



**CITY COUNCIL AGENDA
CITY HALL, 291 N. MAIN STREET
PORTERVILLE, CALIFORNIA
MARCH 5, 2019, 5:30 PM**

Call to Order

Roll Call

ORAL COMMUNICATIONS

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

CITY COUNCIL CLOSED SESSION:

A. Closed Session Pursuant to:

- 1** - Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: 140 S. C Street. Agency Negotiator: John Lollis. Negotiating Parties: City of Porterville and Porterville Unified School District. Under Negotiation: Terms and Price.
- 2** - Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: John Duran v. John Lollis, et al., United States District Court, Eastern Dist., Case No. 1:18-cv-01580-DAD-SAB.
- 3** - Government Code Section 54956.9(d) (3) – Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation: Two (2) cases in which facts are not yet known to potential plaintiff.
- 4** - Government Code Section 54956.9(d)(4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation: Ten (10) cases.

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

Pledge of Allegiance Led by Council Member Monte Reyes
Invocation

AB 1234 REPORTS

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

1. Tulare County Taskforce on Homelessness - February 20, 2019
2. San Joaquin Valley Air Pollution Control District (SJVAPCD) - February 21, 2019
3. Tulare County Economic Development Corp. (TCEDC) - February 27, 2019

4. Tulare County Association of Governments (TCAG) - February 25, and February 28, 2019
5. Cannabis Ad Hoc Committee - February 22, 2019

STAFF INFORMATIONAL REPORTS

This is the time for staff informational items.

ORAL COMMUNICATIONS

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

CONSENT CALENDAR

All Consent Calendar Items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made, in which event the item will be removed from the Consent Calendar. All items removed from the Consent Calendar for further discussion will be heard at the end of Scheduled Matters.

1. **City Council Minutes of December 10, 2018**
Re: Considering approval of the draft minutes of December 10, 2018.
2. **Award of Contract - Library, Fire Station, and Airport Asbestos and Other Hazardous Materials Abatement Project**
Re: Considering awarding a contract in the amount of \$63,500 to A.S.I., Inc. for the Library, Fire Station, and Airport Asbestos and Other Hazardous Materials Abatement Project.
3. **Authorization to Advertise for Qualifications - Engineering Services for Pavement Management Update Implementation & Asset Management Development**
Re: Considering approval to advertise a Request for Qualifications (RFQ) for consultants to provide the software and services needed to implement and update a complete Pavement Management Program.
4. **Authorization to Operate Fare Free Shuttle Service to the Porterville Fair and Porterville Freedom Fest**
Re: Considering approval to operate a fare free shuttle to the Porterville Fair from May 16-18, 2019 (12:00 pm to 10:00 pm) and a fare free shuttle to the Porterville Freedom Fest on June 29, 2019 (4:00 pm to 10:00 pm).
5. **Consideration of Financial Support to the Development of a Regional Strategic Plan to Address Homelessness**
Re: Considering approval of financial support not to exceed \$5,000 toward the development of a Regional Strategic Plan to address homelessness.

6. **Letter of Support for Assembly Bill 213 (Reyes): Annexations Finance: Restoration of Lost Revenue**
Re: Consideration of a Letter of support for Assembly Bill 213 (Reyes) to restore funds for city annexations.
7. **Letter of Support for Partial Deletion of the Beckman Instruments Superfund Site**
Re: Considering approval of a Letter of Support to delete the soil portion of the Beckman Instruments Superfund Site.
8. **Approval for Community Civic Event - Porterville Unified School District, Optimist Club of Porterville and Burton School District - Porterville Celebrates Reading - April 13, 2019**
Re: Considering approval of an event to take place on April 13, 2019, at Veterans Park from 10:00 a.m. to 2:00 p.m.
9. **Status and Review of Declaration of Local Emergency**
Re: Considering approval of the continuance of the Declaration of Local Emergency.

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

PUBLIC HEARINGS

10. **Proposed Sidewalk Vending Ordinance**
Re: Consideration of an Ordinance enacting a permitting system to regulate sidewalk vending.
11. **Consideration of Rentable Park Area Fees**
Re: Considering adoption of new rentable park area fees.

SECOND READINGS

12. **Second Reading - Ordinance 1850 to Amend Municipal Code Chapter 15, Article IX: Massage Businesses and Practitioners**
Re: Second Reading of Ordinance No. 1850, approving the creation of a limited exception to the business license requirements for individuals who are in the process of obtaining their certification from California Massage Therapy Council (CAMTC), which was given first reading on February 19, 2019, and has been printed.

SCHEDULED MATTERS

13. Purchase of CAD/RMS and 9-1-1 System

Re: Considering approval of the purchase of Motorola Solutions Spillman Flex Computer Aided Dispatch and Records Management System for \$1,028,292.72 and CallWorks 9-1-1 System for \$269,390.88.

14. Request for Direction Related to Assembly Bill 626 Regarding Microenterprise Home Kitchens Operations

Re: Consideration of option within Assembly Bill 626, which established Microenterprise Home Kitchen Operation (“MEHKO”) as a new category of retail food facilities that Cities or Counties have the ability to opt-in and authorize a local MEHKO program.

15. Consideration of Tulare County Local Agency Formation Commission (LAFCO) City Representatives

Re: Consideration of Tulare County LAFCO City Representatives

16. Cannabis Ad Hoc Committee Report

Re: Consideration of recommendations of the Cannabis Ad Hoc Committee.

ORAL COMMUNICATIONS

OTHER MATTERS

CLOSED SESSION

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

ADJOURNMENT - to the meeting of March 12, 2019.

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

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



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: City Council Minutes of December 10, 2018

SOURCE: Administrative Services

COMMENT: Staff has prepared the draft Minutes of December 10, 2018 for the Council's review and consideration.

RECOMMENDATION: That the Council approve the draft Minutes of December 10, 2018.

ATTACHMENTS: 1. Draft Minutes 12-10-18

Appropriated/Funded:

Review By:

Department Director:

Patrice Hildreth, Administrative Services Dir

Final Approver:

**CITY COUNCIL MINUTES
CITY HALL, 291 N. MAIN STREET
PORTERVILLE, CALIFORNIA
DECEMBER 10, 2018, 6:00 PM**

Called to Order at 5:59 p.m.

Roll Call: Council Member Monte Reyes, Council Member Martha A. Flores, Council Member Cameron Hamilton, Vice Mayor Brian Ward, Mayor Milt Stowe

The Pledge of Allegiance was led by Council Member Martha A. Flores.

Invocation -- a moment of silence was observed.

ORAL COMMUNICATIONS

- Felipe Martinez, Porterville, thanked Council Member Cameron Hamilton for his years of service to the community; encouraged him to stay active in the community; and congratulated Council Member Elect Daniel Peñaloza on his taking office.
- Virginia Gurrola, Porterville, addressed Council Member Hamilton stating that despite differences in their political philosophies they shared a common interest in the betterment of the community; wished him the very best moving forward; and thanked him for his many years of service. She then congratulated Councilmember Elect Peñaloza; thanked staff for their work; and wished everyone a blessed Christmas.

SCHEDULED MATTERS

1. ACCEPTANCE OF OFFICIAL CANVASS OF VOTES FOR NOVEMBER 6, 2018 ELECTION

Recommendation: That the City Council approve the draft resolution accepting the Certified Canvass of the November 6, 2018 Municipal General Election from the Tulare County Registrar of Voters.

City Manager Lollis introduced the item, and Administrative Services Director Patrice Hildreth presented the staff report.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Council Member Flores that the City Council approve the draft resolution accepting the Certified Canvass of the November 6, 2018 Municipal General Election from the Tulare County Registrar of Voters. The motion carried unanimously.

Documentation: M.O. 01-121018

Disposition: Approved.

2. RECOGNITION OF COUNCIL MEMBER CAMERON J. HAMILTON

City Manager Lollis recognized Council Member Hamilton as the longest serving member of City Council to date; and members of the Council in turn addressed Council Member Hamilton.

Council Member Martha Flores stated that she had known Council Member Hamilton prior to serving on the Council; spoke of their shared interest in the community and service on Tulare County Association of Governments. She thanked him for his friendship and support.

Council Member Reyes spoke of his and Council Member Hamilton's shared interest in racing, healthy debates and disagreements while serving on the Council; and voiced appreciation for his being resolute, calm and reassuring.

Vice Mayor Ward stated that it had been a pleasure serving with Council Member Hamilton, and spoke of his depth of knowledge in City operations and affairs. He thanked him for his diligence to that regard, his mentorship, and his ability to move beyond disagreements for the betterment of the community.

Mayor Stowe spoke of Council Member Hamilton's many years of service, their friendship, and of his

Council Member Hamilton stated that the best thing he did while serving on the Council was appointing John Lollis as City Manager and that he was leaving the City in good hands. Council Member Hamilton thanked staff, and advised Council Member Elect to listen to them staff because they were amazing.

3. ADMINISTRATION OF OATH OF OFFICE AND PRESENTATION OF CERTIFICATES OF ELECTION TO NEW COUNCIL MEMBERS; AND SEATING OF NEW CITY COUNCIL

Tulare County Superior Court Judge Glade Roper administered the oath of office to Council Member Milt Stowe, District 2, and Council Member Elect Daniel Peñaloza, District 1.

Council Member Peñaloza thanked Council Member Hamilton for his passion and commitment to the community during his service on the Council. He then thanked his mother, spoke of his moving to Porterville, and expressed his gratitude to those who supported him during his campaign. He stated that he looked forward to working with community members, fellow council members, and staff; and added that any challenge can be overcome when people come together in love.

4. REORGANIZATION OF CITY COUNCIL

City Manager Lollis introduced the item. Mayor Stowe opened up nominations for mayor, and nominated Vice Mayor Ward. Council Member Flores stated that she would like consideration and nominated herself. Nominations were closed.

City Attorney Lew advised that ballots had been prepared should the Council wish to utilize the McCracken Method. At the Mayor's request, the Deputy City Clerk distributed and collected ballots, which were read aloud by the City Attorney as follows:

- Vice Mayor Ward voted for Vice Mayor Ward
- Council Member Reyes voted for Council Member Flores
- Council Member Peñaloza voted for Council Member Flores
- Council Member Flores voted for Council Member Flores
- Mayor Stowe voted for Vice Mayor Ward

COUNCIL ACTION: MOVED by Mayor Stowe, SECONDED by Vice Mayor Ward that the City Council appoint Council Member Flores to serve as mayor. The motion carried unanimously.

Documentation: M.O. 02-121018

Disposition: Approved

Mayor Flores opened up nominations for vice mayor. Vice Mayor Ward nominated Council Member Stowe. Council Member Stowe nominated Vice Mayor Ward. Nominations were closed and ballots were again distributed, collected, and read aloud as follows:

- Vice Mayor Ward voted for Council Member Stowe
- Council Member Reyes voted for Vice Mayor Ward
- Mayor Flores voted for Vice Mayor Ward
- Council Member Peñaloza voted for Vice Mayor Ward
- Council Member Stowe voted for Vice Mayor Ward

COUNCIL ACTION: MOVED by Council Member Stowe, SECONDED by Council Member Reyes that the City Council appoint Vice Mayor Ward to serve as vice mayor.

AYES:	Peñaloza, Reyes, Stowe, Flores
NOES:	Ward
ABSTAIN:	None
ABSENT:	None

Documentation: M.O. 03-121018

Disposition: Approved

5. COUNCIL MEMBER APPOINTMENTS TO BOARDS AND COMMITTEES

City Manager Lollis introduced the item and suggested that the Council consider the appointment of an elected to serve as alternate on the Tulare County Economic Development Corporation.

At the Vice Mayor's suggestion, Mayor Flores requested that council members communicate their interest in serving on the various boards and committees. The following interests were communicated:

- Tulare County Association of Governments (TCAG) Board – Flores; Stowe (alternate)

- Tulare County Economic Development Corporation – Peñaloza
- Tulare County Taskforce on Homelessness – Flores
- Porterville Area Airport Development Corporation (PAADA) – Stowe; Reyes
- Ad Hoc Committee – Proposition 64 Regulation of Marijuana – Reyes; Peñaloza
- Ad Hoc Committee – Provision of Local Water Services – Ward; Peñaloza
- Tule River Improvement JPA – Peñaloza

With regard to Tulare County Local Agency Formation Commission (LAFCO) vacancy left by Council Member Hamilton, the City Manager stated that a call for nominations would be issued to the cities at a future date.

- Eastern Tule Groundwater Sustainability Agency JPA – Reyes; Peñaloza (alternate)
- Joint City/School Committee – Stowe; Ward

With regard to Council of Cities, Vice Mayor Ward indicated that he was rarely able to attend the meetings due to his schedule. Council Member Stowe indicated he could continue to serve.

- Council of Cities - Flores; Stowe

COUNCIL ACTION: MOVED by Vice Mayor Ward, SECONDED by Council Member Stowe that the City Council approve the appointments as proposed. The motion carried unanimously.

Documentation: M.O. 04-121018

Disposition: Approved.

ADJOURNMENT

The Council adjourned at 6:52 p.m. to the meeting of December 18, 2018.

Luisa Zavala, Deputy City Clerk

SEAL

Martha A. Flores, Mayor



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Award of Contract - Library, Fire Station, and Airport Asbestos and Other Hazardous Materials Abatement Project

SOURCE: Public Works

COMMENT: On February 20, 2019, staff received four (4) bids for the Library, Fire Station, and Airport Asbestos and Other Hazardous Materials Abatement Project. The proposed project is the required first step for future remodeling and/or painting at each of the three locations.

The bids are as follows:

Contractor:	Amount:
1. A.S.I., Inc. Bakersfield, CA	\$63,500.00
2. PARC Environmental Fresno, CA	\$69,794.00
3. Central Valley Environmental Fresno, CA	\$75,232.00
4. Bowen Engineering and Environmental Fresno, CA	\$94,000.00

Staff has found the low bid acceptable.

The Engineer's estimate of probable cost for the overall project was \$81,600. The low bid presented by A.S.I., Inc. of Bakersfield is \$63,500, which is 22.18% lower than the Engineer's Estimate. An additional \$6,350 is necessary for abatement contingencies. It is anticipated that an additional \$20,994 is required for construction management, quality control and inspection services (33.06%) for a total project cost of \$90,844. The totals for each individual area of the project are as follows:

Location:	Bid:	Management:	Contingency:	Total:
Airway Cafe	\$33,000	\$11,304	\$3,300	\$47,604
Library	\$5,000	\$3,774	\$500	\$9,274
Fire Station 1	<u>\$25,500</u>	<u>\$5,916</u>	<u>\$2,550</u>	<u>\$33,966</u>
Totals	\$63,500	\$20,994	\$6,350	\$90,844

Funding for this project includes land release proceeds for the Airport-Airway Cafe, General Fund Carryover for the Library, and Equipment Replacement Funds for Fire Station 1.

RECOMMENDATION: That City Council:

1. Award the Library, Fire Station, and Airport Asbestos and Other Hazardous Materials Abatement Project to A.S.I., Inc. in the amount of \$63,500;
2. Authorize progress payments up to 95% of the contract amount;
3. Authorize a 10% contingency to cover unforeseen abatement costs; and
4. Authorize \$20,994 for construction management, quality control, and inspection.

ATTACHMENTS:

1. Library Locator Map
2. Fire Station 1 Locator Map
3. Airway Cafe Locator Map

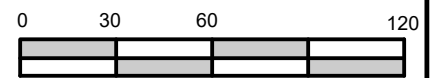
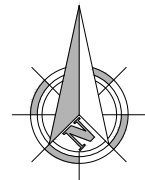
Appropriated/Funded: MB

Review By:

Department Director:

Mike Reed, Acting Public Works Director

Final Approver: John Lollis, City Manager



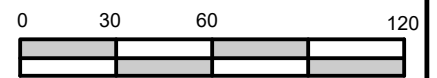
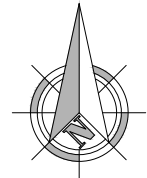
SCALE: 1"=60'

CITY OF PORTERVILLE
ENGINEERING DIVISION
291 NORTH MAIN STREET
PORTERVILLE, CA 93257
(559) 782-7462

PORTERVILLE PUBLIC LIBRARY
LOCATOR MAP
41 W THURMAN AVENUE
PORTERVILLE, CA 93257

DRAWN BY	KRS
CHECKED BY	MKR
SCALE	1" = 60'
DATE	1/10/2019

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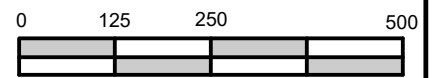
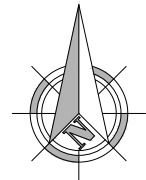
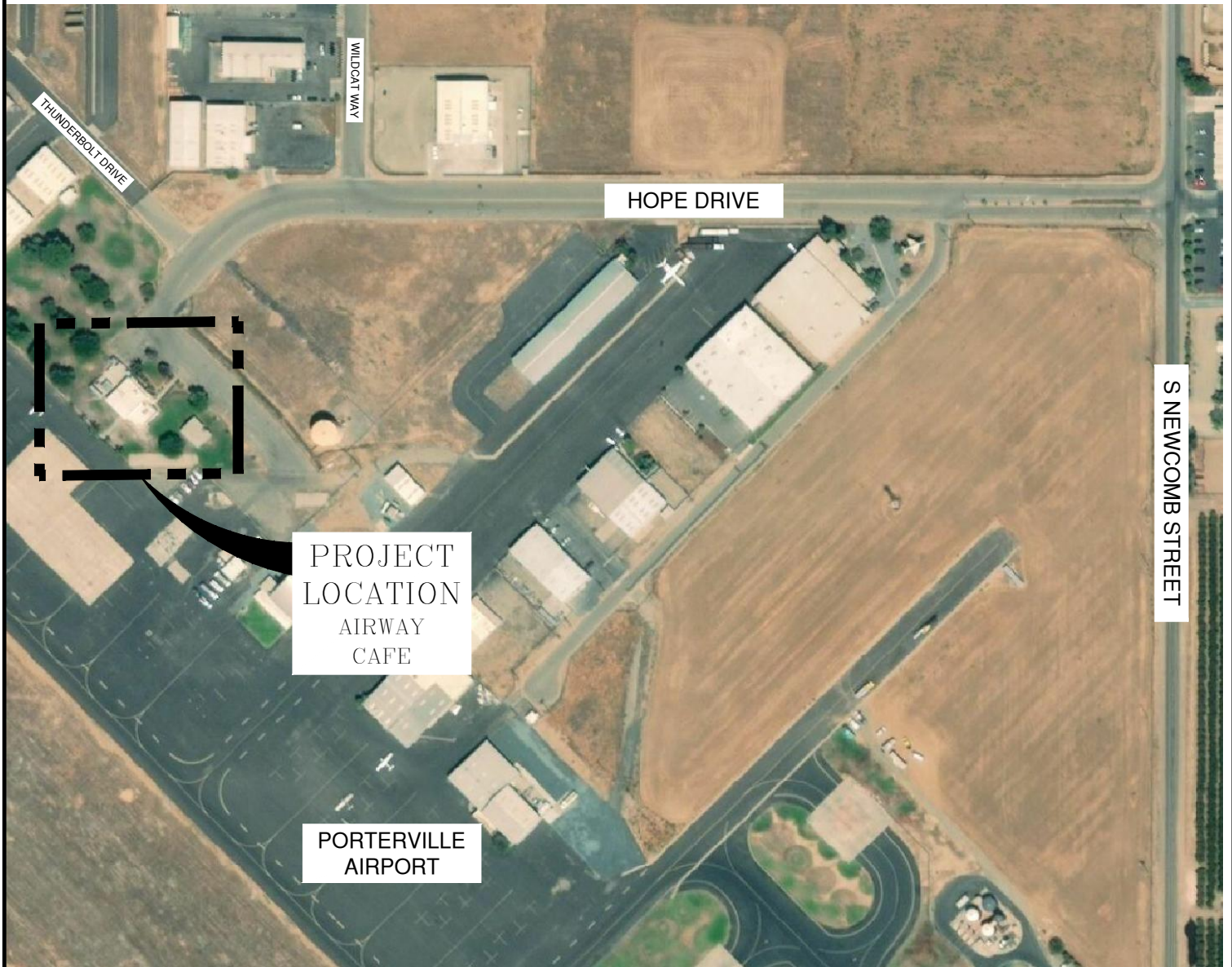
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CITY OF PORTERVILLE
ENGINEERING DIVISION
291 NORTH MAIN STREET
PORTERVILLE, CA 93257
(559) 782-7462

FIRE STATION 1 LOCATOR MAP
40 W CLEVELAND AVENUE
PORTERVILLE, CA 93257

DRAWN BY	KRS
CHECKED BY	MKR
SCALE	1" = 60'
DATE	1/10/2019

SHEET
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SCALE: 1"=250'

CITY OF PORTERVILLE
ENGINEERING DIVISION

291 NORTH MAIN STREET
PORTERVILLE, CA 93257
(559) 782-7462

AIRWAY CAFE LOCATOR MAP
1893 NEWCOMB STREET #12
PORTERVILLE, CA 93257

DRAWN BY	KRS
CHECKED BY	MKR
SCALE	1" = 250'
DATE	1/10/2019

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CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Authorization to Advertise for Qualifications - Engineering Services for Pavement Management Update Implementation & Asset Management Development

SOURCE: Public Works

COMMENT: The City of Porterville is requesting authorization to advertise a Request for Qualifications (RFQ) for consultants to provide the software and services needed to implement and update a complete Pavement Management Program for the entire paved street circulation system. In addition to the Pavement Management Program (PMP), the City would like the Consultant to provide information and costs for additional right of way asset database development items.

