcontractors. Copies of all agreements with sub-recipients, contractors, and subcontractors shall be submitted to the Department's program manager upon request.
- C. The Department does not have a contractual relationship with the Grantee's sub-recipients, contractors, or subcontractors, and the Grantee shall be fully responsible for all work performed by its sub-recipients, contractors, or subcontractors.
- D. In the event the Grantee is partnering with another jurisdiction or forming a collaborative effort between the Grantee and other jurisdictions who are grantees of the Local Early

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Action Planning Grants Program, the Grantee acknowledges that each partner and/or all entities forming the Local Early Action Planning Grants Program collaborative are in mutual written agreement with each other but are contractually bound to the Department under separate, enforceable contracts.

- E. In the event the Grantee is partnering with another jurisdiction or forming a collaborative effort with other entities that are not grantees of the Local Early Action Planning Grants Program, the Department shall defer to the provisions as noted in subsections 8(B) and 8(C) of this part.

9. Compliance with State and Federal Laws, Rules, and Regulations

- A. The Grantee agrees to comply with all state and federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the grant, the Grantee, its contractors or subcontractors, and any other grant activity.
- B. During the performance of this Agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, ancestry, national origin, sex, gender, gender identity, gender expression, genetic information, age, disability, handicap, familial status, religion, or belief, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 USC 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975 and all implementing regulations.
- C. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all agreements with its sub-recipients, contractors, and subcontractors, and shall include a requirement in all agreements with all of same that each of them in turn include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts they enter into to perform work under the Program.
- D. The Grantee shall, in the course of performing project work, fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
- E. The Grantee shall adopt and implement affirmative processes and procedures that provide information, outreach and promotion of opportunities in the LEAP project to encourage participation of all persons regardless of race, color, national origin, sex, religion, familial status, or disability. This includes, but is not limited to, a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, as required by 24 CFR 92.351.

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~~EXHIBIT D~~**10. Litigation**

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Grantee shall notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

11. Changes in Terms/Amendments

This Agreement may only be amended or modified by mutual written agreement of both parties.

12. State-Owned Data**A. Definitions****1) Work:**

The work to be directly or indirectly produced by the Grantee, its employees, or by and of the Grantee's contractor's, subcontractor's and/or sub-recipient's employees under this Agreement.

2) Work Product:

All deliverables created or produced from Work under this Agreement including, but not limited to, all Work and Deliverable conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six months after the termination thereof, which relates to the Work commissioned or performed under this Agreement. Work Product includes all deliverables, inventions, innovations, improvements, or other works of authorship Grantee and/or Grantee's contractor subcontractor and/or sub-recipient may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret or other legal protection.

3) Inventions:

Any ideas, methodologies, designs, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Grantee or jointly with the Grantee's contractor, subcontractor and/or sub-recipient and/or Grantee's contractor, subcontractor, and/or sub-recipient's employees with one or more employees of the Department during the term of this Agreement and in performance of any Work

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under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of Work issued under this Agreement.

B. Ownership of Work Product and Rights

- 1) All work Product derived by the Work performed by the Grantee, its employees or by and of the Grantee's contractor's, subcontractor's and/or sub-recipient's employees under this Agreement, shall be owned by the Department and shall be considered to be works made for hire by the Grantee and the Grantee's contractor, subcontractor and/or subrecipient for the Department. The Department shall own all copyrights in the work product.
- 2) Grantee, its employees and all of Grantee's contractor's, subcontractor's and sub-recipient's employees agree to perpetually assign, and upon creation of each Work Product automatically assigns, to the Department, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Grantee's contractor, subcontractor and/or subrecipient from the Department. From time to time upon the Department's request, the Grantee's contractor, subcontractor and/or subrecipients, and/or its employees, shall confirm such assignments by execution and delivery of such assignment, confirmations or assignment or other written instruments as the Department may request. The Department shall have the right to obtain and hold in its name all copyright registrations and other evidence of rights that may be available for Work Product under this Agreement. Grantee hereby waives all rights relating to identification of authorship restriction or limitation on use or subsequent modification of the Work.
- 3) Grantee, its employees and all Grantee's contractors, subcontractors and sub-recipients hereby agrees to assign to the Department all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority thereunder and the same shall become and remain the Department's property regardless of whether such protection is sought. The Grantee, its employees and Grantee's contractor, subcontractor and /or subrecipient shall promptly make a complete written disclosure to the Department of each Invention not otherwise clearly disclosed to the Department in the pertinent Work Product, specifically noting features or concepts that the Grantee, its employees and/or Grantee's contractor, subcontractor and/or subrecipient believes to be new or different.
- 4) Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications and estimates, produced as part of this Agreement will automatically be vested in Department and no further agreement will be necessary to transfer ownership to Department.

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13. Special Conditions

The State reserves the right to add any special conditions to this Agreement it deems necessary to assure that the policy and goals of the Program are achieved.