The City has approximately 208 centerline miles, which translates to roughly 498 lane miles. Some of the services that the City is looking for, aside from updating the City's software, are automated pavement surveys and asset data collection that include sign inventory, curb ramp and sidewalk inventory, signal inventory, street lights, and full right of way asset collection. Rather than perform time consuming inspections by foot, the City wants automated distress surveys that can collect assets as well. The City's goal is to reach a Pavement Condition Index (PCI) of 70 or better and continue performing automated surveys every few years to develop accurate data and accurate PCI ratings. Having more frequent determinations of PCI ratings will allow the City to track progress of road maintenance as well as to select projects based on data gathered and efficiently use City funding for roadways.

Special Gas Tax is the funding source for this project and was approved in the 2018/2019 FY budget.

RECOMMENDATION: That City Council:

1. Accept the RFQ in draft form; and
2. Authorize staff to distribute the RFQ to Pavement Management & Asset Management Consultants.

ATTACHMENTS:

1. 1-COP PMP Update RFQ
2. 2-COP PMP Scope of Services
3. 3-Consultant Selection Rating Form
4. 4-Blank Service Agreement

Appropriated/Funded:

Review By:

Department Director:

Mike Reed, Acting Public Works Director

Final Approver: John Lollis, City Manager



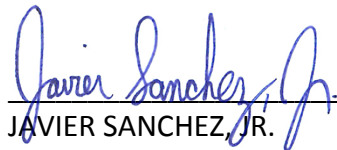
REQUEST FOR QUALIFICATIONS

Pavement Management Program Update Implementation & Asset Management Development

CITY PROJECT #: 89-9127

PREPARED BY:
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
MARCH 2019

REVIEWED BY:


JAVIER SANCHEZ, JR.
City Engineer

APPROVED BY:


MICHAEL K. REED
Public Works Director

I INTRODUCTION AND OBJECTIVES:

The City of Porterville (hereinafter referred to as "CITY") is requesting proposals from qualified consultants to provide the software and services needed to implement and update a complete Pavement Management Program for its entire street system. In addition to the Pavement Management Program (PMP), the City would like the Consultant to provide information and costs for additional right of way asset database development items. The attached Scope of Services provides detailed tasks required as part of these services.

II EXAMINATION OF PROPOSAL DOCUMENTS:

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

III ADDENDA/CLARIFICATIONS:

Any CITY changes to this RFQ will be made by written addendum. No verbal modification shall be binding. All RFQ questions from CONSULTANTS must be received by the end of the day on Monday, March 25, 2019 in order to be provided a response from CITY on Thursday, March 28, 2019.

IV PROPOSAL REQUIREMENTS:

Proposals for this project will be accepted at this office until 4:00 p.m., on Thursday, April 4, 2019. Three (3) copies of the proposal shall be submitted in a sealed envelope, plainly marked "RFQ Pavement Management Update Implementation & Asset Management Development." Cost proposals shall not be submitted until requested by CITY. Proposals shall be addressed to:

Vincent Santamaria, Associate Engineer
Public Works Department
City of Porterville
291 N. Main Street
Porterville, CA 93257

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

V PRE-CONTRACTUAL EXPENSES:

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

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

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

VI EXCEPTIONS/DEVIATIONS:

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

VII CONSULTANT REPRESENTATIVE:

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

VIII LOCAL AGENCY REPRESENTATIVE:

Vincent Santamaria, Associate Engineer, shall be the Contract Administrator and contact person for all communications with CITY.

IX INSURANCE REQUIREMENTS:

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

Full liability under Worker's Compensation laws of the State of California

General comprehensive liability (*bodily injury and property damage*)*

Professional liability insurance (*errors and omissions*)*

Automotive liability Insurance*

*All must provide a combined single limit (CSL) of not less than \$1 million per occurrence.

X INDEMNIFICATION:

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

CONSULTANT and its subconsultants arising out of performance of the requirements of the Contract.

XI SUBCONTRACTING:

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

XII FEDERAL, STATE, AND LOCAL LAWS:

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

XIII PROPOSAL FORMAT AND CONTENT:

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

A. Firm Experience:

1. A brief list of similar projects completed in the last seven (7) years, indicating the specific relationship if other than principal, and each firm's responsibilities. Descriptions of pertinent experience should include a summary of work performed, adherence to schedules, the duration of each project, and the name, title, and phone number of clients that may be contacted for reference.
2. Other information that might aid CITY in ascertaining firm's qualifications.

B. Consultant Team:

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

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

telephone and/or cell number of the project manager.

C. Proposal Format:

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

XIV PROPOSAL EVALUATION CRITERIA:

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

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

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

XV CONSULTANT SELECTION AND INTERVIEWS:

CITY selection committee, consisting of the Contract Administrator and at least two additional staff members familiar with the project requirements, will review all proposals and rank CONSULTANTs according to their demonstrated competence and professional qualifications as assessed by their response to this RFQ and the evaluation criteria contained in CITY'S Consultant Selection Rating Form. The highest ranked CONSULTANT(s) may be invited for oral interviews with CITY team. Interviews, if deemed necessary by CITY, are tentatively scheduled for early May 2019. Each participating firm will be contacted via telephone for verification of interview date and time. Failure to be available at the time of a scheduled interview shall be considered non-responsive and shall be cause for elimination from any further consideration. CITY reserves the right to begin negotiations and enter into a Contract without interviews or further discussion.

XVI PROTEST PROCEDURES AND DISPUTE RESOLUTION PROCESS:

The following process and procedures are to be followed in the event a dispute arises concerning this RFQ:

Only a prospective CONSULTANT who is aggrieved in connection with the RFQ or award of the contract may file a protest. All protests to resolve a dispute concerning this RFQ shall be submitted in writing stating the name and address of protestor, a contact person, must specify in detail the grounds of the protest, the facts and evidence in support thereof, and the remedy sought. The written protest must be delivered to CITY within the time limits provided below. In the absence of a timely and properly submitted written protest, no party responding to this RFQ shall be eligible for any remedy. No protest may be filed if the RFQ is cancelled or if all RFQs received in response to the RFQ are rejected.

Any applicant desiring to protest a determination concerning this RFQ or the recommendation of CITY staff, must file a protest, in writing, no later than twenty-four (24) hours prior to the meeting of the City Council at which the staff recommendation will be considered. The CITY's Public Works Director shall have authority to settle and resolve a protest based upon the written protest and any oral and written response thereto provided by CITY staff. Any resolution of the protest shall be deemed final.

Appeals:

- A. An appeal of a denial of award can only be brought on the following grounds:
 - 1. Failure of CITY to follow the selection procedures and adhere to the requirements specified in the RFQ or any addenda or amendments;
 - 2. There has been a violation of conflict of interest as provided by California Government Code Section 87100 et seq; and/or
 - 3. A violation of State or Federal law.

- B. Appeals will not be accepted for any reasons other than those stated above. Appeals must be sent to:

City of Porterville
ATTN: Public Works Director
Public Works Department
291 N. Main Street
Porterville, CA 93257

- C. Accepted appeals will be processed and reviewed by the Public Works Director within five (5) business days of receipt of written appeal; and
- D. The Public Works Director will consider only those specific issues addressed in the written appeal.

XVII COST PROPOSAL:

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

XVIII CONTRACTS/AGREEMENTS:

The successful CONSULTANT shall enter into a Contract with CITY that is based on the contents of this RFQ, the CONSULTANT's proposal, and CITY Contract. Where two or more CONSULTANTS desire to submit a single proposal (joint venture), only one CONSULTANT shall be listed as prime CONSULTANT, all others shall be listed as subconsultants. Issuance of this RFQ and receipt of proposals does not commit CITY to award a Contract. CITY reserves the right to postpone award of a Contract for its own convenience, accept or reject any or all proposals received in response to this RFQ, negotiate with a CONSULTANT other than the highest ranked CONSULTANT should negotiations with the highest ranked CONSULTANT be terminated, and cancel any or all portions of this RFQ and resulting Contract.

XIX COMPENSATION:

- A. All items of work required for completion of the project outlined in this RFQ shall be paid for following the cost proposal format submitted. Costs for any and all items not specifically listed, but required to complete the work for the project (including all exceptions and deviations stated included in CONSULTANT's proposal), shall be included as part of the total cost proposed. No additional compensation shall be paid for such items. No additional compensation shall be given for any reproduction costs, except those in excess of the requirements stated in this RFQ. Only a change in scope or any

significant task addition or increase shall receive consideration for additional compensation.

- B. If the CONSULTANT feels that any work it has been directed to perform is beyond the scope of the Contract and constitutes extra work, it shall notify CITY in writing within ten (10) days. CITY will review such notice and, if justified, authorize additional compensation to the CONSULTANT on a fair and equitable basis.
- C. Monthly progress payments will be made to the CONSULTANT only upon submittal of invoices to CITY. Said invoice shall indicate the percentage completion of each task, as well as the overall percentage completion of the entire project. In addition, an updated schedule showing tasks and their degree of completion shall be provided.

XX OWNERSHIP OF REPORTS AND DOCUMENTS:

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

**PAVEMENT MANAGEMENT PROGRAM UPDATE IMPLEMENTATION
& ASSET MANAGEMENT DEVELOPMENT
SCOPE OF SERVICES**

BACKGROUND INFORMATION

The City of Porterville has a population of just over 60,000. It is located in the Central Valley between the larger metropolitan cities of Fresno and Bakersfield. The City maintains approximately 208 miles of streets within its jurisdictional limits. A breakdown of the centerline street miles for each street type (arterial, collector, local, and alley) is summarized in Table 1 at the end of this section.

The City is soliciting proposals from qualified Consultants to develop a complete Pavement Management Program (PMP) for its entire street system (see Table 1). The Consultant will be responsible for recommending an appropriate software system, evaluating the condition of all the streets maintained by the City through data collection and pavement evaluation processes, compiling all of the data collected into the software system, establishing a PMP, and integrating the data with the City's Geographical Information System (GIS) program. The PMP shall identify the needs of the City's pavement network, establish cost-effective priorities for making improvements, and develop a maintenance implementation program.

In addition to the Pavement Management Program (PMP), the City would like the Consultant to provide information and costs for right of way asset data collection, sidewalk inventory and database development, sign inventory and database development, curb ramp inventory, compliance survey, and database development. The City may elect to have the Consultant provide data collection and processing services for these items as well pending cost and the City budget for this project. See Task 4 for a full list of optional items and further details.

The purpose of this RFQ is to give the Consultant a clear idea of the City's goals and objectives in the development of its PMP. The Consultant is strongly encouraged to propose the best means and methods to accomplish these goals. The Consultant shall clearly indicate the levels of participation expected from City Staff in the fulfillment of their proposal. All proposals will be judged on the qualifications of the Consultant and the means and methods that are being proposed to meet the City's goals in accordance with the evaluation criteria listed in the RFQ.

While it is believed the study requirements set forth in this RFQ are in a logical sequence and include all elements essential for a comprehensive system evaluation and development plan, those submitting proposals are advised to include any subject or procedure which they believe has been overlooked. They may also note requirements and items that they believe to be excessive or extraneous to the scope of any effective study.

Table 1 - Porterville Street Mileage

Street Classification	Approx. Centerline Miles
Arterial	39.95
Collector	14.61

Local	153.26
Alley	8.5

A. TASK 1 - EVALUATION OF SOFTWARE SYSTEM OPTIONS

The City of Porterville's current Pavement Management Program software system being utilized is MicroPaver. However, the City would like to explore available pavement management/asset management software. The selected Consultant will evaluate and compare the available pavement management/asset management software packages and determine which program will best meet the needs of the City. The Consultant will prepare a technical memorandum summarizing the findings for this item. At this time the main focus of the system will be pavement management. However, the City will require that the proposed software program be expandable to inventory/maintain a range of other right of way asset items as discussed in this section.

a. City Software Information/Methods

The Current city software systems in use are as follows: Server Operating System is Microsoft Server 2016 (x64) and the Relational Database Management System is Microsoft SQL Server 2016 (x64). The City of Porterville is currently using ArcGIS Version 10.6.1 by ESRI to manage its GIS data. The GIS program is currently managed using geodatabase files and the software system utilized must integrate with GIS using geodatabase file although shape files are an acceptable deliverable format. See Task 3 for additional requirements related to integration of the PMP into the GIS system. Additionally, the software for the PMP shall be designed to operate on City staffs' personal computers, PC's, running on Windows 10, 64-bit. It is expected that the selected software system will be upgradable and maintain functionality with upgrades to higher versions of any of the servers, database systems, and software programs listed in this section.

b. Software Program Capabilities/Requirements

The software must be compatible with all of the existing city software systems, database systems, and servers. This will include close collaboration between the Consultant and selected City staff members. It is expected that meetings with software company representatives and demo presentations of the programs will be set up by the consultant and provided for the most suitable 2-3 software programs. All demos must be detailed and thorough enough to allow City staff to evaluate and confirm that the program will meet the appropriate needs/requirements of the City. Upon completion of the selection process the Consultant shall provide the city with a brief technical memorandum summarizing the findings of this task. The following portions of this section will discuss the requirements of the selected software.

Software General Requirements/Pavement Management System Specific Requirements

1. The system must be as user friendly as possible and capable of being operated/maintained by City staff. City staff must be able to operate the program from their own personal computers.
2. Pavement Management System should be a module as part of a suite of enterprise wide tools.
3. The program must be capable of storing and analyzing many forms of pavement distress survey data including but not limited to: International Roughness Index (IRI), rutting, and structural condition.
4. The software must allow for the inclusion of roadway strength in the pavement performance curves and rehabilitation selection.
5. An appropriate prediction philosophy and prediction basis must be used.
6. Pavement Condition Index shall be based on a modified version of ASTM D6433-09 as proposed by the Consultant.
7. Program must be capable of assessing the current condition of the pavement, creating a pavement inventory, and analyzing pavement improvement strategies.
8. The Need Year Determination should be based on the intersection of performance curves with minimum acceptable levels of service.
9. Program should be capable of utilizing a number of optimization techniques including: effectiveness optimization, cost minimization, and maintaining specified levels of service.
10. Data Collection: system must be capable of utilizing automated data information from equipment like Laser RST's while still allowing city crews to have the ability to manually input surface distress information and testing results.
11. Program must provide standardized and customizable reporting methods along with creating a variety of graphic representations of the surface conditions. It must also have the ability to export data to different file formats including .txt files.
12. Must be highly compatible with the City's GIS system. City must be able to generate color-coded maps based upon existing pavement conditions, street rehabilitation plans, and other criteria.
13. Must allow the user to re-label buttons and features
14. Must be capable of managing a mix and match of surfaces types and Pavement Condition Indices (PCI).
15. Flexible enough to accommodate user definable prioritization.
16. Ability to tie digital images to the system.
17. The software company should have some kind of technical support staff available to the city during normal business hours to address questions/issues that arise.

18. The consultant must demonstrate an expert knowledge of 3rd party software applications. While the consultant will perform an evaluation, the selected vendor will have completed in excess of 10 data collection assignments for each software evaluated. Experience with the 3rd party PMP's must include implementation, pavement data collection, right of way asset inventories, and pavement analysis.

Additional Software Management Functionality

In addition to pavement management, the City of Porterville is interested in the following functionality within the management system:

1. Growth potential to add other municipal infrastructure management modules such as:
 - a. Sidewalk & curb ramp inventory with condition rating
 - b. Underground Utility inventory and rating to include sanitary sewers and storm sewers
 - c. Sign Inventory Database
 - d. Signal Database
 - e. Streetlight Database
 - f. Pavement Striping/Marking Database
 - g. Full right of way inventory
 - h. Accommodation of some type of work order system
2. The capability to run budget scenarios for all modules.
3. The ability to store record maintenance data within each of the modules.
4. Full data query and export capabilities, with ability to map queried data.

c. Training Requirements

The City requires that select staff be trained in using the selected pavement management software so that staff can perform routine pavement database updates, add new road segments, enter road condition surveys, create pavement condition maps, and run various pavement management funding scenarios. The Consultant will provide training at City Hall on the City's completed Pavement Management System Software program for a small group so that City staff can utilize the selected pavement management software. The Consultant will provide a user manual for the selected pavement management software which will explain in detail how to perform the tasks mentioned above. The Consultant will be responsible for proposing an appropriate training program for city staff which shall be described in detail in their proposal.

B. TASK 2 - CITY-WIDE PAVEMENT CONDITION ASSESSMENT AND DATA COLLECTION

The selected Consultant will perform an automated, repeatable, City-wide pavement condition assessment of all the streets listed in Table 1 (100% of the City Streets listed in

this table). The City would like to adhere to a modified version of ASTM D6433-09 for data collection and pavement assessment procedures. The Consultant will be responsible for determining which items of ASTM D6433-09 are the most important and need to be collected and analyzed for a functional and cost efficient PMP. All pavement condition data shall be accurate and reproducible. The Consultant should have sufficient experience and staff availability to perform the City-wide pavement condition assessment in a timely manner. The Consultant will provide a technical memorandum documenting the methodology for performing the assessment, and presenting the data collection forms to be used for the assessment. After review by the City and written approval of the methodology, the Consultant will be authorized to proceed with the assessment.

Minimum Criteria for data collection are as follows:

1. Using a laser enhanced road surface tester, the data collection vehicle must contain a minimum of 9 lasers, deliver continuous laser-measured roadway cracking and distress data, ride quality data (expressed in terms of International Roughness Index – IRI), and rutting data (on asphalt concrete arterials and collectors), summarized on a per segment basis as an overall segment Pavement Condition Index (PCI) rating. PCI ratings shall be a combination of pavement distress data and ride quality data. Conditions survey shall be continuous on the pavement segment being evaluated, not a sampling of the segment. Consultant will be responsible for clearly delineating proposed data collection methods and rating systems in his proposal.
2. Dual wheel path IRI collected using high-speed lasers.
3. Minimum of 3 digital video cameras capturing a forward pavement view, forward right of way view, and rear camera capturing the adjacent right of way view.
4. Windshield surveys are deemed unacceptable unless certified by an approved agency such as the Metropolitan Transportation Commission (MTC) or the Orange County Transportation Authority (OCTA).
5. Equipment used for rut measurement shall be capable of measuring both wheel track ruts simultaneously.
6. Must be able to collect roadside attributes on the fly as an event.
7. Create and deliver a database and ESRI shape file(s) of the centerlines, pavement condition, and ride quality data in the NAD83 State Plane Coordinate system.

The Consultant's proposal shall clearly define how they plan to collect the pavement surface distress data, the types of surface distress data collected, and fees for the data collection and processing. The Consultant will be responsible for entering all of the City-wide pavement condition assessment data into the City's new pavement management system software.

C. TASK 3 - PAVEMENT MANAGEMENT PLAN (PMP)

a. PMP General Requirements

The PMP should include as a minimum the following attributes and reports:

1. A pavement inventory including street name, length, width, area, test limits, number of lanes, street classification, and type of pavement.
2. Pavement condition information that identifies the present conditions of the pavement and the projected future performance for the next five years. It shall identify the condition of the base and subgrade. The overall pavement condition report shall fully integrate and incorporate into its analysis surface condition, deflection information, and other factors as recommended by the Consultant.
3. Pavement improvement information shall be based upon the rehabilitation strategies necessary to achieve the desired level of serviceability. Rehabilitation strategies shall not be limited to overlays. The improvement analysis shall make provision for simultaneously analyzing the effectiveness of not less than ten strategies as determined by the Consultant and the City and shall have the capability of including pavement recycling alternatives, surface treatments, and base reconstruction. The City shall be able to select the strategies and apply them to groups of streets based upon their traffic usage, pavement type, and surface type.
4. Priority information indicating the pavement condition in order of best-to-worst. In addition, a priority listing of pavement condition to establish user-benefit.
5. Investment benefit information that indicates the cost per square foot of benefit for each maintenance strategy when applied to each street section based on both current maintenance and rehabilitation costs and costs estimated to be in effect for each of the next five years (inflation factor).
6. The PMP shall make recommendations as to the streets, rehabilitation strategies, and cost of rehabilitation that would be included in the City's yearly rehabilitation program for each of the next five years. These recommendations shall include the cost necessary to achieve several levels of serviceability as well as the improvements necessary to obtain the greatest benefit from several alternative-funding levels.
7. The PMP is to be owned by the City with no additional user fees to the Consultant or any other party.
8. The PMP shall be compatible with and capable of processing information gathered through both automated and manual methods.
9. The PMP software shall be designed to allow the user to compile and store construction/history related information and retrieve this information as selected by the user. It shall also be designed to allow the user to input the actual implementation or maintenance strategies, which will update the PMP and project the performance for retesting.

b. Integration of Pavement Management System with Geographic Information Systems

The PMP shall integrate with the City's geographical information system (GIS). The City will make available a street centerline GIS file, which includes street names and the Consultant shall provide a linkage between their data and the City's GIS file. The Consultant shall establish linkages that provide for pavement management data by a test section basis and avoid averaging pavement management data. Efforts should be made in the pavement management system data collecting process to help in this linking by attempting wherever possible to collect pavement data on an intersection to intersection basis. The PMP shall provide utilities to update the pavement management data in a "seamless" fashion and allow for adjustments to the linkage as necessary. The linkage shall allow the City to display and query pavement management data on a minimum of three levels (inventory and test data, history data, and budgetary plan data). The Consultant's status as an ESRI Business partner and Software Developer is highly desirable.

The desired PMP must be capable of a 2-way GIS integration with the City's existing GIS interface.

The proposal shall also contain such other information that the Consultant feels vital to the development of a comprehensive PMP, and its integration with the City's GIS System.

The final result of the work shall be a PMP to assist the City in planning, implementation, and coordination of its street maintenance and rehabilitation programs.

D. TASK 4 - OPTIONAL SERVICE ITEMS

In addition to the Pavement Management Program (PMP), the City of Porterville would like the Consultant to provide a detailed scope of services and cost to develop a number of other inventory/management systems, which will be called optional items under this section. Due to budget restraints, these optional items may or may not be incorporated into the scope of work under this proposal. The fees for these items should include services for data collection and processing for incorporating these items into the City's software management program. These optional items are listed below:

1. Right of Way Asset data collection (GPS and images)
2. Sidewalk Inventory and Database Development
3. Sign Database Development
4. Curb Ramp Inventory, Compliance Survey, and Database Development

Under this optional service items task, the Consultant is encouraged to include any additional items that they believe could be beneficial for use in developing a Pavement Management Plan that have not already been addressed in other sections.

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

Highest Possible Score = 100

SERVICE AGREEMENT

DATE:

PARTIES: City of Porterville, a California municipal corporation, hereinafter referred to as "CITY"; and (*insert name*), hereinafter referred to as "CONSULTANT".

RECITALS: CITY has undertaken a project on which it is seeking assistance from CONSULTANT. Said project which will hereinafter be referred to as "project" is described as follows:

Project Name:

Description of Project: In general, Consultant to provide (*plans and specifications*) (*services*) for the (*proposed project*). Details are summarized in the Scope of Services as Attachment "A".

IN CONSIDERATION OF MUTUAL COVENANTS AND AGREEMENTS HEREINAFTER set forth the parties hereto do contract and agree as follows:

SECTION 1. CONTRACT SERVICES:

CONSULTANT hereby agrees to provide the following services and materials, in a timely manner as described:

SECTION 2. PAYMENT:

In consideration for said services and materials, CITY shall pay CONSULTANT on a time and materials basis (and/or not to exceed _____ Dollars, (\$)).

TIME OF PAYMENT: Progress payment requests shall be submitted by the 25th of each month. CONSULTANT should receive payment within 45 days of the date the bill is received.

SECTION 3. COMPLETION DATE:

The services to be performed by CONSULTANT will be commenced upon execution of this agreement and all "work directives" shall be completed by (*date*). In the case of ongoing testing and results protocol, the CONSULTANT shall submit results as required to CITY, State and/or Federal governing agencies.

SECTION 4. FAMILIARITY WITH PROJECT:

CONSULTANT certifies and agrees that it is fully familiar with all of the details of the project required to perform its services. CONSULTANT agrees it will not rely upon any opinions and representations of CITY unless CITY is the only available source of said information.

SECTION 5. INDEPENDENT CONTRACTOR:

It is expressly understood that CONSULTANT is entering into this contract and will provide all services and materials required hereunder as an independent contractor and not as an employee of CITY. CONSULTANT specifically warrants that it will have in full force and effect, valid insurance covering:

- (i) Full liability under worker's compensation laws of the State of California; and
- (ii) Bodily injury and property damage insurance in the amount not less than One Million Dollars (\$1,000,000) per occurrence; and
- (iii) Errors and Omissions insurance of One Million Dollars (\$1,000,000) minimum per occurrence, if deductible for Errors and Omissions insurance is Fifty Thousand Dollars (\$50,000) or more, the City may require a Surety Bond for the deductible; and
- (iv) Automotive liability in the amount not less than One Million Dollars (\$1,000,000) per occurrence; fully protecting CITY, its elected and appointed officers, employees, agents

and assigns, against all claims arising from the negligence of CONSULTANT and any injuries to third parties, including employees of CITY and CONSULTANT. ***To the fullest extent permitted by law***, CONSULTANT agrees to indemnify, defend (at CITY'S election), and hold harmless the CITY against any claims, actions or demands against CITY, and against any damages, liabilities for personal injury or death or for loss or damage to property, or any of them arising out of negligence of CONSULTANT or any of its employees or agents, ***or CONSULTANT'S activities related to the terms and conditions of or implementation of this Agreement.***

SECTION 6. WORKMANSHIP AND MATERIALS:

Every part of the work herein described shall be executed in a professional manner with competent, experienced personnel. Finished or unfinished material prepared under the agreement, prepared by CONSULTANT, shall become property of CITY. CONSULTANT hereby warrants that any materials prepared under this agreement shall be fit for the intended use contemplated by the parties.

SECTION 7. ASSIGNMENT OF CONTRACT:

It is acknowledged by the parties that CITY has entered into this contract with the express understanding that CONSULTANT will perform all work. CONSULTANT shall not, without the written consent of CITY, assign, transfer or sublet any portion or part of this work, nor assign any payments to others.

SECTION 8. AFFIRMATIVE ACTION.

CONSULTANT will not discriminate against any employee, or applicant for employment as required by applicable Federal and State law.

SECTION 9. CONFLICT OF INTEREST CODE:

CONSULTANT agrees to comply with the regulations of CITY'S "Conflict of Interest Code." Said code is in accordance with the requirements of the Political Reform Act of 1974.

CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder. The term "conflict" shall include, as a minimum, the definition of a "conflict of interest" under the California Fair Political Practices Act and the City of Porterville Conflict of Interest Code, as that term is applied to consultants.

SECTION 10. TERMINATION:

Either party for just cause may terminate this contract by giving seven (7) days written notice to the other party. Upon termination by CITY, CITY shall be relieved of any obligation to pay for work not completed including profit and overhead. CONSULTANT may be entitled to just and equitable compensation for satisfactory work completed, except CITY can withhold damages incurred as a result of the termination.

SECTION 11. ENTIRE CONTRACT:

It is understood and agreed that this Service Agreement represents the entire Agreement between the parties. Should it be necessary to institute legal proceedings to enforce any and all of the covenants and conditions of this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs.

SECTION 12. DISPUTES; VENUE:

If either party initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that this Agreement is entered into and is to be performed in Tulare County, California. CONSULTANT hereby waives any rights it might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

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

CITY OF PORTERVILLE

CONSULTANT

By _____

By _____

Date _____

Date _____

Scope of Services as Attachment "A"

(Scope of Services shall identify the project specifics as well as duration of the project or the duration of the contract. For example, lab services shall include page identifying charges for specific tests as well as hourly rates for personnel. The scope shall also include any potential/optional extensions of this contract).



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Authorization to Operate Fare Free Shuttle Service to the Porterville Fair and Porterville Freedom Fest

SOURCE: Public Works

COMMENT: In 2011, the Porterville Fair and the Porterville Freedom Fest opened in their new locations on Teapot Dome and Scranton Avenue. Porterville Transit does not operate in this area, and in an effort to improve mobility options and reduce congestion, Council authorized staff to operate a shuttle route from the downtown Transit Center to the Porterville Fairgrounds and the City's Sports Complex.

This year, staff received a request from the Porterville Fair Board to operate a shuttle route from the downtown Transit Center to the Porterville Fairgrounds on the following dates and duration:

Thursday, May 16, 2019, 12:00 p.m. - 10:00 p.m.

Friday, May 17, 2019, 12:00 p.m. - 10:00 p.m.

Saturday, May 18, 2019, 12:00 p.m. - 10:00 p.m.

In 2018, Porterville Transit operated a fare free shuttle route and transported 121 passengers. The total cost to operate the Porterville Fair Shuttle was \$564.

Staff also received a request to operate a fare free shuttle route from the downtown Transit Center to the Porterville Freedom Fest on Saturday, June 29, 2019. The requested shuttle route will operate from 4:00 p.m. to 10:00 pm. In 2018, Porterville Transit operated a fare free shuttle route and transported 91 passengers. The total cost to operate the Freedom Fest Shuttle was \$300.

RECOMMENDATION: That the City Council authorize Porterville Transit to operate a fare free shuttle to the Porterville Fair from May 16-18, 2019 (12:00 pm to 10:00 pm), and operate a fare free shuttle to the Porterville Freedom Fest on June 29, 2019 (4:00 pm to 10:00 pm).

ATTACHMENTS:

Appropriated/Funded:

Review By:

Department Director:

Mike Reed, Acting Public Works Director

Final Approver: John Lollis, City Manager



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Consideration of Financial Support to the Development of a Regional Strategic Plan to Address Homelessness

SOURCE: City Manager's Office

COMMENT: At its meeting on February 20, 2019, the Tulare County Task Force on Homelessness acted to proceed with the development of a Regional Strategic Plan by HomeBase to address homelessness across the county, and provide a framework to secure future funding. With an estimated cost of \$75,000 for the Plan, the Kings/Tulare Homeless Alliance has programmed \$51,000 from California Emergency Solutions and Housing (CESH) funds, with approximately \$24,000 remaining to be funded. Tulare County Board of Supervisor Shuklian, who serves as Chair of the Task Force, recommended that the remaining balance be equally paid by the County, Porterville, Tulare, and Visalia, as the communities most affected by homelessness (\$6,000 per agency). Mayor Flores, who serves as the City's representative to the Task Force and indicated that Council approval would be required, recommended that the amount be distributed by population, as other agency funding formulas are derived. Based on 2017 census estimates, the four (4) agencies combined comprise eighty-seven percent (87%) of the population in the county, of which Porterville constitutes fifteen percent (15%) of the combined population, equating to \$3,600 as Porterville's share of the Plan's estimated development cost. It is recommended that Council consider an amount not to exceed \$5,000 to account for the possibility of increased costs of the Plan and/or different population estimates, to be paid from the Community Promotions budget.

RECOMMENDATION: That the City Council approve financial support not to exceed \$5,000 toward the development of a Regional Strategic Plan to address homelessness.

ATTACHMENTS: 1. HomeBase Regional Strategic Plan Proposal

Appropriated/Funded:

Review By:
Department Director:

Final Approver: John Lollis, City Manager

TULARE COUNTY TASK FORCE ON HOMELESSNESS

REGIONAL STRATEGIC PLAN PROPOSED SCOPE OF WORK

PREPARED BY
HOMEBASE: THE CENTER FOR COMMON CONCERNS

FEBRUARY 2019

OVERVIEW

HomeBase is pleased to have the opportunity to submit this proposal to the Tulare County Task Force on Homelessness for its consideration. HomeBase proposes to support Tulare County to create a multi-year strategic plan to prevent and end homelessness. The plan will be developed through an inclusive, community-based planning process and address the needs of youth, adults, veterans, families, seniors, and those experiencing chronic homelessness. The process will be structured to involve a full array of stakeholders, consider local data on need and existing service performance, align with existing local efforts and related state and local plans, foster local partnership formation and enhancement, and incorporate best practice strategies from around the country. HomeBase will assist the community in developing locally-tailored strategies to address identified gaps, build on existing strengths, and leverage opportunities for cross-system collaboration to achieve collective impact and strategically allocate resources. All recommendations will include concrete implementation plans, including metrics for tracking progress, identification of responsible parties with specific roles delineated and timelines.

HomeBase's approach is informed by our extensive work providing strategic planning and implementation assistance to a variety of states and communities around the nation and our 30-year knowledge of homelessness policy and programs. We provide expert meeting facilitation, helping to frame issues and guide discussions toward robust consensus, and we offer an array of helpful planning frameworks, tools and materials, all which will be selected and customized to meet the specific needs of the Tulare County community. We understand the importance of creating a process that is inclusive in seeking input, yet able to efficiently support prioritization and decision-making. To this end, we strive to engage a broad array of stakeholders through a variety of methods to ensure that the Plan is fully rooted in the experiences of those who know homelessness and the local system of care, and we work closely with planning participants to help frame issues and provide local data and national best practice examples to support recommendation development. We see the design of the planning process as critical, not only for the development of the Plan, but also to build community-wide support for action to address homelessness and to help forge the partnerships and relationships necessary for implementation. As such, education, outreach, communication and transparency are hallmarks of our approach.

Regional strategic plans of this scope are required by the State of California's Community Development Block Grant Program, Emergency Solutions Grant Program, HOME Investment Partnership Program, Housing Opportunities for Persons with AIDS Program, and No Place Like Home Program; are complementary to community needs assessment requirements under the State of California's Community Services Block Grant Program; and a means to meeting system performance tracking requirements under the Continuum of Care Interim Rule.

To be responsive to the requirements of the related funding sources and to ensure the development of an effective Plan that serves the community, the Plan will include:

- A description of homelessness County-wide, including a discussion of the estimated number of residents experiencing homelessness or chronic homelessness among single adults, families, and unaccompanied youth;
- An estimate of the number of residents experiencing homelessness who are also experiencing serious mental illness, co-occurring disabilities or disorders, or who are children with a Serious Emotional Disturbance;
- Identification of special challenges or barriers to serving those experiencing, or those who are at risk of entering, homelessness;
- An inventory of resources that are already being used to address, or could be applied towards addressing homelessness;
- Analysis of how the deployment of the region's Coordinated Entry System affects the region's ability to address homelessness;
- Description of systems in place to collect data on homelessness;
- Identification of community partners and stakeholders working to address homelessness in Tulare County;
- Assessment of homelessness services throughout the county to ensure nondiscriminatory access to assessment and referral system, including from the perspective of those who may face economic, linguistic, cultural, physical, mental health, behavioral, developmental, and identity-based barriers and recommendations for improvement, as needed;
- Identification of system resource gaps, including funding needs and funding strategies; and
- Proposed solutions to reduce and end homelessness.

The final document will serve as a guide for all jurisdictions and community stakeholders towards common solutions to address homelessness, including identifying specific roles, contributions and expectations of the stakeholders within the homeless system of care. Evidence-driven adjustments made in response to the strategic plan will enhance delivery efficiencies and improve system performance outcomes, thereby increasing the chances of securing additional competitive resources to respond to homelessness.

ABOUT HOMEBASE

HomeBase is a nonprofit public policy law firm dedicated to ending homelessness. We work on the national and state levels, on homelessness policy, program design, and funding

allocations, and at the local level, assisting communities to develop effective systems and programs to prevent and end homelessness.

HomeBase has facilitated multi-sector strategic planning processes in dozens of states and communities. Our experience includes over 20 ten-year plans for ending homelessness; numerous strategic plans and updates; over 30 plans to integrate health, housing and homeless systems; and myriad agency-specific strategic plans. We bring to this work comprehensive knowledge of federal and state landscapes, including the policies, regulations, funding and priorities of HUD and other government agencies; familiarity with the latest research on best and emerging practices; expert facilitation skills; and capacity with advanced data collection, visualization and analytic techniques that allows us to guide clients in understanding and addressing their particular situation and needs.

Our facilitated planning processes utilize sophisticated community outreach and engagement strategies to ensure involvement of a full range of stakeholders, provide transparent communication about processes and timelines, and allow for substantial input and feedback from all sectors. We begin these efforts with a review of current systems and services, based on data and document review and stakeholder interviews and/or focus groups, to identify key needs and gaps. Understanding of local needs and priorities along with consideration of national best practices drives the development of recommendations, which are concrete and specify responsible parties, specific roles and contributions and timelines for achieving outcomes. We also support communities in carrying out their plans, including developing annual implementation plans – providing more in-depth mapping of roles, responsibilities and action planning for each year; providing operational advice and guidance; tracking progress; and facilitating plan updates as needed.

The following is an overview of strategic planning processes that we have facilitated:

- ✓ *Homelessness Strategic Plans & Updates:* Santa Barbara County (current), Marin County (2018), Stanislaus County (2018), Yolo County (2018), Yuba/Sutter Counties (2018), Shasta County (2017), Solano County (current update, 2016), Santa Clara County (2014), Mariposa County (2014-15, 2017), Sacramento County (2014-17), San Francisco (2007, 2013-14), Contra Costa County (2004, 2014, 2016, 2018 update)
- ✓ *Ten Year Plans – County Level:* Las Vegas/Clark County (2013), Monterey/San Benito Counties (2011), Kings/Tulare Counties (2011), Yolo County (2009), San Luis Obispo (2008), Napa County (2006), Santa Barbara County (2005- 2006), Placer County (2004)
- ✓ *Ten Year Plans – State Level:* Arizona, California, District of Columbia, Indiana, Louisiana, Missouri, Montana, Nebraska, North Carolina, Oregon, Washington, Wyoming and Utah
- ✓ *Other Planning Experience:* Five-Year Homelessness Continuum of Care Plans; Agency-specific strategic plans; health, housing and homeless systems integration plans; and state, regional and local planning summits.

Other highlights of our wide-ranging expertise include:

Federal homelessness policy and programs. As a U.S. Department of Housing and

Urban Development (HUD) Technical Assistance provider for 18 years, we have significant experience helping communities align their efforts with HUD's vision and requirements.

System and service integration. We have helped many communities develop integrated programs and services, thus enhancing homeless access to mainstream services, better meeting the needs of those with co-occurring disorders, and promoting more efficient use of limited resources.

Data collection and performance measurement. We are national Homelessness Management Information System (HMIS) Technical Assistance providers for HUD and have helped communities across the country put in place HMIS systems, including design of data collection tools, development of performance measures, and support in data analysis. We offer a wide portfolio of services, which include expert facilitation of community strategic planning processes, data-based needs assessment, program design and implementation, incorporating best practices, and partnership development to facilitate integrated service delivery.

Highlights of HomeBase's Strategic Planning Work and Links to Work Product

Solano County, CA *Neighbors Helping Neighbors: Forward Together:*

<https://tinyurl.com/y8ophzx5>

In 2016-17, HomeBase worked with Solano County to prepare a countywide plan to end homelessness and first year implementation plan. This plan is called *Neighbors Helping Neighbors: Forward Together*, it is a regional plan to end homelessness in the County. We wrote this Plan for the Joint Powers Agency on homelessness in the County and worked through a year-long community engagement process to get buy in from all jurisdictions. Our work included hosting town halls and meetings, completing surveys and interviews and writing a community needs assessment. HomeBase's facilitation supported these jurisdictions within the County to effectively work together and as a result, local jurisdictions are now pooling local funds to expand the Coordinated Entry System and implement this strategic plan.

Santa Clara County, CA *Community Plan to End Homelessness:*

<https://tinyurl.com/y7nczd5t>

In 2015, HomeBase led the strategic planning process to prepare the Community Plan to End Homelessness to Santa Clara County. Because the CoC wanted to ensure the plan was inclusive of all subpopulations, planning sessions were organized thematically with these focuses: veterans, families, youth, environmental impact, discharging institutions (especially health), North County (urban community), and South County (rural/agricultural community). The plan drafting process was iterative, with consistent feedback and revision to ensure that the final message aligned with community needs and priorities. The three overarching strategies in the plan: Disrupt Systems, Build the Solution, and Serve the Person, are the driving force behind all of the CoC's recent activity and progress on ending homelessness. HomeBase has continued to be involved in plan implementation, including supporting system change and evaluating and reporting on plan progress.

Shasta County, CA Strategic Plan: <https://tinyurl.com/yc4dumce>

HomeBase facilitated a gaps analysis, community alignment workshops, an analysis of the cost of homelessness, and a strategic planning process in 2015-16 to support the Shasta County community in identifying actionable solutions to homelessness. HomeBase established a steering committee of local leadership from each sector (community action agency healthcare and behavioral health system, faith community, direct services, city council, Board of Supervisors, law enforcement and many others) that was informed by focus groups, public issue summits, and a gaps analysis. The process strengthened community understanding of the root causes of homelessness, generated buy-in to best practice approaches such as Housing First and permanent supportive and rapid rehousing, while developing a series of actionable steps to align resources and create a more effective system to end homelessness.

PROPOSED PROCESS AND TIMELINE

HomeBase will pursue a community-led, data-driven process, combining research on national best practices and emerging models with information and feedback on the current system to identify community strengths and weaknesses. After identifying specific community needs, HomeBase will provide locally-tailored recommendations and options for the Tulare County Task Force on Homelessness to pursue in addressing regional homelessness.

HomeBase proposes to adhere to the following process in a manner that is inclusive of persons of all races, colors, religions, sexes, ages, national origins, familial statuses, disabilities, sexual orientations, and gender identities.

TASK/TIMING	DETAILS
<i>Complete a homeless and housing environmental scan.</i> March-April 2019	HomeBase will conduct an initial environmental scan to identify the unique characteristics, strengths, challenges, and barriers for the homeless system of care in Tulare. To start, this process will be guided by existing community resources, including the CoC's 2017 and 2018 CoC Competition submissions; the 2016, 2017, 2018, and 2019 (where available) Point in Time and Housing Inventory Counts; the County's 2018-2019 CSBG Needs Assessment; HMIS data; the McKinney-Vento homeless student data; as well as any other system-level information produced by the CoC, and other homelessness-focused entities over the past two years in any of the jurisdictions within Tulare County.

	Each jurisdiction and key providers will be asked to provide information and data to support the environmental scan.
<i>Work with Tulare County Task Force on Homelessness and Facilitate Meetings.</i> March – August 2019	HomeBase will work with the Tulare County Task Force on Homelessness on the strategic planning effort. Additional key stakeholders on homelessness in Tulare County can be consulted at their request, including being used on topical Subcommittees or through the community engagement process. HomeBase anticipates the need to meet with the Task Force to review the environmental scan, discuss existing barriers and needs, to help develop the framework for the regional strategic plan and review stakeholder input and iterative drafts of the strategic plan. During the planning process, Task Force members will be asked to attend meetings, including by videoconference, provide written input to HomeBase, and report updates to their respective stakeholder groups on a regular basis. Please note that in order to be compliant with No Place Like Home regulations, certain community sectors must be involved in the planning process. This can be through community engagement (forum, survey, focus group, interview, etc.) or could be through a subcommittee. A list of those that need to be included in the process to be No Place Like Home compliant are: • Local government jurisdictions • Affordable housing • Business • County Public Health, community clinics, health centers, and other health care providers, especially those implementing pilots or other programs that allow the County to use Medi-Cal or other non-MHSA funding to provide or enhance services provided to No Place Like Home tenants, or to improve tracking of health outcomes in housing; • County representatives with expertise from behavioral health, public health, probation/criminal justice, social services, and housing departments; • Disability services • Faith-based organizations • Formerly or currently homeless individuals and families, including veterans, youth and chronically homeless • Housing and Homeless services providers, especially those with experience providing housing or services to those who are chronically homeless, veterans, families, youth, and other specialized sub-populations; • LGBT+ individuals and organizations that serve them • Public Housing Authorities

	• Representatives of family caregivers of persons living with serious mental illness • Victims services
<i>Complete community surveys and targeted interviews.</i> March – May 2019	HomeBase will solicit targeted and detailed input from key individuals to contextualize data and develop priorities and strategies for the plan. HomeBase will design each engagement to better incorporate an understanding of historical concerns and local experience; test public sentiment and community buy-in; and commit participants to supporting Plan implementation. Specifically, HomeBase will: • Design and circulate surveys to various homelessness-related email distribution lists and key stakeholders. Surveys will be designed for both consumer and provider/community member feedback. • Undertake a limited number (8-10) of key interviews for stakeholders identified by the Tulare County Task Force on Homelessness who may not be able to easily participate in another information gathering method but whose input is key to success, such as elected officials, CEOs, key providers or other select individuals. • Conduct 1-2 consumer focus groups with individuals and/or families currently experiencing homelessness • If desired, HomeBase can conduct a community forum to review key issues or priority topics related to the Plan, discuss best practices, and gather community/stakeholder feedback. This can take place before or after a draft of the Plan has been prepared. These efforts will be focused on ensuring diverse feedback from a variety of stakeholders throughout the county and increasing investment in the strategic action plan. HomeBase will work to ensure the process is not unfairly weighted by a limited number of planning participants. The purpose of this activity is twofold: first, to identify additional needs and gaps in the system of care and develop responsive models, and second, to engage community members in responding to homelessness.

<i>Create an initial design of the regional strategic plan with Tulare County Task Force on Homelessness.</i> May – June 2019	HomeBase will work with the Tulare County Task Force on Homelessness to create an initial design, outline, and a timeline for the regional strategic plan. HomeBase will continue to develop and flesh out this design and the plan’s outline as the community engagement and jurisdictional input process proceeds.
<i>Further develop the draft plan.</i> June – August 2019	With the guidance of the Tulare County Task Force on Homelessness, HomeBase will further develop the draft regional strategic plan to reflect community input. The regional strategic plan will do the following*: • Provide a description of homelessness County-wide, including a discussion of the estimated number of residents experiencing homelessness or chronic homelessness among single adults, families, and unaccompanied youth • Offer an estimate of the number of residents experiencing homelessness who are also experiencing serious mental illness, co-occurring disabilities or disorders, or who are children with a Serious Emotional Disturbance; • Identify special challenges or barriers to serving those experiencing, or those who are at risk of entering, homelessness • Inventory resources that are already being used to, or could be applied towards, addressing homelessness; • Consider how the deployment of the region’s Coordinated Entry System affects the region’s ability to address homelessness • Describe systems in place to collect data on homelessness • Identify community partners and stakeholders working to address homelessness • Assess homelessness services throughout the county to ensure nondiscriminatory access, including from the perspective of those who may face economic, linguistic, cultural, physical, mental health, behavioral, developmental, and identity-based barriers • Identify system resource gaps, including funding needs and funding strategies; • Identify a roadmap for implementing specific strategies needed for making progress on homelessness locally, • Recommend specific systemic measures of success, and • Identify the specific roles and responsibilities of the stakeholders within the homeless system of care, including the members of the Tulare County Task Force on Homelessness

	○ Identify leadership and oversight roles for managing specific aspects of the Strategic Plan ○ Identify resource commitments of each stakeholder (i.e. jurisdictional commitments on units, public housing authority on vouchers with a homeless preference, the County relating to mental health and services, staffing for a particular project or initiative, etc.) The Tulare County Task Force on Homelessness will assist with: ● Prioritizing identified efforts based on degree of concern, partners, and available resources; ● Determining definitions, targets, and metrics of success; and ● Preparing for plan implementation and identifying funding with community partners ● Identifying roles and responsibilities of each Task Force member, and of other key stakeholders, in achieving Plan goals *Note that the Plan will comply with NPLH requirements
<i>Complete plan.</i> August – September 2019	HomeBase will present the final draft of the plan to the Tulare County Task Force on Homelessness at a public meeting and make any requested revisions based on that presentation and a public comment period.
<i>Support plan presentation.</i> October – November 2019	HomeBase will present the Tulare County Task Force on Homelessness with next steps as it directs the presentation of the approved plan to jurisdictions and other entities for buy-in and investment towards implementation.

REFERENCES

1. Dawn La Bar
Special Projects Manager, City Manager's Office, City of Fairfield
Secretary, Community Action Partnership of Solano, Joint Powers Authority
(707) 428-7749
dlabar@fairfield.ca.gov
Note: See attached letter of recommendation from Ms. La Bar

Ms. La Bar managed HomeBase's contract in Solano County for several years as the Chair of the JPA when we were providing substantial staffing support during a significant time of transition for both the CoC and JPA. She also was

the JPA's representative on the Solano County Strategic Planning Work Group during the regional strategic planning process that we facilitated and has since worked closely with us on the Coordinated Entry expansion process.

2. Kathryn Kaminski
Office of Supportive Housing, Santa Clara County
(408) 793-1843
kathryn.kaminski@hhs.sccgov.org

Ms. Kaminski manages HomeBase's contract with the Office of Supportive Housing in Santa Clara County. Our work in Santa Clara County included the development of Santa Clara County's Community Plan to End Homelessness and currently includes strategic planning implementation support, CoC support, training and technical assistance, and project-level monitoring.

3. Ashley Hart McIntyre, JD
Homelessness Policy Analyst
Marin County Department of Health and Human Services
(415) 473-3501
amcintyre@marincounty.org

Ms. Hart McIntyre manages HomeBase's contract in Marin County where we have provided strategic planning support and we have also supported coordinated entry implementation, Housing First implementation, and other training and technical assistance.

PROPOSED BUDGET

\$75,000 will cover the scope of work proposed, including all professional services and costs. HomeBase prides itself on meeting our clients' needs. This proposed budget is based on our estimated costs to do the work described in this proposal. We are happy to adjust as necessary to meet your needs.

QUESTIONS

HomeBase appreciates the opportunity to submit this proposal and would be pleased to answer any questions you may have. Please feel free to contact Bridget Kurtt DeJong, Managing Director of HomeBase State and Local Programs, at (415) 788-7961 ext. 324 or at bridget@homebaseccc.org.



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Letter of Support for Assembly Bill 213 (Reyes): Annexations Finance: Restoration of Lost Revenue

SOURCE: City Manager's Office

COMMENT: The League of California Cities has requested that the City Council consider the draft Letter of Support for Assembly Bill 213 (Reyes), legislation that seeks to restore funding to approximately 140 cities that had annexed inhabited territory in reliance on previous financial incentives, then suffered significant harm when those funds were taken by the state in 2011 due to the passage of Senate Bill 89. The City of Porterville was among the cities most severely impacted by SB 89, resulting in an annual loss of \$237,744. The legislation offers similar incentives to support future annexations of inhabited territory to improve services to affected residents consistent with state Local Agency Formation Commission (LAFCO) policies.

The funding formula used in AB 213 is identical to the formula approved by the Legislature in 2017 in Senate Bill 130 to restore funding to four (4) recently incorporated cities that were also harmed by SB 89. The state fiscal impact of SB 130 is estimated to be \$19 million annually, which the fiscal costs of addressing the losses cities suffered in annexations in AB 213 would be comparatively less at \$5 million.

RECOMMENDATION: That the City Council approve the draft Letter of Support for Assembly Bill 213 (Reyes).

ATTACHMENTS:

1. AB 213 Draft Letter of Support
2. 2011 SB 89 City Annexation Financial Losses

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager



March 5, 2018

The Honorable Eloise Gómez Reyes
California State Assembly
State Capitol Building, Room 2175
Sacramento, CA 95814

RE: Annexation Finance: Restoration of Lost Revenue
Letter of Support

Dear Assembly Member Reyes:

The City of Porterville strongly supports your AB 213 (Reyes), which would restore funding to cities that had annexed inhabited territory in reliance on previous financial incentives provided by AB 1602 (Laird) of 2006, then suffered significant fiscal harm when the approximate \$200 million in annual funds were swept away from cities due to the passage SB 89 (2011) in response to the state's then dire budget conditions. We also support restoring these incentives to improving service delivery via annexation to county residents—many who may be currently served by inadequate infrastructure and services.

The solution in the bill is consistent with the solution the Legislature approved in SB 130 (2017) to restore funding to four (4) recently incorporated cities harmed by SB 89. Moreover, addressing the losses of 140 annexing cities in this bill will cost less than \$5 million—one-quarter of the cost of SB 130.

The City of Porterville lost approximately \$238,000 annually following the passage of SB 89, and AB 213 (Reyes) would help restore the revenue our city relied upon when making the policy decision to annex and serve new residents. The loss in revenue has impacted the City's ability to implement necessary infrastructure improvements in these areas, especially connections to sewer, construction of sidewalks, and installation of street lighting.

The City of Porterville supports the restoration of fiscal incentives that support the policy of city annexation of adjacent inhabited territory. In many cases an annexation may be desired by affected residents and consistent with LAFCO policies due to lacking infrastructure, yet the financing does not work for the city to extend services to the new territory. This measure would help make some annexations fiscally viable and thereby consolidate and improve service delivery to affected residents.

For these reasons, the City of Porterville supports AB 213 (Reyes).

Sincerely,

Martha A. Flores, Mayor
City of Porterville

cc: Senator Melissa Hurtado
Assemblyman Devon Mathis
Ms. Raj Rakkar, League of California Cities Regional Public Affairs Manager
Ms. Meg Desmond, League of California Cities Legislative & Policy Development Specialist

City Name **FY 2011-12 Loss SB 89**
New Annex

American Canyon	\$1,448
Anderson	\$2,941
Atwater	\$272
Bakersfield	\$40,725
Barstow	\$10,453
Beaumont	\$12,987
Biggs	\$543
Brentwood	\$272
Camarillo	\$6,154
Campbell	\$37,558
Carpinteria	\$91
Cathedral City	\$226
Ceres	\$634
Chico	\$471,461
Chino	\$1,765
Chowchilla	\$3,394
Clovis	\$22,173
Coachella	\$1,086
Colton	\$9,231
Concord	\$136
Corcoran	\$79,867
Corning	\$1,584
Cupertino	\$2,308
Daly City	\$136
Delano	\$3,258
Diamond bar	\$6,833
Dinuba	\$22,354
Dixon	\$136
El Cajon	\$272
El Centro	\$8,688
El Paso de Robles	\$2,353
Encinitas	\$226
Escondido	\$4,480
Etna	\$91
Farmersville	\$362
Fontana	\$759,071
Fowler	\$272
Fresno	\$32,671
Fullerton	\$14,073
Gilroy	\$1,041
Gonzales	\$181
Grass valley	\$8,824

City Name **FY 2011-12 Loss SB 89**
New Annex

Greenfield	\$634
Gridley	\$4,480
Hanford	\$6,109
Hayward	\$13,439
Healdsburg	\$1,539
Hemet	\$2,806
Hesperia	\$12,127
Hollister	\$453
Hughson	\$407
Huntington Beach	\$2,670
Imperial	\$453
Indio	\$27,557
Kerman	\$2,398
La Habra	\$14,571
La Mesa	\$91
La Quinta	\$6,742
Lake Elsinore	\$3,801
Lakeport	\$3,575
Lathrop	\$4,706
Lincoln	\$1,131
Lindsay	\$3,665
Livermore	\$136
Livingston	\$181
Lodi	\$5,204
Los Altos Hills	\$8,371
Los Gatos	\$3,032
Madera	\$17,783
Manteca	\$19,910
Merced	\$15,114
Mill Valley	\$272
Milpitas	\$453
Modesto	\$10,905
Montclair	\$33,847
Morgan Hill	\$11,448
Mount Shasta	\$91
Mountain View	\$91
Napa	\$6,380
National City	\$1,674
Nevada City	\$45
Newport Beach	\$63,938
Novato	\$91
Oakdale	\$7,059

<u>City Name</u>	<u>FY 2011-12 Loss SB 89</u> <u>New Annex</u>
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Oakley	\$7,104
Orland	\$7,647
Oroville	\$38,191
Paradise	\$91
Parlier	\$181
Patterson	\$6,199
Placerville	\$91
Pleasanton	\$136
Porterville	\$237,744
Rancho Cucamonga	\$136
Red Bluff	\$362
Redlands	\$362
Reedley	\$67,513
Rio Dell	\$136
Ripon	\$2,534
Riverbank	\$1,810
Riverside	\$71,948
Roseville	\$181
Salinas	\$317
San Bernardino	\$112,944
San Buenaventura	\$226
San Carlos	\$91
San Clemente	\$3,349
San Jacinto	\$407
San Jose	\$339,648
San Luis Obispo	\$3,711
San Marcos	\$1,765
San Ramon	\$334,806
Sanger	\$1,312
Santa Barbara	\$226
Santa Clarita	\$390,916
Santa Maria	\$32,173
Santa Paula	\$1,855
Santa Rosa	\$14,887
Saratoga	\$8,371
Sebastopol	\$407
Selma	\$5,566
Shafter	\$1,720
Simi Valley	\$181
Soledad	\$181
Sonoma	\$453
Sonora	\$91

<u>City Name</u>	<u>FY 2011-12 Loss SB 89</u> <u>New Annex</u>
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Stockton	\$2,941
Suisun City	\$1,403
Susanville	\$45
Sutter Creek	\$181
Tehachapi	\$317
Temecula	\$428,745
Thousand Oaks	\$4,254
Tulare	\$97,243
Turlock	\$12,761
Upland	\$2,534
Vacaville	\$3,665
Visalia	\$146,248
Vista	\$543
Waterford	\$2,534
Watsonville	\$181
Windsor	\$272
Woodlake	\$181
Yuba City	\$22,082

Total: \$4,316,109



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Letter of Support for Partial Deletion of the Beckman Instruments Superfund Site

SOURCE: City Manager's Office

COMMENT: At its meeting on December 18, 2018, the City Council received a presentation from Ms. Holly Hadlock, Remedial Project Manager for the United States Environmental Protection Agency (EPA), in regards to the proposed partial deletion of the Beckman Instruments Superfund Site, more specifically the soil portion. Ms. Hadlock reported that the Beckman Instruments Superfund Site was placed on the National Priorities List (NPL) in 1986 due to lead contamination of the soil and volatile organic compounds of the groundwater. The contaminated soil was transported to the Kettleman Hills Landfill to mitigate the soil contamination, and the groundwater has been restored to drinking water standards in all but one small area, allowing the plant property to be redeveloped to residential housing standards. As the Council is aware, the Beckman Instruments facility is in the midst of a wind-down of its operations, which the partial deletion would assist in the marketing for the reuse of the facility.

On February 14, 2019, the EPA issued a Notice of Intent to Delete the soil portion of the Superfund Site from the NPL, and requests public comments on the proposed action, which must be received by March 18, 2019. The EPA and the State of California have determined that all appropriate soil response actions have been completed, however, the proposed deletion does not preclude future actions under Superfund. A draft Letter of Support for the partial deletion has been drafted for the Council's consideration.

RECOMMENDATION: That the City Council approve the draft Letter of Support for partial deletion of the Beckman Instruments Superfund Site.

ATTACHMENTS:

1. Draft Letter - Beckman Instruments Superfund Site
2. Federal Register Notice of Intent - Beckman Instruments Superfund Site

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager



March 5, 2018

United States Environmental Protection Agency
Docket ID no. EPA-HQ-SFUND-1986-0005

RE: National Priorities List: Partial Deletion of the Beckman Instruments Superfund Site
Letter of Support

To Whom It May Concern:

In response to the Notice of Intent posted in the Federal Register on February 14, 2019, the City of Porterville supports the partial deletion of the Beckman Instruments Superfund Site, specifically the deletion of the soil portion. It is the City's understanding that the EPA and the State of California have concurred with the deletion of the soil portion of the Superfund Site, the responsible parties having implemented all required response actions and no further action is appropriate and that the release poses no significant threat to public health or the environment. The City further understands the groundwater will remain on the National Priorities List, and that maintenance, monitoring, and five-year reviews of the groundwater remedy will continue until all drinking water standards have been met.

Sincerely,

Martha A. Flores, Mayor
City of Porterville

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-1986-0005; FRL-9989-47—Region 9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Beckman Instruments Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 9 is issuing a Notice of Intent to Delete the soil portion of the Beckman Instruments Superfund Site (Site) located in Porterville, California, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of California, through the Department of Toxic Substances Control (DTSC), have determined that all appropriate soil response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to the soil; a map indicating the area to be deleted is in the public docket. The groundwater will remain on the NPL and is not being considered for deletion as part of this action. Maintenance, monitoring, and five-year reviews of the groundwater remedy will continue until all drinking water standards have been met.

DATES: Comments must be received by March 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1986-0005, by one of the following methods:

- <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

- **Email:** Project Manager: Hadlock.holly@epa.gov or Community Involvement Coordinator: Lane.jackie@epa.gov.

- **Mail:** Holly Hadlock (SFD-7-3), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105.

- **Hand delivery:** Superfund Records Center, U.S. EPA, 75 Hawthorne Street, San Francisco, California. Such deliveries are accepted only during EPA's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA-HQ-SFUND-1986-0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov> or email. The <https://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <https://www.regulations.gov>, your email address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in <https://www.regulations.gov> or in hard copy at the following repositories:

Superfund Records Center, 75 Hawthorne Street, Room 3110, San Francisco, California, Hours: 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays; (415) 947-8717.

Site Repository: 41 W Thurman Avenue, Porterville, California. Call (559) 784-0177 for hours of operation.

FOR FURTHER INFORMATION CONTACT: Holly Hadlock, Remedial Project Manager, U.S. EPA, Region 9 (SFD-7-3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3171, email: hadlock.holly@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Partial Site Deletion

I. Introduction

EPA Region 9 announces its intent to delete the soil portion of the Beckman Instruments Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL in order to identify sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL are eligible for remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Beckman Instruments Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in section 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains

eligible for Fund-financed remedial action if future conditions warrant such actions.

EPA will accept comments on the proposal to partially delete the Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the soil of the Beckman Instruments Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. At the Beckman Instruments Site, contaminants in soil have been cleaned up to levels that allow for unlimited use and unrestricted exposure, and therefore no five-year reviews for the portion of the Site proposed to be deleted are necessary. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the soil portion of the Site:

(1) EPA consulted with the State before developing this Notice of Intent for Partial Deletion.

(2) EPA has provided the State 30 working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The State of California, through DTSC, has concurred with the deletion of the soil portion of the Beckman Instruments Superfund Site from the NPL.

(5) Concurrently, with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice is being published in a major local newspaper, the Porterville Recorder. The notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(6) EPA placed copies of documents supporting the proposed partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day comment period on this document, EPA will evaluate and respond accordingly to the comments before making a final decision to delete the soil portion of the site. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the soil portion of the Beckman Instruments Superfund Site, the Regional Administrator will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the soil

portion of the Beckman Instruments Superfund Site from the NPL.

Site Background and History

The Site (CERCLIS ID # CAD048645444), which includes the Beckman industrial plant and the surrounding study area, is located near the southern limit of the City of Porterville, California. Porterville is in Tulare County on the eastern edge of California's San Joaquin Valley. Site contamination originated at the plant, physically located at 167 West Poplar Avenue in Porterville. The plant occupies approximately 12 acres, while the overall Site is approximately 160 acres in size and extends to the Tule River to the north, plant property limits to the east, Poplar Ditch to the south, and Newcomb Street to the west. Beckman Instruments, now operating as Beckman Coulter, Inc. (BCI), started manufacturing electronic equipment assemblies and printed circuit boards in Porterville in 1967. Industrial processes used at the plant included electroplating and degreasing. Past processes and materials handling at the Beckman plant were responsible for lead contamination in soils at the Beckman plant. From 1975 until early 1983, waste discharged to an on-site evaporation pond resulted in groundwater becoming contaminated with volatile organic compounds (VOCs), primarily 1,1-dichloroethene. This contaminated groundwater migrated beyond the boundaries of the plant property. On October 15, 1984, the Site was proposed for NPL listing (49 FR 40320). On June 10, 1986, EPA added the Site to the NPL (51 FR 21054). There is one site-wide Operable Unit which includes both groundwater and soil. The soil is being addressed in this proposed action. A map of the proposed deletion area is in the docket.

Ongoing Development

The plant property is zoned for industrial and agricultural use. Land use in the surrounding area is residential, commercial, and agricultural. Since the 1990s, plant activities have scaled back. The Beckman plant is now owned and operated by Nypro, a Jabil Company.

1989 Investigation and Remedy for Soils

EPA completed a remedial investigation and feasibility study in 1989 and concluded that the only contaminant of concern in soil was lead in the operational area. EPA evaluated three soil remedial action alternatives in the Record of Decision (ROD): No action (S-1); excavation and disposal (S-3); and extraction, treatment, and disposal (S-4). Alternative S-1 was deemed not protective of human health and the

environment and Alternative S-4 was deemed not cost-effective. EPA selected Alternative S-3, excavation and off-site disposal at an approved facility, for the soil remedy in the September 26, 1989, ROD. A cleanup level of 200 milligram per kilogram (mg/kg) lead was selected based on human health risk modeling. The remedial action objective was to prevent direct contact with, and inhalation of, lead-contaminated soil. EPA determined that this remedial action would allow for unrestricted access and use of the plant property. EPA also selected a cleanup remedy for groundwater; the remedy for VOCs in groundwater was extraction, treatment, and discharge of cleaned water. EPA issued a ROD Amendment in 2005 changing the groundwater remedy to monitored natural attenuation.

Soil Response Actions and Cleanup Levels

In March 1990 Beckman conducted the soil remedial action, excavating approximately 18 cubic feet of lead-contaminated soil, which was transported to Kettleman Hills Landfill, a CERCLA-approved facility in Kettleman City, California.

In 2013, EPA issued the Fourth Five-Year Review Report which assessed the protectiveness of the remedy. In this report EPA noted that in 2009 the California residential lead screening level (SL) was revised to 80 mg/kg, based on 1 µg/deciliter benchmark for source-specific incremental change in blood lead levels for children. EPA determined that the 1990 soil cleanup was protective for commercial/industrial use of the property but not residential use. Based on the finding in the Fourth Five-Year Review Report, EPA asked BCI to re-evaluate the post-excavation lead concentrations and determine if the new residential lead screening level of 80 mg/kg had been attained during the 1990 soil excavation.

From 2015 to 2017, BCI, with EPA oversight, conducted several investigations and excavations. Soil samples were collected from the 1990 excavation area and several samples had lead above 80 mg/kg. In 2017 BCI did a more thorough investigation and by October 2017 had excavated approximately 270 additional cubic yards of soil, which were transported to Kettleman Hills Landfill. Confirmation sampling and analysis indicated that 50 samples were below the California residential screening level of 80 mg/kg and four samples were just above this concentration. The average concentration of the remaining soil is well below 80 mg/kg; a statistical

analysis for the remaining soil calculated a conservative estimate of a mean concentration of 24 mg/kg. EPA determined that the Site soil had been cleaned to a level that allows for unlimited use and unrestricted exposure.

Monitoring and Institutional Controls

Because the soil is now clean enough to allow for any future use, no maintenance and monitoring of the soils remedy is required and no institutional controls are needed to restrict future property use.

2018 Five-Year Review

EPA conducts reviews every five years to determine if remedies are functioning as intended and if they continue to be protective of human health and the environment. EPA issued the Fifth Five-Year Review Report on August 23, 2018, and concluded that the soil remediation is complete and the remedy at the Beckman Instruments Site is protective of human health and the environment. There were no issues or recommendations. The next five-year review, scheduled for 2023, will evaluate the groundwater remedy only.

Community Involvement

EPA prepared a Community Involvement Plan in 1987 and updated it in 1994.

EPA held numerous community meetings before and during the Site cleanup and issued fact sheets, most of which focused on groundwater. EPA released two Proposed Plans, one for the ROD and one for the ROD Amendment. EPA released a fact sheet shortly before publication of this Notice informing the community of the proposal to delete the soil portion of the Site from the NPL and how to submit comments.

Determination That the Criteria for Deletion Have Been Met

EPA has followed all procedures required by 40 CFR 300.425(e), Deletion from the NPL. EPA consulted with the State of California prior to developing this Notice. EPA determined that the responsible party has implemented all appropriate response actions required and that no further response action for the soil portion of the Site is appropriate. EPA is publishing a notice in a major local newspaper, The Porterville Recorder, of its intent to partially delete the Site and how to submit comments. EPA placed copies of documents supporting the proposed partial deletion in the Site information repositories; these documents are available for public inspection and copying.

The implemented soil remedy achieved the degree of cleanup and protection specified in the ROD for the soil portion of the Site. The selected remedial action objectives and associated cleanup levels for the soil are consistent with agency policy and guidance. Based on information currently available to EPA, no further Superfund response in the area proposed for deletion is needed to protect human health and the environment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p.306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: January 22, 2019.

Michael B. Stoker,

Regional Administrator, Region 9.

[FR Doc. 2019–02348 Filed 2–13–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket Nos. 19–2 and 13–184; FCC 19–5]

E-Rate Program Amortization Requirement, Modernizing the E-Rate Program for Schools and Libraries

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to eliminate the E-Rate amortization requirement, which requires E-Rate applicants to amortize over three years upfront, non-recurring category one charges of \$500,000 or more. Through this measure, the Commission seeks to further the Commission's goal of closing the digital divide by facilitating and promoting increased broadband infrastructure deployment to our nation's schools and libraries.

DATES: Comments are due on or before March 18, 2019 and reply comments are due on or before April 1, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Approval for Community Civic Event - Porterville Unified School District, Optimist Club of Porterville and Burton School District - Porterville Celebrates Reading - April 13, 2019

SOURCE: Finance

COMMENT: Porterville Unified School District, Optimist Club of Porterville and Burton School District are requesting approval for their annual literacy fair, Porterville Celebrates Reading, on April 13, 2019, at Veterans Park from 10:00 a.m. to 2:00 p.m. This annual event includes free books and small group presentations, for parents and children, promoting literacy development for all ages.

This request is made under the Community Civic Events Ordinance No. 1326, as amended. The application has been routed according to the Ordinance regulations and reviewed by all Departments involved. The requirements are listed on the attached copy of the application and agreement, Exhibit A and Exhibit B.

RECOMMENDATION: That the City Council approve the attached Community Civic Event Application and Agreement submitted by the Porterville Unified School District, the Optimist Club of Porterville and Burton School District, subject to the stated requirements contained in the Application and Agreement, Exhibit A and Exhibit B.

ATTACHMENTS:

1. Community Civic Event Application and Agreement, Exhibit A, Exhibit B, Map, Outside Amplifier Permit and Certificate of Liability Insurance.

Appropriated/Funded:

Review By:

Department Director:

Maria Bemis, Finance Director

Final Approver: John Lollis, City Manager

3/5/19

CITY OF PORTERVILLE

291 N. Main Street, Porterville, CA 93257
559-782-7451 Fax: 784-4569 www.ci.porterville.ca.us



(Incomplete applications can delay permit process)

APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

DO YOU HAVE? Event Flyer? E-mail address? Website?
Application date: 2/6/19 Event date: 4/13/19
Event time: 10:00am - 2:00pm
Name of Event: Porterville Celebrates Reading

Sponsoring organization: Optimist/PUSD/BSD Phone # 793-2400
Address: PUSD-600 W. Grand Ave.

Authorized representative: Dr. Nate Nelson Phone # 793-2400
Address: 600 W. Grand Ave., Porterville

Event chairperson: Catherine May Phone # cell 788-9053

Location of event Veteran's Park

(Location map must be attached)

Type of event: Literacy fair for children ages pre-school - up
Schools and community organizations have booths with literacy
activities.

Non-profit organization status: 94-2676206 Optimist BL # 2018
0310 # 03069
00359

(IRS Determination)

City services requested (fees associated with these services will be billed separately):

Barricades (quantity): _____ Street sweeping Yes _____ No ☒

Police protection Yes _____ No ☒ Refuse pickup Yes _____ No ☒

Other: _____

Parks facility application required: Yes ☒ No ☐ Attached _____

Assembly permit required: Yes _____ No ☒ Attached _____

STAFF COMMENTS (list special requirements or conditions for event):

Appr. Deny

_____	_____	Bus. Lic. Spvr.	_____
_____	_____	Pub. Works Dir	_____
_____	_____	Comm. Dev. Dir.	_____
_____	_____	Field Svcs. Mgr.	_____
_____	_____	Fire Chief	_____
_____	_____	Parks Dir.	_____
_____	_____	Police Chief	_____
_____	_____	Admin. Svcs. Dir.	_____

CITY OF PORTERVILLE

APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

What constitutes a Community Civic Event?

A non-profit organization wishes to sponsor an event that is open to the community at large and will utilize public property. Most of the time, Community Civic Events require street or sidewalk closures. This application must be submitted **NO LESS THAN 30 DAYS PRIOR** to the date of the event in order to obtain City Council approval.

All City Code requirements are described in ordinance 15-20 (e) 1-23 and as amended in ordinance 1613. For a full description please visit our City of Porterville website at www.ci.porterville.ca.us/govt/CityClerk/, Porterville Municipal Codes. For questions or concerns please call 559-782-7451 or 559-782-7457. Any person who violates the provisions in this code, shall be deemed guilty of either a misdemeanor or an infraction, with penalties of one hundred (\$100) for the first violation.

Liability insurance: The sponsoring organization/applicant agrees to provide and keep in force during the term of this permit a policy of liability and property damage insurance against liability for personal injury, including accidental death, as well as liability for property damage which may arise in any way during the term of this permit. **The City of Porterville and Successor Agency to the Porterville Redevelopment Agency shall be named as additional insured.** A Certificate of Liability Insurance and Additional Insured Endorsement sample forms are enclosed for your convenience. **This original certificate and endorsement shall be submitted to the Finance Department prior to the City of Porterville Council's approval.** *The council shall condition the granting of a CCE permit upon the sponsoring entity's filing with the council a policy of public liability insurance in which the city has been named as insured or coinsured with the permittee. The policy of insurance shall insure the city, its officers, and its employees against all claims arising out of, or in connection with, the issuance of the CCE permit or the operation of the permittee or its agents or representatives, pursuant to the permit. The policy of insurance shall provide coverage of no less than one million dollars (\$1,000,000.00) per occurrence of bodily injury and property damage, combined single limit.* (Ordinance 15-20(e) 18)

cm Authorized Representative Initial

Alcohol liability insurance: Organization/Applicant will obtain an alcohol permit if any alcoholic beverages are to be served. The insurance policy shall be endorsed to include **full liquor liability** in an amount not less than one million dollars (\$1,000,000) per occurrence. The City of Porterville shall be named as additional insured against all claims arising out of or in connection with the issuance of this permit or the operation of the permitted, his/her agents or representatives pursuant the permit. **Claims-made policies are not acceptable.**

____ Authorized Representative Initials

Health permit: Organization/Applicant will obtain or ensure that all participants obtain a 'Temporary Food Facilities' permit(s) from the Tulare County Public Health Department, if any food is to be served in connection with this Community Civic Event. To contact the Tulare County Environmental Health Department located at 5957 S. Mooney Blvd., Visalia, CA, 93277, call 559-733-6441, or fax information to 559-733-6932; or visit their website: www.tularehhsa.org.

____ Authorized Representative Initials

First aid station: Organization/Applicant will establish a first aid station, with clearly posted signs, to provide basic emergency care, such as ice/hot packs, bandages, and compresses.

cm Authorized Representative Initials

Toilet rental service: Applicant shall have care, custody and control of the equipment and shall bear responsibility and liability for all loss and damage to the equipment and for its contents while at the City's location. Applicant shall not overload, move or alter the equipment and shall use the equipment for its intended purpose. Applicant shall be responsible for any damages to City's property resulting from company's provision of services hereunder. Applicant shall confirm with the service company the number of portable toilets, standard and handicap, and wash sinks needed for the number of expected attendees.

____ Authorized Representative Initials

Agreement: The sponsoring organization/applicant agrees to comply with all provisions of the Community Civic Event Ordinance 15-20(e), as amended, and the terms and conditions set forth by City Council and stated in Exhibit 'A.' The sponsoring organization/applicant agrees, during the term of this permit, to secure and hold the City free and harmless from all loss, liability, and claims for damages, costs and charges of any kind or character arising out of, relating to, or in any way connected with his/her performance of this permit. Said agreement to hold harmless shall include and extend to any injury to any person or persons, or property of any kind whatsoever and to whomever belonging, including, but not limited to, said organization/applicant, and shall not be liable to the City for any injury to persons or property which may result solely or primarily from the action or non-action of the City or its directors, officers, or employees. Approval of the Community Civic Events Permit by the Porterville City Council pertains only to authorized activities conducted at designated locations within the incorporated area of the City of Porterville, and such approval shall not be construed or interpreted to authorize sponsor utilization of public right-of-ways outside of the jurisdiction of the City of Porterville.

Optimist /PUSD/BSD	Catherine E. May	2/6/19
(Name of Organization)	(Signature)	(Date)

VENDOR/PARTICIPANT LIST IN CONNECTION WITH THE APPLICATION AND
AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY
TO BE HELD ON PUBLIC PROPERTY

All vendors are required to complete the business license permit form. List all firms, individuals, organizations, etc., that will engage in selling at or participate in the above-named event. **NO PERMIT WILL BE ISSUED WITHOUT THIS INFORMATION.** Vendors with no valid City of Porterville business license are required to pay \$1 per day to the City, with the exceptions of non-profit organizations per *City of Porterville Municipal Code 15-20(E) Community Civic Events (16). This form should be completed at the time of application, but must be submitted **NO LESS THAN ONE WEEK PRIOR TO THE EVENT.**

[illegible]

The nonprofit sponsor shall collect said fee and remit the fee to the city within five (5) working days following the CCE. Said remittance shall be accompanied by a complete list of participants and consecutively numbered receipts written in triplicate, containing the name, address and telephone number of the licensee, and the licensee's California seller's permit number. Said receipts shall be furnished by the city. One copy of the receipt shall be furnished to the licensee, one copy filed with the finance department of the city, and one copy retained by the CCE sponsor for a period of three (3) years for audit purposes.

CITY OF PORTERVILLE

REQUEST FOR STREET CLOSURES AND PUBLIC PROPERTY USAGE IN CONNECTION WITH THE APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Name of event: Porterville Celebrates Reading

Sponsoring organization: Optimist/PUSD/BSD

Event date: April 13, 2019 Hours: 10:00-2:00

ATTACH MAP MARKING AREAS TO BE CLOSED OR USED:

Closed			
<u>Street Name</u>	<u>From</u>	<u>To</u>	<u>Activity</u>
<u>Sidewalks</u>	<u>From</u>	<u>To</u>	<u>Activity</u>
<u>Parking lots and spaces</u>	<u>Location</u>	<u>Activity</u>	

Requirements for Community Civic Event
Porterville Unified School District, Optimist Club of Porterville and Burton Middle School
Porterville Celebrates Reading
April 13, 2019

Finance Director:
M. Bemis

City Engineer:
J. Sanchez

Community Development Manager:
J. Phillips

Field Services Manager: No comment.
M. Knight

Fire Marshal: Approved.
M. Sandoval

Parks and Leisure Services Director: Vehicles permitted on grass for unloading and
D. Moore loading.

Police Lieutenant: Please see Exhibit B.
R. Standridge

Administrative Services Director: Please see Exhibit A, page 2.
P. Hildreth

Requirements for Community Civic Event

Sponsor: Porterville Unified School District, Optimist Club of Porterville
and Burton Middle School
Event: Porterville Celebrates Reading
Event Chairman: Catherine May
Location: Veterans Park
Date of Event: April 13, 2019
Time of Event: 10:00 a.m. to 2:00 p.m.

RISK MANAGEMENT: Conditions of Approval

That the Porterville Unified School District provide a Certificate of Commercial General Liability Insurance Coverage evidencing coverage of not less than \$1,000,000 per occurrence, and having the appropriate Endorsement naming the City of Porterville, its Officers, Employees, Agents and Volunteers as 'Additional Insured' against all claims arising from, or in connection with, the Permittee's operation and sponsorship of the aforementioned Community Civic Event.

- A. Said Certificate of Insurance shall be an original (fax and xerographic copies not acceptable), the Certificate shall be signed by an agent authorized to bind insurance coverage with the carrier, and the deductible, if any, shall not be greater than \$1,000.
- B. Said insurance shall be primary to the insurance held by the City of Porterville, be with a company having an A.M. Best Rating of no less than A:VII, and the insurance company must be an "admitted" insurer in the State of California.

CITY OF PORTERVILLE/POLICE DEPARTMENT
Community Civic Event Application

Porterville Celebrates Reading
April 13, 2019
Veterans Park

Proposed Conditions/Requirements:

- City Council approval is required for all street closures.
- On all streets approved for closure, ensure adequate barricades/barriers are used to warn motorists of non-access and prevent vehicle access to those designated areas.
- Food vendors should provide inspection certificates from the Tulare County Health Department to members of the organizing committee, to ensure food product safety.
- An Outside Amplifier Permit has been approved and granted. However, event organizers shall not allow music to be played so loud as to unreasonably disturb the peace and good order of any residents or business establishments in the surrounding area.
- At conclusion of event, event organizers shall ensure streets are promptly cleared of any vehicles, equipment, booths or anything that could present a hazard to pedestrians or vehicles traveling through this area.

Rich Standridge, Lieutenant
Porterville Police Department

Exhibit B

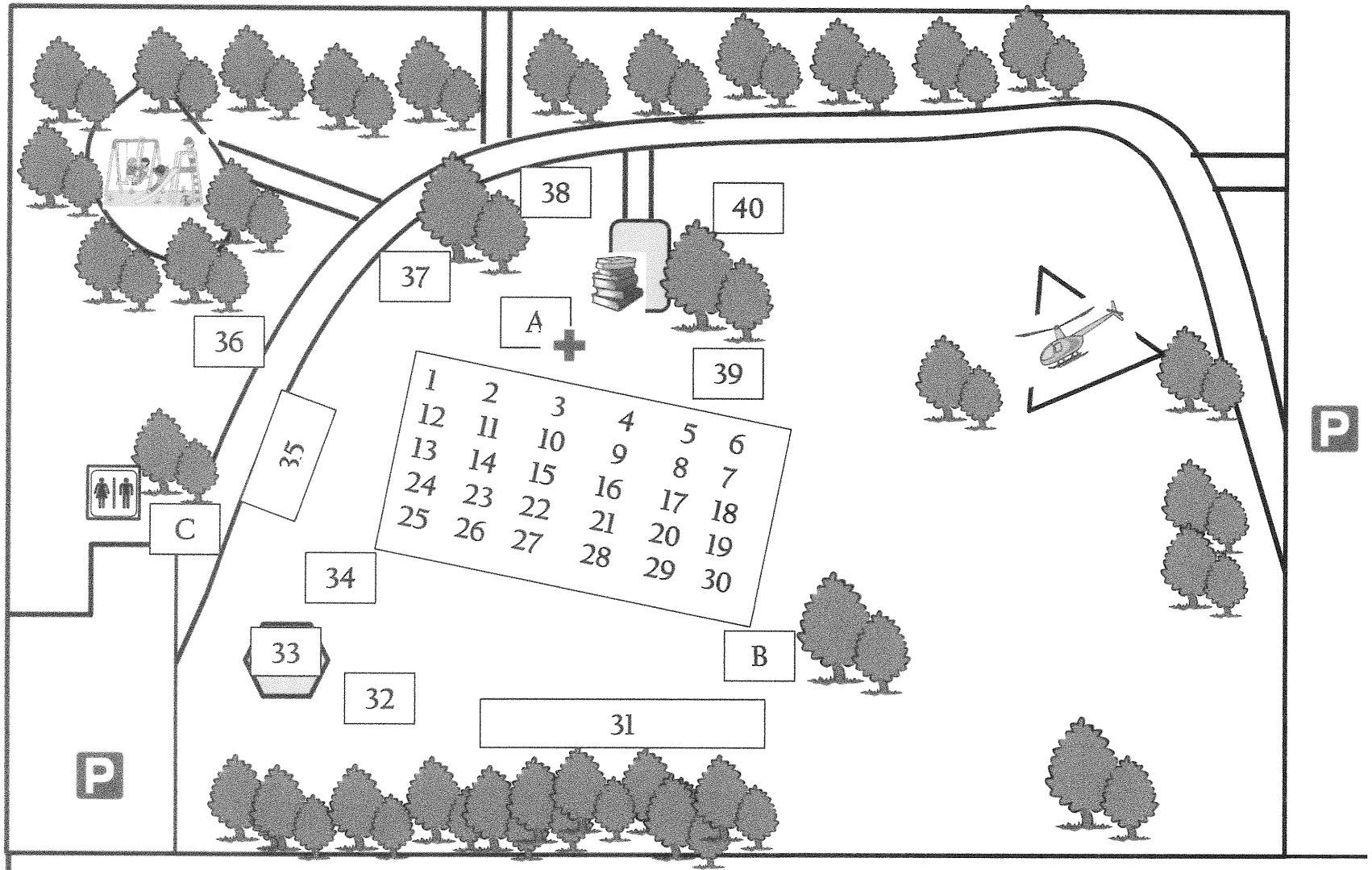


Monache H.S.



Henderson Ave.

Newcomb St.



Porterville Celebrates
Reading Map



First Aid Kit



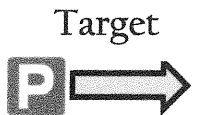
Booths

A-C

Information



Restroom



CITY OF PORTERVILLE
OUTSIDE AMPLIFIER PERMIT
(City Ordinances #18-9 & 18-14)



This application must be submitted ten (10) days prior to the date of the event. A copy of this permit must be at the operating premises of the amplifying equipment for which this registration is issued.

- 1 Name and home address of the applicant: Catherine May
770 Phillips Circle, Porterville, CA 93257
- 2 Address where amplification equipment is to be used: Veteran's Park
- 3 Names and addresses of all persons who will use or operate the amplification equipment: Catherine May
- 4 Type of event for which amplification equipment will be used: Literacy Fair
- 5 Dates and hours of operation of amplification equipment: 4/13/19 10:00am to 2:00pm
- 6 A general description of the sound amplifying equipment to be used: PA System

Section 18-9

It shall be unlawful for any person within the city to use or operate or cause to be operated or to play any radio, phonograph, jukebox, record player, loudspeaker, musical instrument, mechanical device, machine, apparatus, or instrument for intensification or amplification of the human voice or any sound or noise in a manner so loud as to be calculated to disturb the peace and good order of the neighborhood or sleep of ordinary persons in nearby residences or so loud as to unreasonably disturb and interfere with the peace and comfort of the occupants of nearby residences.

The operation of any such instrument, phonograph, jukebox, machine or device in such manner as to be plainly audible at a distance of one hundred feet (100') from the building, structure, vehicle, or place in which, or on which it is situated or located shall be prima facie evidence of a violation of this section. (Ord. Code § 6311)

Section 18-14

It shall be unlawful for any person to maintain, operate, connect, or suffer or permit to be maintained, operated, or operated, or connected any or sound amplifier in such a manner as to cause any sound to be projected outside of any building or out of doors in any part of the city, except as may be necessary to amplify sound for the proper presentation of moving picture shows, or exhibiting for the convenient hearing of patrons within the building or enclosure in which the show or or exhibition is given, without having first procured a permit from the chief of police, which permit shall be granted at the will of the chief of police upon application in writing therefore, but which permit, when granted, shall be revocable by the city council whenever any such loudspeaker or sound amplifier shall by the council be deemed objectionable, and any such permit may be so revoked with or without notice, or with or without a formal hearing, at the option of the council, and in the event of the revocation of any such permit, the same shall not be renewed, except upon application as the first instance. (Ord. Code § 6312)

Penal Code Section 415 (2) Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine: (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

I hereby certify that I have read and answered all statements on this registration form and that they are true and correct.

Catherine E. May
Signature of Applicant

2/6/19
Date

THIS OUTSIDE AMPLIFIER PERMIT HAS BEEN APPROVED. HOWEVER, WE URGE YOU TO REMAIN CONSIDERATE OF THE GENERAL PEACE AND ORDER OF THE NEIGHBORS IN THE AREA. FAILURE TO ABIDE BY THESE REGULATIONS CAN RESULT IN REVOCATION OF THE PERMIT.

[Signature]
City of Porterville, Chief of Police/Designee

2-27-19
Date

CERTIFICATE OF LIABILITY COVERAGE

DATE (MM/DD/YYYY)
02/07/2019

ADMINISTRATOR Houston Insurance Services Post Office Box 1002 Tulare, CA 93275 Phone: (559) 688-2874	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE MEMORANDUMS OF COVERAGE.
Named Member: Porterville Unified School District 600 West Grand Avenue Porterville, CA 93257	Organization A Central Tulare County School Districts Liability Property Joint Powers Authority Organization B Central California Schools Authority

COVERAGES

THIS IS TO CERTIFY THAT THE MEMORANDUMS OF COVERAGE LISTED BELOW HAVE BEEN ISSUED TO THE MEMBER NAMED ABOVE FOR THE COVERAGE 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 MEMORANDUM OF COVERAGE AFFORDED BY THE COVERAGE DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH MEMORANDUM OF COVERAGE. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

ORG LTR	TYPE OF COVERAGE	COVERAGE NUMBER	COVERAGE EFFECTIVE DATE (MM/DD/YY)	COVERAGE EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	General Liability ☒ Commercial General Liability	CTCS-1701-02	07/01/2018	07/01/2019	General Aggregate	\$5,000,000
					Products/Comp/Ops Agg	Incl.
					Personal & Adv. Injury	\$ 250,000
					Each Occurrence	\$ 250,000
					Fire Damage (Any One Fire)	\$ 250,000
					Med Exp (Any One Person)	-
A	Automobile Liability ☒ Owned Auto ☒ Non-Owned Auto ☒ Hired Auto	CTCS-1701-02	07/01/2018	07/01/2019	Bodily Injury & Property Damage	\$ 250,000
A	School Board Legal Liability	CTCS-1701-02	07/01/2018	07/01/2019	Each Claim	\$ 250,000
					Aggregate	\$5,000,000
B	Excess Liability	CCSA-001-01	07/01/2018	07/01/2019	Each Occurrence	\$9,750,000
					Each Claim	\$9,750,000
					General Liability Aggregate	\$9,750,000
					Wrongful Act Aggregate	\$9,750,000
					Fire Damage (Any One Fire)	\$ 750,000

Remarks:

When Required by written contract, agreement, or permit:

1. The certificate holder and others are included as a Member(s) for general liability and automobile liability and such coverage is primary and non-contributory as per Coverage A - Section II - Who is A Member, ITEM E; and/or
2. The Authority waives its rights of recovery against the certificate holder and others a per common memorandum of coverage conditions L.6.

The Limits of coverage apply separately per Named Member as per Coverage A, Section III-Limits of Coverage B.2 and 3.

Re: Porterville Celebrates Reading Literacy Fair, April 13, 2019, at Veteran's Park, Porterville, CA

CERTIFICATE HOLDER City of Porterville 291 N. Main Street Porterville, CA 93257	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED MEMORANDUMS OF COVERAGE BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ORGANIZATION WILL MAIL _____ 30 _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. AUTHORIZED REPRESENTATIVE
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THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE. PLEASE READ IT CAREFULLY

MEMORANDUM CHANGES

MEMORANDUM NUMBER CTCS-1701-02	ENDORSEMENT EFFECTIVE July 1, 2018	ENDORSEMENT NUMBER 11
FIRST NAMED MEMBER Central Tulare County School Districts Liability Property Joint Powers Authority		COVERAGE PARTS AFFECTED Coverage A; and Coverage B

CHANGES

Notice of Cancellation to Certificate Holder Endorsement

This endorsement amends the **Common Memorandum of Coverage Conditions, B. Cancellation** by adding the following:

4. If this coverage is cancelled for any reason before the expiration date and **we** have issued a certificate of liability coverage to a certificate holder, we will mail thirty (30) day written notice of cancellation to the certificate holder. Notice shall be sent by any means of our choosing. The notice to the certificate holder will state the effective date of the cancellation.

Failure to provide notice in accordance with the terms of this endorsement does not:

- (a) Alter the effective date of the cancellation;
- (b) Render the cancellation ineffective;
- (c) Grant, alter, or extend any rights or obligations under this **memorandum of coverage**; or
- (d) Extend the coverage beyond the effective date of the cancellation.

23. Damages, or loss, costs or expenses because of **bodily injury, personal injury, advertising injury, or property damage** arising directly or indirectly out of:
- a. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information; or
 - b. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, costs or expenses incurred by a **Member** or others arising out of that which is described in a. or b. above.

SECTION II - WHO IS A MEMBER

A. You are a **Member**.

B. Each of the following is a **Member** while acting within the scope of their duties as such:

1. All persons who were, are now, or will be **your** elected or appointed officials or members of the Board of Education, Board of Trustees, School Directors, Superintendents, Assistant Superintendents, Administrators, Assistant Administrators, Principals, Vice Principals, School Committee, or any equivalent administrative position.
2. Current or former commissions, boards or other entities, including their current or former members, under **your** exclusive operation and jurisdiction.
3. All of **your** current or former employees including teachers, student teachers, or school administrators while acting within the scope of their duties for the **Member** and under **your** direction and control.
4. All persons who perform a service on a volunteer basis for **you**, provided such performance is under **your** direction and control. This does not include any person working on retainer or as an independent contractor.
5. Student Body Organizations, Parent-Teacher Organizations, Booster Clubs and Non-Profit organizations approved by **your** governing board as on file with **us**.
6. Students, including the parents or legal guardians of those students, who serve as members of **your** safety patrol, but only with respect to liability arising out of service by the student as a safety patrol member.
7. Students enrolled in **your** students in practicum program while engaged in academic studies or work experience relating to **your** students in practicum program during the coverage period.
8. The estate of any person in 1. through 6. above.

D. Any person, entity, or any organization while acting as **your** real estate manager.

E. Any person, entity, or any organization **you** are required by a **covered contract** to include as a **Member**. This coverage will be limited to the extent of coverage and Limits of Liability required by the **covered contract** and will not increase the limits stated in **SECTION III - LIMIT(S) OF COVERAGE** or alter any of the terms of coverage stated in this Coverage Part. The **covered contract** must be effective and executed prior to a covered **occurrence**. If other valid and collectible insurance is available to the additional **Member** to pay damages and/or **claim expenses** due to an occurrence, then our indemnification obligations is excess over such other insurance covering the additional **Member**, whether such other insurance is written on a primary, excess, contingent or on any other basis. If a written contract or written agreement specifically requires the coverage as provided by **Coverage Part A** to apply as primary to, and on a non-contributory basis with, any other available insurance to the additional **Member** we agree to do so.

F. Any other person, entity or any organization **We have** has issued an **Endorsement** to this Coverage Memorandum adding the person, entity or organization as a **Member**.

G. With respect to:

Mobile equipment or any **auto**, any person is a **Member** while driving such **auto** or **mobile equipment** with **your** permission. Any person, entity, or organization responsible for the conduct of such person is also an **Member**, but only with respect to **bodily injury** or **property damage** arising out of the operation of the **auto** or **mobile equipment**.

However, the owner or anyone else from whom **you** hire or borrow an **auto** is a **Member** only if that **auto** is a trailer connected to an **auto** **you** own.

However, no person, entity, or organization is a **Member** under this paragraph e. with respect to:

1. **Property damage** to property owned by **you** or the employer of any person who is a **Member** under this provision;
2. Any **auto** **you** hire or borrow from one of **your** employees, volunteers or members of their households, if they are the owner of such **auto**, unless acting within the scope of their duties on **your** behalf;
3. Any **auto** being used by a person employed in the business of selling, servicing, repairing, or parking **autos** unless they are **your** employees; or
4. The movement of property to or from an **auto** except **you**, **your** employees, lessees or borrowers of such **auto**, and any employee of the lessees or borrowers.

H. Any entity or organization **you** newly acquire or form and over which **you** have exclusive jurisdiction will qualify as a **Named Member** if there is no other similar insurance available to that entity or organization. However:

1. Coverage under this provision is afforded only until the 90th day after **you** acquire or form the entity or organization or the end of the policy period, whichever is earlier;
2. Coverage does not apply to **bodily injury** or **property damage** that occurred before **you** acquired or formed the entity or organization; and
3. Coverage does not apply to **personal injury** or **advertising injury** arising out of an **offense** committed before **you** acquired or formed the entity or organization.

I. No person, entity, or organization is a **Member** with respect to the conduct of any current or past partnership or joint venture that is not shown as a **Named Member** in the **Annual Renewal Statement**.

SECTION III - LIMIT(S) OF COVERAGE

- A. The **Limit(s) of Coverage** shown in **Item 2.** of the **Annual Renewal Statement** and the rules below fix the most we will pay under this Coverage Part regardless of the number of:
1. **Members;**
 2. Claims made or **suits** brought; or
 3. Persons or organizations making claims or bringing **suits**.
- B. 1. The each **occurrence Limit of Coverage** is the most we will pay for **ultimate net loss** under **Coverage Part A** for any single **occurrence**.
2. Subject to subparagraph B. 1. above, the **Coverage Part A** Aggregate Limit is the most we will pay for all **ultimate net loss** during the coverage period for all covered **occurrences** for each **Named Member**, except **ultimate net loss** because of **bodily injury** or **property damage** arising from the **automobile hazard**.
3. Subject to B.1 and B.2 above, the **Coverage Part A** each **Occurrence Limit of Coverage and Aggregate Limit** shown in Item. **Limit(s) of Coverage, Coverage Part A**, of the **Annual Renewal Statement**, or amended by **Endorsement**, applies separately to each **Named Covered Member** under the Memorandum of Coverage.
- C. If any **occurrence** covered in whole or in part under **Coverage Part A** of this Memorandum of Coverage (or any preceding or succeeding Memorandum of Coverage issued by **US** also constitutes a **wrongful act(s)** covered in whole or in part under **Coverage Part B** of this Memorandum of Coverage (or any preceding or succeeding Memorandum of Coverage issued by **US**, then only the Coverage Part with the higher limits for the each **occurrence (Coverage Part A)** or each **claim(s) (Coverage Part B) Limit(s) of Coverage** as listed on the **Annual Renewal Statement** or any Endorsement will apply. If the each **occurrence (Coverage Part A)** and the each **claim(s) (Coverage Part B) Limit(s) of Coverage** as listed on the **Annual Renewal Statement** or any Endorsement are equal, only one limit will still apply and it will be the each **occurrence (Coverage Part A) Limit(s) of Coverage**.
- D. The **Limit(s) of Coverage** applies separately to each consecutive annual period, and to any remaining period of less than twelve (12) months, starting with the beginning of the coverage period shown on the **Annual Renewal Statement**, unless the coverage period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the **Limit(s) of Coverage**.
-

SECTION IV - DEFINITIONS

- A. **Advertising injury** means injury arising out of one or more of the following **offenses** committed in the course of advertising **your** goods, products or services:
1. Electronic or other publication, transmission, dissemination or storage of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services;
 2. Electronic or other publication, transmission, dissemination or storage of material that violates a person's right of privacy;

K. SEPARATION OF MEMBERS

Except with respect to the relevant **Limit(s) of Coverage** and any applicable exclusion(s), this Memorandum of Coverage applies:

1. As if each **Named Member** were the only **Named Member**; and
2. Separately to each **Member** against whom **claim** or **suit** is brought.

L. SUBROGATION- RECOVERY FROM OTHERS

1. **We** have the right to recover all payments which **we** have made to or on behalf of the **Member** from anyone liable for a loss. If the **Member** recovers from anyone liable for a loss, **we** will be reimbursed first from such recovery to the extent of our payments to or on behalf of the **Member**. The **Member** expressly waives any rights it may have to recoup any uncovered portions of any loss prior to **our** recovery of the full amounts we paid hereunder.
2. If the **Member** does not commence an action or proceeding to recover damages from anyone liable for a loss paid by **us**, the **Member** agrees to timely assign all of its rights of recovery to us and also agrees that we have the rights of the **Member** to recover from anyone liable for a loss. The **Member** will do everything necessary to protect those rights and help us to enforce them.
3. Any such recovery will be allocated in the following order:
 - a. First, to reimburse any other Memorandum of Coverage or insurance for coverage in excess of this Memorandum of Coverage's relevant **Limit(s) of Coverage** set forth on the **Declaration Page** or any endorsement, or to reimburse the **Member** to the extent there is no such other memorandum of Coverage or insurance;
 - b. Then, we will be reimbursed for all of **our** payments under this Memorandum of Coverage;
 - c. Then, any other Memorandum of Coverage or insurance that we are excess above will be reimbursed for all of their payments, if any;

d. Finally, any balance of the recovery will be paid to the **Member**.

4. Expenses of all proceedings to recover from anyone liable for loss covered by this Memorandum of Coverage will be deducted from any amount which has been recovered prior to the allocation in accordance with paragraph 3. above.
5. If such action is commenced by the **Member**, with our prior approval, and the expenses incurred in obtaining recoveries exceeds the amount recovered, if any, the excess expense will be apportioned between the parties in proportion to the liability of each party for the loss before the recovery was obtained, if such an action or proceeding undertaken solely by **us** results in no recovery, **we** will pay all related expenses.
6. Notwithstanding anything to the contrary in paragraphs 1. through 5. Above, in the event **we** make any payment under this Memorandum of Coverage, **we** will waive **our** right of recovery against any person or organization with whom the **Member** has:
 - a. Agreed in a written contract, agreement or permit that is effective and executed prior to the date of an **occurrence** or **wrongful act(s)**, to waive its subrogation, contribution, or indemnity rights; or
 - b. Performed or received work under a letter of intent, work order, or other letter of understanding provided that the **Member** can demonstrate that such letter of intent, work order, or other letter of understanding would customarily be reduced to a written contract, agreement or permit that requires the **Member** to waive its subrogation, contribution or indemnity rights.



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Status and Review of Declaration of Local Emergency

SOURCE: City Manager's Office

COMMENT: Governor Brown issued Executive Order B-29-15 on Wednesday, April 1, 2015, which established drought-related mandates and restrictions in addition to those already stipulated in previous Executive Orders B-26-14 and B-28-14. Of significance, the Governor directed the State Water Resources Control Board to impose restrictions to achieve a statewide 25% reduction in potable urban water usage through February 28, 2016, in comparison to the amount used in 2013, and with consideration given to per capita usage as a basis. The Governor further directed the Board to impose additional restrictions on commercial, industrial, and institutional properties with significant landscaping (cemeteries, golf courses, parks, schools, etc.), to also achieve a 25% reduction in potable water usage. Also of significance, the Board was directed to prohibit irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or micro-spray systems.

On November 13, 2015, Governor Brown issued Executive Order B-36-15, which extends emergency conservation regulations through October 2016, if drought conditions persist through January 2016. On February 2, 2016, the State Water Resources Control Board adopted extended emergency water conservation regulations, to be in effect March 1 through October 31, 2016. The City of Porterville benefited somewhat from the extended regulations as the City's water conservation rate has been reduced from 32% to 26%, due to new water connections that have been made and population served (4%), as well as a new climate adjustment factor that was considered (2%).

On May 9, 2016, Governor Brown issued Executive Order B-37-16 ("Making Water Conservation a California Way of Life"), which directs the State Water Resources Control Board to establish new regulations making permanent the emergency conservation regulations. On May 18, 2016, the State Water Resources Control Board adopted a statewide water conservation approach that replaces the percentage reduction-based water conservation standard with a localized "stress test" approach that mandates urban water suppliers act immediately to ensure at least a three-year supply of water to their customers under continued drought conditions.

On April 7, 2017, Governor Brown issued Executive Order B-40-17, which ended the drought state of emergency in most of California, with the exception of Fresno, Kings, Tulare and Tuolumne counties where emergency water supply

and reliability projects are continuing toward addressing diminishing groundwater supplies. The Order maintains monthly reporting requirements and prohibitions on wasteful practices. It is anticipated that the Governor will end the drought state of emergency in the four remaining counties in the near future.

On May 31, 2018, Governor Brown signed both AB 1668 (Friedman) and SB 606 (Hertzberg), which set permanent overall targets for indoor and outdoor water consumption. The legislation sets an initial limit for indoor water use of 55 gallons per-person per-day in 2022, reducing to 52.5 gallons per-person per-day in 2025, and finally to 50 gallons per-person per-day in 2030. The amount of residential outdoor use is yet-to-be determined, but will allow for varying regional climates. In addition, a standard for water loss due to leak rates in water system pipes will be established. As an urban water provider, the City of Porterville will need to submit its plan for compliance for approval by the State Water Resources Control Board.

At its last meeting on February 19, 2019, the City Council took action in the continued affirmation of the adoption of a Resolution of Declaration of Local Emergency due to local residences within the city having been identified as having wells that are now dry as a result of the drought. Twenty-six (26) residences within the city have been determined to have dry wells, for which City staff submitted a Mutual Aid Request to Tulare County OES to initiate the household tank program for identified properties within the city where wells are dry and challenged for permanent connection. City, County, State and non-profit partner representatives have continued to discuss solutions toward addressing these challenged residences given the State is expected to end its drought emergency funding. The State had committed funding through June 30, 2018 for non-profit agencies to continue drought-related activities, which Self-Help Enterprises has continued the household tank program locally. Although a new appropriation of State funding has not yet been made, there are sufficient residual funds from the original appropriation to fund the continuance of the program through September 30, 2018. Assemblyman Joaquin Arambula (Fresno) had requested of the Assembly Budget Committee the appropriation of \$3.5 million in the State's 2018-2019 fiscal year budget to continue to support the approximate 300 residences in the Central Valley that still have dry wells and receive temporary water deliveries, however, that appropriation request has not been granted. Should continued funding not be appropriated by the State, representatives for the State Water Resources Control Board have indicated that they will attempt to secure continued funding through Cleanup and Abatement Account (CAA) emergency funds.

Representatives for the City, County, State (CalOES, DDW, DWR, and SWB) and non-profit partners have continued to meet in support of the long-term permanent water connection project for the entire East Porterville area and the estimated 1,800 expected future connections. DWR identified 423 residential units in the East Porterville area (381 of which are in the City's Urban Development Boundary), that were served by the County's Household Tank Program and desired by the State to be connected to the City's water distribution system as soon as possible. DWR has completed a significant City waterline

extension project to permanently connect those 423 residential units to the City's water system (considered Phase I of the project). To provide source water for the DWR extension project, CalOES desired to expeditiously connect the new well on Olive Avenue to the City's water system instead of being first equipped as a filling station. Given the new well has an estimated water production value of 800 gallons per minute, as well as a SWB assumed 1.5 gallons per minute per residence, the new well could effectively serve up to 500 single-family residential units. The City indicated its significant interest that the E. Vandalia Avenue area and its 80 residential units be included in the water connection project, to which the State was agreeable.

Given CalOES has paid for the development of the new well, and its connection to the City's water system, the City will be required under "Drought Redundancy and Resiliency Provisions" to make available to the State up to three million gallons of water per month without charge for emergency purposes.

To proceed with the connection of the new well to the City's water system and the 500 East Porterville and E. Vandalia Avenue residential units, the City Council approved modifications to the Draft Agreement between the City and County at its meeting on April 5, 2016, which the County Board of Supervisors subsequently approved at their meeting on May 10, 2016.

A Memorandum of Understanding between the State, County, and City on the East Porterville permanent water connection project was approved by the Council during a Special Meeting on Tuesday, June 21, 2016, and approved by the Board of Supervisors on Tuesday, June 28, 2016. With the approval of the MOU, the State began the permanent connection of approximately 40 homes that are located along existing City water mains. Subsequently, the State officially requested that the City approve the connection of an additional 30 residences as part of the first immediate connections, for up to a total of 70, which the Council approved at its meeting on August 2, 2016.

In regards to the new well's development and connection to the City's water distribution system, the Board of Supervisors awarded the contract for equipping and connecting the new well at their meeting of Tuesday, August 16, 2016, and construction activities commenced the week of October 10, 2016. County staff had previously indicated that the well would be in service and connected to the City's system no later than December 2016, however, the well was operational and connected to the City's water distribution as of Friday, February 17, 2017. Given the delay in the well's completion and connection, DWR requested that the City Council consider allowing the connection of residences as they become prepared for connection, to which the Council was receptive, and a Draft MOU Amendment was approved by the Council at its meeting on December 6, 2016, and subsequently approved by the Board of Supervisors at its meeting on December 20, 2016. City staff is currently working with County staff toward the transfer of the well's ownership from the County to the City.

As of Friday, March 31, 2017, the date the State established as the final day for property owners to complete the registration process to participate in the State-funded connection program opportunity, of the 1,017 eligible developed residential properties identified by the State for connection, 722 completed the required Extra-Territorial Services Agreement, leaving 295 developed residential properties non-responsive to this unique connection program, 23 of which were reported as having either dry or diminishing capacity wells. On February 6, 2018, the final residential connection was made of the approximate eligible 800 residences in East Porterville to the City's water system.

County OES and the State Division of Drinking Water (DDW) have reported to the City that the Central Mutual Water Company, located south of the city and south of Gibbons Avenue, has had its well run dry and desires an immediate emergency connection to the City's water system to serve the 41 connections currently without water. DDW is wishing to support a financial application to upgrade the small water system to City standards (new water lines, meters ,etc.), and to sponsor an Urban Development Boundary (UDB) Amendment application to Tulare County Local Agency Formation Commission (LAFCO), given this area is currently outside the City's UDB but within the City's Urban Area Boundary (UAB). Given several private wells have run dry in this area, DDW is also attempting to sponsor their connection to the City's water system. For source water capacity for the connections, DWR will include these new connections within the East Porterville water connection capacity development projects. At its Special meeting on August 30th, the City Council directed staff to proceed with the immediate emergency connection of the Central water system, with the permanent connection of the system contingent upon an Agreement with DDW to the sponsorship conditions they have offered.

State Division of Drinking Water (DDW) has also reported to the City that the Del Oro East Plano water system, located on Paul Street (southeast of the intersection of Plano Street and Worth Avenue), is experiencing problems with its existing well and have implemented severe water restrictions. The East Plano water system serves 14 residences and approximately 45 people. DDW is wishing to provide financial support to upgrade the small water system to City standards (new water lines, meters ,etc.), and for source water capacity for the connections, DDW would need to either pay appropriate fees and/or develop a capacity development project. The Council is aware that the Del Oro Grandview Gardens water system (north of W. North Grand Avenue) is also experiencing significant issues, and DDW may seek their future consolidation with the City's water system as well.

City staff continues to coordinate with Self-Help Enterprises and State representatives toward the extension of water mains to serve all residential properties within City limits and the city's periphery that are currently participating in the County's Household Tank Program. The two main areas of focus are N. Cobb Street (northwest of State Route 65 and Pioneer Avenue), and S. Cloverleaf Street (southeast of State Route 65 and Olive Avenue). The State has maintained its commitment to grant-fund the necessary infrastructure and connection fees, providing an official funding letter to the City on January 18,

2018, which commits up to \$2.81 million in funding until December 31, 2019. The authorization to advertise for bids for the water connection project was approved by the Council at its July 17th meeting, after which DWR reviewed the bid package for compliance and approved in December the package for advertisement. Council authorized award of the construction contract for approximately \$1.82 million at its meeting on January 15, 2019.

RECOMMENDATION: That the City Council receive the report of status and review of the Declaration of Local Emergency and determine the need exists to continue said Declaration.

ATTACHMENTS:

1. Resolution 49-2015 - Declaration of Local Emergency
2. City-County Well Agreement
3. Memorandum of Understanding
4. Memorandum of Understanding Draft Amendment
5. SWRCB Letter Dated November 29, 2017
6. DWR Letter Dated January 18, 2018
7. Governor Brown Executive Order

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager

RESOLUTION NO. 49-2015

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF PORTERVILLE DECLARING A DROUGHT EMERGENCY
WITHIN THE CITY OF PORTERVILLE

WHEREAS: in response to the ongoing severe drought, the State Water Resources Control Board approved an emergency regulation to ensure water agencies, their customers, and state residents increase water conservation in urban settings or face possible fines or other enforcement; and

WHEREAS: as we enter the fourth year of severe drought, long-term forecasts indicate no relief of the current drought conditions, and suggest a warmer-than-average summer, resulting in increased domestic demand for water; and

WHEREAS: public and private potable water supplies continue to be threatened due to decreasing supplies of groundwater caused by the precipitation deficit and an extended state of groundwater overdraft; and

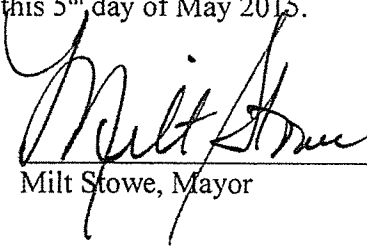
WHEREAS: the long-term ramifications of the current drought will have a significant impact on the city of Porterville and potentially pose a danger to the health and welfare of its residents; and

NOW, THEREFORE, BE IT RESOLVED: that the City Council of the City of Porterville does hereby proclaim that, due to drought conditions, a Local Emergency now exists in the city of Porterville and shall remain in effect for the duration of the emergency; and

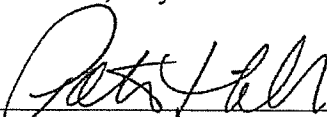
BE IT FURTHER RESOLVED: that the City Council of the City of Porterville requests the Governor and California Department of Water Resources make available California Disaster Assistance Act funding for the State of Local Emergency proclaimed on May 5, 2015, and seek all available forms of Federal assistance, to include a Presidential Declaration of Emergency and Individual Assistance and Public Assistance programs as applicable; and

BE IT FURTHER RESOLVED: that a copy of this resolution be forwarded to the State Director of the Office of Emergency Services.

PASSED, APPROVED, AND ADOPTED this 5th day of May 2015.


Milt Stowe, Mayor

ATTEST:
John D. Lollis, City Clerk


By: Patrice Hildreth, Chief Deputy City Clerk

TULARE COUNTY – CITY OF PORTERVILLE WELL AGREEMENT

THIS AGREEMENT is entered into this day of, May 10, 2016, between the COUNTY OF TULARE, referred to as COUNTY, and the CITY OF PORTERVILLE, referred to as CITY, with reference to the following:

- A. WHEREAS, East Porterville/Doyle Colony area properties within the COUNTY's jurisdiction and within the CITY's Urban Development Boundary are experiencing serious water shortages due to the historical drought conditions. Attached hereto as Exhibit 'A' is a map defining the East Porterville/Doyle Colony and Vandalia areas; and
- B. WHEREAS, CITY and COUNTY have been and are collaborating to jointly develop a new municipal water well; and
- C. WHEREAS, COUNTY shall secure complete funding for a new well to be solely owned, operated and maintained by the CITY for the purpose of providing long-term capacity to enable permanent water connections to properties that comply with CITY'S Annexation and Extension of Municipal Services policy, with certain exceptions for specific properties in excess of the maximum lot size. These procedures are defined by two Resolutions, 74-2014 and 19-2016, which are attached hereto as Exhibit 'B'; and
- D. WHEREAS, the COUNTY owns a parcel at the southeast corner of the Tule River and Olive Avenue (APN 240-120-017), represented in Exhibit 'C', and has drilled a municipal supply well, and will equip said well utilizing CITY standards, after which the COUNTY shall convey the land to CITY at a cost of \$1; and
- E. WHEREAS, CITY operates an existing municipal water system, with limited infrastructure already established in the East Porterville/Doyle Colony and Vandalia areas, and has experience and qualifications necessary to provide such services; and
- F. WHEREAS, CITY and COUNTY mutually agree that a regional, collaborative solution to leverage and expand CITY'S municipal water system into the East Porterville/Doyle Colony and Vandalia areas is the most feasible means to address the area's water needs; and
- G. WHEREAS, CITY is willing to enter into this Agreement with COUNTY upon terms and conditions set forth herein; and
- H. WHEREAS, CITY and COUNTY mutually understand that due to the limited resources of the CITY's municipal water system, all future connections must comply with the CITY's Annexation and Extension of Municipal Services policies, with certain exceptions for specific properties in excess of the maximum lot size, attached hereto and made a part thereof as Exhibit 'B'.

ACCORDINGLY, IT IS AGREED:

- 1. **TERM:** This agreement shall become effective as of the date the agreement is fully executed by both agencies.
- 2. **SERVICES TO BE PERFORMED & PAYMENT FOR SERVICES – EQUIPPING MUNICIPAL WELL FACILITY:** Refer to attached Exhibit 'D'.

TULARE COUNTY AGREEMENT NO. 27596

3. **SERVICE TO BE PERFORMED IN PERPETUITY:** The services described below shall be performed in perpetuity upon completion of all tasks enumerated in Exhibit 'D' and upon COUNTY securing the funds for equipping the well to CITY standards and requirements:
- A. CITY shall provide to STATE and/or COUNTY, upon STATE and COUNTY's request, a maximum of three million (3,000,000) gallons of water per month upon integration of the well provided under this Agreement, for the purposes of meeting emergency water needs in COUNTY's jurisdiction. CITY shall not charge COUNTY or STATE for said water.
 - B. CITY shall utilize water produced by the well provided under this Agreement as source capacity for new service connections and agreements in East Porterville/Doyle Colony and Vandalia areas. CITY agrees to provide source water for up to four hundred twenty-three (423) new connections in the East Porterville/Doyle Colony area subject to the CITY'S Annexation and Extension of Municipal Services policies, with certain exceptions for specific properties in excess of the maximum lot size, and up to 80 new connections in the Vandalia area. The 423 new connections noted above are inclusive of those properties immediately adjacent to an existing water main, estimated at 40 parcels, which can be connected to the City's water system immediately upon execution of this agreement and the Memorandum(a) of Understanding between CITY, COUNTY, and STATE. Upon connection to CITY services, the listed properties will be exempt from payment of CITY water impact fees, but will be subject to standard fees, such as, but not limited to, water service and meter installation, unless otherwise financed by STATE or other funding sources, and associated monthly fees. This section shall not be construed to limit additional connections beyond the above referenced 503 properties provided for herein, where CITY provides consumption documentation that determines additional source capacity is available as a result of the connection of this well to CITY's system.
 - C. CITY expressly agrees to own, operate, maintain, repair and otherwise care for the well provided under this Agreement, in order to maintain it in proper working order and to the highest standard, for the duration of the well's useful life.
 - D. COUNTY shall grant the parcel on which the well is located to the CITY by Grant Deed at a cost of \$1 upon formal acceptance of the project. A 50-foot control zone around the well site is a requirement of the State Water Resources Control Board, Drinking Water Program, therefore establishing the minimum parcel size to be conveyed to the CITY. Existing COUNTY infrastructure may encroach through or conflict with the subject parcel and if so, ownership, maintenance, repair and replacement of these facilities shall transition to the City's responsibility by separate maintenance agreement upon acceptance of the project.
 - E. CITY shall not be entitled to compensation by COUNTY, or any State or Federal agency providing funding for the activities enumerated in Exhibit 'D', for any ongoing costs related to owning, operating, maintaining, repairing, or replacing this well. CITY and COUNTY expressly agree that CITY's ongoing compensation for such ongoing costs shall be the use of the well for CITY's use within its water system, unrestricted except as noted in "A"

above. No part of this paragraph shall be construed to limit or restrict in any way CITY's ability to seek any grant funding or collect rates and fees from users of CITY's water system.

- F. All recipients of water are subject to CITY water policies, such as, but not limited to, water conservation and watering schedules. Connections made as noted in "B" above may be subject to further water conservation thresholds as required by the STATE.

4. This Agreement represents the entire agreement between CITY and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

5. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY: County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare
Administrative Building
2800 W. Burrel Avenue
Visalia, CA 93291

(Fax No.: (559) 733-6318 / Phone No. (559) 636-5005)

CITY: City Manager
291 N. Main St.
Porterville, CA 93257

(Fax No.: (559) 715-4013/ Phone No. (559) 782-7466)

Notice delivered personally or sent by facsimile transmission is deemed to be received upon receipt. Notice sent by first class mail shall be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

6. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.
7. Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
8. This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. This Agreement is entered into and shall be performed in Tulare County, California. CITY waives the removal provisions of California Code of Civil Procedure Section 394.
9. The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party or either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.
10. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

11. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court of other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.
12. Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to affect the purposes of this Agreement.
13. CITY expressly agrees that it will not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.
14. Insurance
15. Permit
16. Dispute Resolution: If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.
17. Indemnification: CITY shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CITY or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CITY under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CITY's failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

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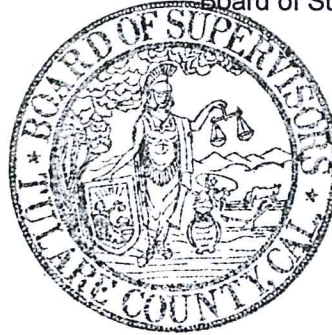
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THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

BY Mike Ennis
Mike Ennis Chairman,
Board of Supervisors



ATTEST: Michael C. Spata,
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By Danisa A. Ybana
Deputy Clerk

Approved as to Form
County Counsel

By M. Grice for LMT
Deputy 20151902

CITY OF PORTERVILLE

BY Milt Stowe
Milt Stowe, Mayor

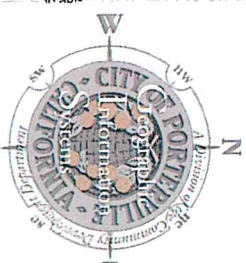
ATTEST:
City Clerk of the City of Porterville

BY J. L. Lolis
John Lolis, City Manager

Approved as to Form

BY [Signature]
City Attorney

EXHIBIT 'A'



 East Porterville Project Boundary

CityLimits

UDB

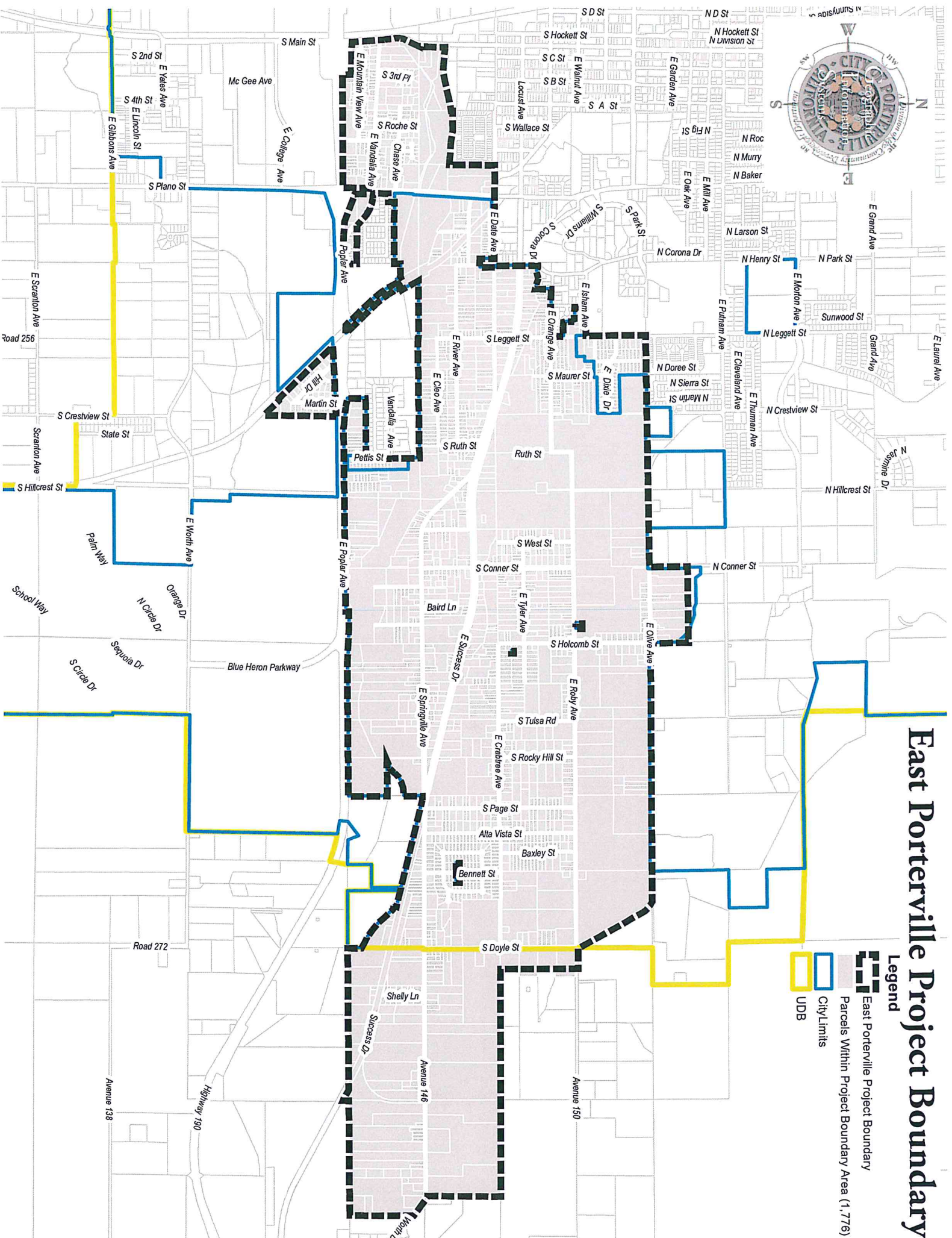


EXHIBIT 'B'

RESOLUTION NO. 74 -2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE DEFINING OBJECTIVES AND POLICIES FOR ANNEXATIONS AND MUNICIPAL SERVICES

WHEREAS: The City of Porterville established a policy concerning annexation and provision of municipal services in 1986, noting that “the City, in order to grow for reasons of economies of scale and quality of services must expand its boundaries within reason, generally encourages the owners of properties contiguous to the city of Porterville to annex to said City of Porterville”; and

WHEREAS: Since 1990, the population of the city of Porterville has increased 53% according to the California Department of Finance, and the land area of the city proper has increased by 38% according to City annexation records; and

WHEREAS: The City of Porterville accepts its responsibility to provide municipal services to those residents, businesses, and other land uses within the limits of the city. The City of Porterville has taken the position that the costs of all physical improvements within the city have been paid by property owners, and other taxes derived in the city, and, therefore, these same people should not be required to bear the expense of additional physical improvements needed to serve newly annexed areas.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Porterville does hereby define the following objectives related to annexations and municipal services:

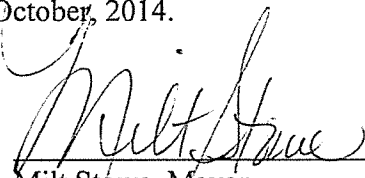
1. To promote orderly development while discouraging urban sprawl, preserving open space and prime agricultural lands, and efficiently extending government services.
2. To honor the City’s fundamental responsibility to provide efficient and sustainable public services to the inhabitants of the city, and where appropriate, to provide those services beyond the limits of the city within the Urban Development Boundary, and only in extreme cases to those properties beyond the Urban Development Boundary within the Urban Area Boundary.
3. To provide for land development and growth in a manner consistent with the General Plan, particularly as it relates to land use and circulation.
4. To consider an application upon its own merits, and identify what benefits would accrue to the City as an agency and service provider, to the residents of the city of Porterville, and to the applicant.
5. To identify the problems involved in any proposal considered for annexation or request for extra-territorial services and resolve them in the manner most beneficial to the properties within the city of Porterville.
6. To develop factual information to permit informed discussion between City representatives and property owners/residents of unincorporated territories.

BE IT FURTHER RESOLVED, that the City Council of the City of Porterville does hereby establish the following policies for consideration of annexations and municipal services:

1. It shall be the policy of the City of Porterville to consider annexation proposals only within the Urban Development Boundary, which is defined as the City of Porterville Annexation Boundary, as adopted by Tulare County Local Area Formation Commission (LAFCo).

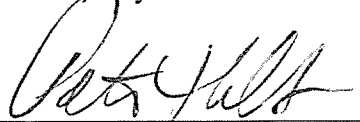
2. It shall be the policy of the City of Porterville to consider extra-territorial service requests primarily within the Urban Development Boundary, which is defined as the City of Porterville Annexation Boundary, as adopted by Tulare County LAFCo.
3. It shall be the policy of the City of Porterville, only where necessary in order to respond to an existing or impending threat to public health or safety of affected residents, to consider extra-territorial service requests within the Urban Area Boundary, as adopted by City Council and identified on the City of Porterville Zoning Map.
4. It shall be the policy of the City of Porterville to consider annexation proposals and extra-territorial service requests in a manner consistent with the policies and regulations adopted by the Tulare County LAFCo and the State of California, as applicable.
5. It shall be the policy of the City of Porterville to discourage single-family one (1) lot annexation proposals that may have an adverse fiscal impact on the City of Porterville.
6. It shall be the policy of the City Council that territory shall not be annexed to the city of Porterville, which as a result of such annexation, unincorporated territory is completely surrounded, or substantially surrounded by the city of Porterville.
7. It shall be the policy of the City of Porterville that annexation proposals shall be in conformance with the Cortese-Knox-Hertzberg Act of 2000, as amended.
8. It shall be the policy of the City Council to consider each petition/consent for annexation upon its relationship to what economic benefits will accrue to the City of Porterville, and to the area residents/property owners.
9. It shall be the policy of the City Council that the costs of all physical improvements will be borne by the property owners/resident or developer.
10. It shall be the policy of the City of Porterville to maintain the viability of agricultural productivity; i.e. protecting and conserving as much agricultural land as possible in the area surrounding the Porterville community.
11. It shall be the policy of the City of Porterville that the applicant for annexation present proposals to the Project Review Committee and explain the particulars of the area under consideration for possible annexation, including a plan for services.
12. It shall be the policy of the City of Porterville to consider any requests for annexation or extra-territorial services in a manner consistent with the procedures adopted by resolution of the City Council.

PASSED, APPROVED AND ADOPTED this 21st day of October, 2014.


Milt Stowe, Mayor

ATTEST:

John D. Lollis, City Clerk

By: 
Patrice Hildreth, Chief Deputy City Clerk

STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at regular meeting of the Porterville City Council duly called and held on the 21st day of October, 2014.

THAT said resolution was duly passed, approved, and adopted by the following vote:

Council:	REYES	WARD	STOWE	HAMILTON	GURROLA
AYES:	X		X	X	X
NOES:		X			
ABSTAIN:					
ABSENT:					

JOHN D. LOLLIS, City Clerk


By: Luisa M. Zavala, Deputy City Clerk

RESOLUTION 19-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
ESTABLISHING PROCEDURES FOR ANNEXATIONS AND EXTENSION OF
MUNICIPAL SERVICES

WHEREAS: On October 21, 2014, the City Council of the City of Porterville adopted two resolutions that defined objectives and policies, and established procedures for annexations and municipal services, respectively; and

WHEREAS: The on-going, severe drought of the past few years has created a situation where hundreds of parcels in the East Porterville area are experiencing dry wells, or wells of substandard water quality. State and regional agencies have come together with the City to identify and develop a long-term solution to this crisis, which will involve a significant infrastructure project to allow extension of municipal water services to the area. Not all parcels within the subject area meet the mandatory findings for extra-territorial service agreements as identified in the City's current procedures.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Porterville does hereby amend existing procedures to submit application for municipal services, and to have said application(s) processed as outlined in Exhibit "A", attached. The exemption identified for the East Porterville Feasibility Study Project Area will apply to the area represented in Exhibit "B".

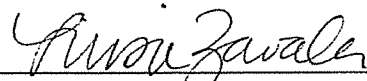
PASSED, APPROVED AND ADOPTED this 19th day of April, 2016.



Milt Stowe, Mayor

ATTEST:

John D. Lollis, City Clerk

BY 

Luisa Zavala, Deputy City Clerk

All properties requesting annexation or extraterritorial services are subject to the procedures established below unless otherwise stated. Compliance with City of Porterville procedures does not guarantee approval by LAFCo of annexations or extra-territorial service agreements. Upon request for an annexation or extraterritorial services request, staff will evaluate whether the applicant's property is within the City's Urban Development Boundary or Urban Area Boundary and explain the process.

ANNEXATION APPLICATION PROCEDURE

1. A complete annexation application packet includes: fees, an Irrevocable Agreement to Annex, information as needed to define a deed restriction specific to land use and zoning, Application for Annexation, and other materials as required with those applications respectively.
2. On receipt of an application as outlined above, all materials will be considered by the Project Review Committee, who will coordinate in a pre-consultation process with LAFCO staff and the County Public Works Department for review and recommendation.
3. During review by the Project Review Committee of the necessary application and data, staff will prepare a report and findings on all aspects of the proposed action(s).
4. An environmental document will be prepared pursuant to the California Environmental Quality Act (CEQA), reviewing the potential environmental effect of the proposed activities. The Zoning Administrator will make an initial determination of the level of environmental review required.
5. After proper noticing, a public hearing will be held for the City Council to hear comments related to the project at a regularly scheduled meeting. The Council will authorize staff to initiate the application with LAFCo. Documents will be filed in accordance with the Cortese-Knox-Hertzberg Act of 2000, as amended, and submitted to the Local Agency Formation Commission for its review, recommendation and action.
6. On consummation by the City Council, the City Clerk shall submit the necessary materials to the State Board of Equalization with the appropriate acreage fees, which are paid by the Applicant.
7. In the event the annexation fails, either by dissenting votes of the City Council or at hearing at LAFCo, the City Council may approve an extraterritorial service agreement within the Urban Development Boundary, subject to conditions identified in the deed restriction.

ANNEXATION EXEMPTION PROCEDURE

Where a certain property meets all of the following criteria, they may proceed with an Extraterritorial Service Agreement for water or storm-water drainage without first attempting annexation, subject to the conditions of Extraterritorial Service Agreements as defined below.

1. Previously developed single family residences on parcels 24,999 square feet or smaller, OR a school developed by a State funded school district.
2. The parcel requesting services must be immediately adjacent to a municipal main providing the requested service, or the property owner shall provide for the extension of the main line to City standards at their expense.

EXTRATERRITORIAL SERVICES APPLICATION PROCEDURE

Extraterritorial Service connections may be made subject to the following conditions. Note specific parameters and the required findings for connections in the Urban Development Boundary and the Urban Area Boundary.

1. Application: A complete extraterritorial services application packet includes: fees, an Irrevocable Agreement to Annex, information as needed to define a deed restriction specific to land use and zoning, and other materials as required with those applications respectively.
2. General Plan Consistency:
 - a. Proposed Uses and Improvements: Service connections are to be withheld from proposed uses and improvements that would not be consistent with the adopted Land Use Element of the Porterville Area General Plan and the City of Porterville General Plan.
 - b. Existing Uses and Improvements: Service connections to existing uses and improvements which are not consistent with the adopted Land Use Element of the Porterville Area General Plan and the City of Porterville General Plan shall be considered at the discretion of the City Council, and may be subject to other restrictions.
3. Agreements and covenants:
 - a. A deed restriction specific to land use and zoning must be approved by the property owner and the City Council, and recorded with the County of Tulare upon the property, at the applicant's cost.
 - b. An irrevocable agreement to annex must be signed by the property owner and recorded with the County of Tulare upon the property, at the applicant's cost.
4. Time limitations: The City Manager or his designee, or the City Council may condition the approval of applications for service connections by establishing a time frame within which connections must be made to avoid re-application.
5. Improvement Plans: Applications for service connections, which necessitate the extension of one or more municipal facilities to property in order to make such connections, shall be conditioned by the City Manager or his designee, or the City Council to require that Construction Drawings of the intended public improvements be submitted to the City Engineer for plan check and approval. Costs incurred for the preparation of improvement plans, and certain off-site construction and/or installation costs related to extending facilities, shall be the responsibility of the applicant.
6. Fees: Prior to the issuance of a Connection Permit, payment must be made to the City of Porterville of all fees pertinent to the respective service connection, or connections, approved by the City Manager or his designee, or the City Council.

Within the Urban Development Boundary:

For connection of water or storm-water facilities, the requesting party must fully fund the extension of infrastructure if it does not already exist in order to connect. The City of Porterville Wastewater Facility is a regional facility and as such, an extraterritorial service request cannot be denied; however, the requesting party must fund a fair share of the extension of infrastructure if it does not already exist in order to connect. Contract services for police, fire, or building inspection services shall be approved by resolution of the City Council.

For connection of water or storm-water facilities, the following findings must be made in order for the Council approve an extraterritorial service connection:

- That the subject property is a previously developed single family residence on a parcel 24,999 square feet or smaller, OR a school developed by a State funded school district.
- That failure to connect to municipal services would result in a threat to public health or safety of affected residents.
- That connection of the subject property would not result in a negative impact to the City of Porterville water and/or storm-water system.
- That the subject property is not within an island as defined by Tulare LAFCo.
- That an attempt to annex the subject site is not realistic given current city limit boundaries. Specifically, the parcel is too far removed from the city limit, and/or the number and valuation of adjacent parcels would result in a failed annexation effort.

Within the Urban Area Boundary:

For connection of water or storm-water facilities, the requesting party must fully fund the extension of infrastructure if it does not already exist in order to connect. The City of Porterville Wastewater Facility is a regional facility and as such, an extraterritorial service request cannot be denied; however, the requesting party must fund a fair share of the extension of infrastructure if it does not already exist in order to connect. Contract services for police, fire, or building inspection services shall be approved by resolution of the City Council.

For connection of water or storm-water facilities, the following findings must be made in order for the Council approve an extraterritorial service connection:

- That the subject property is a previously developed single family residence on a parcel 24,999 square feet or smaller, OR a school developed by a State funded school district.
- That failure to connect to municipal services would result in a threat to public health or safety of affected residents.
- That connection of the subject property would not result in a negative impact to the City of Porterville water and/or storm-water system.

EXEMPTIONS AND EXCEPTIONS

1. PVPUD: Connections to Porterville Regional Sewage Treatment Facilities serving uses and improvements to property within the boundaries and jurisdiction of the Porter Vista Public Utility District (PVPUD) are exempted from application to the City of Porterville. Interested parties should contact the PVPUD for information on connection requirements and fees pertaining

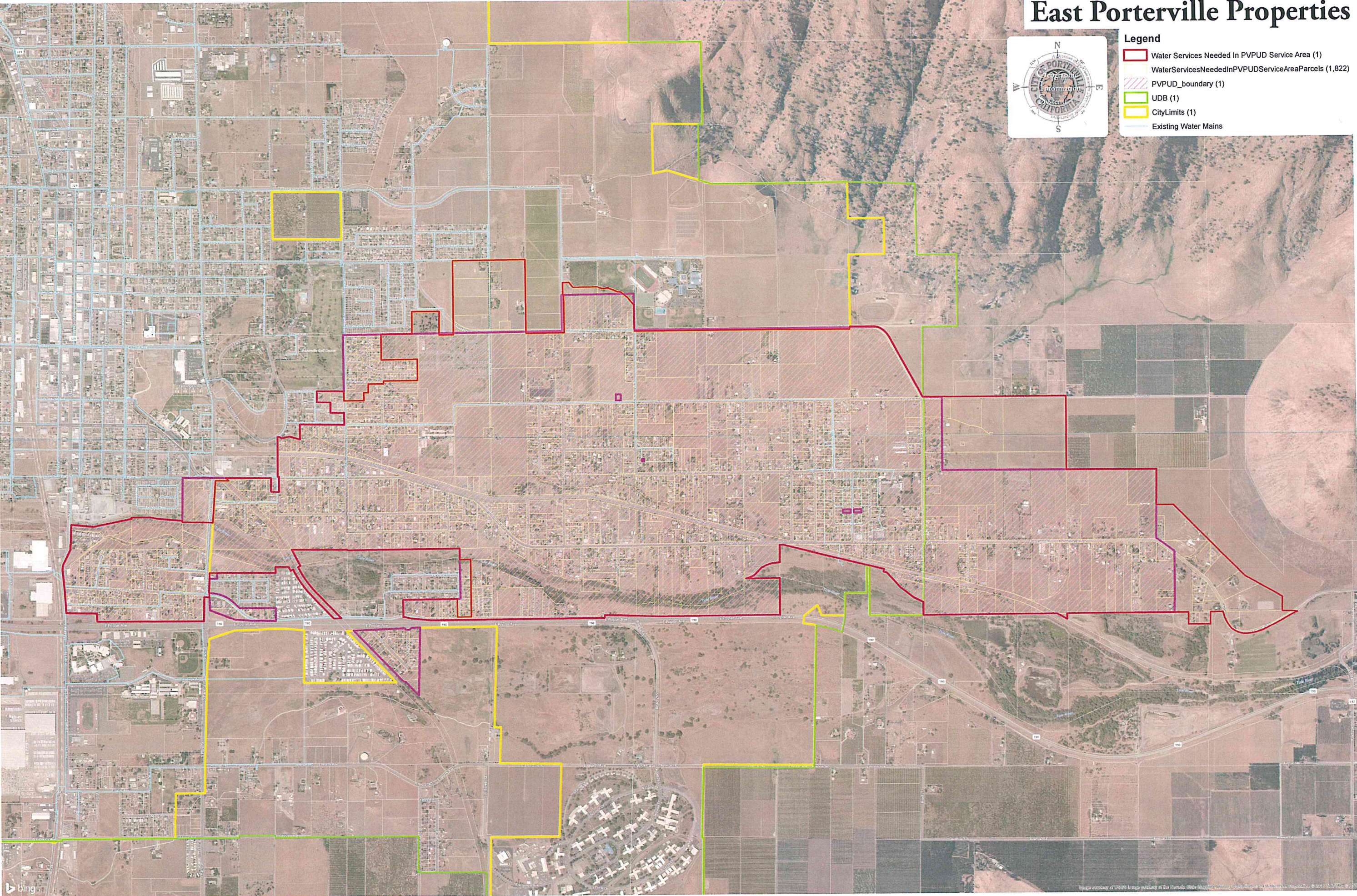
to sewer services. This exemption does not apply to requests for connection to Municipal Water and/or Master Storm Drain Facilities.

2. PRIOR APPROVALS: Porterville City Council approval of requests for connection to Regional Sewage Treatment, Municipal Water and/or Master Storm Drain Facilities as authorized prior to the adoption and effective date of the respective policies set forth herein shall remain valid and in force according to the terms and conditions initially specified at the time of approval, and re-application will not be required.

3. PROPERTIES WITHIN THE EAST PORTERVILLE FEASIBILITY STUDY PROJECT AREA: The California State Water Resources Control Board, in coordination with the Department of Water Resources Drought Task Force, is charged with preparing a feasibility study to define a long-term solution to the water related issues in East Porterville. Properties within that boundary would be permitted to apply for connection, whether in association with DWR, SWRCB, or at a later date, on their own. Such connections would be subject to the mandatory findings as outlined in this procedure, with the following exceptions:

- Rather than require that the subject property be a developed single-family residence on a parcel 24,999 square feet or smaller, neither the land use nor the parcel size would be restricted neither the land use nor the parcel size would be restricted for legal and legal non-conforming structures and land uses existing as of April 29, 2016.
- Further, properties within certain islands in the EPFS Project Area would not be required to annex prior to connection. This exception does not limit the City of Porterville's authority to pursue annexation in the future, but rather waives the requirement that annexation must be approved prior to connection.

East Porterville Properties



STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at regular meeting of the Porterville City Council duly called and held on the 19th day of April, 2016.

THAT said resolution was duly passed, approved, and adopted by the following vote:

Council:	REYES	WARD	STOWE	HAMILTON	GURROLA
AYES:	X	X	X	X	
NOES:					
ABSTAIN:					
ABSENT:					X

JOHN D. LOLLIS, City Clerk

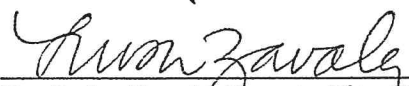

By: Luisa Zavala, Deputy City Clerk

EXHIBIT 'C'



EXHIBIT 'D'

Scope of Work

Task	Description	Cost
1.2	Prepare Well Drilling Plans, Specifications, and Estimates	\$468.00
3.2	Prepare Well Equipping Plans, Specifications, and Estimates	\$1,526.00
5	Ph. 1 Preconstruction Meeting	\$1,357.43
Total:		\$3,351.43

Consulting Engineering work will be reimbursed directly to Dee Jaspar & Associates under Tulare County Agreement No. 1276, including the following Tasks:

Task 4.1	Project Evaluations and Field Surveying	\$58,326.00
Task 4.2	Prepare Well Equipping Plans, Specifications, and Estimates	\$30,000.00
Task 4.3	Prepare and Assist with SCE Application & Telephone Service	\$5,000.00
Task 4.4	SCE Costs	\$15,000.00
Total:		\$108,326.00

Discussion Draft

Subject to Additional Review and Modification by the Parties

Porterville MOU
Draft 2
June 15, 2016
PortervilleEmergencyMOU061516



Memorandum of Understanding (MOU)

Regarding the Provisions of Emergency Water Supplies to East Porterville

by the California Department of Water Resources (DWR), California Office of Emergency

Service (OES), the State Water Resources Control Board (SWRCB),

the County of Tulare (County), and City of Porterville (Porterville),

which are collectively known as the “Parties”

Recitals

Whereas, some residents living in an unincorporated area of Tulare County, commonly known as “East Porterville,” have experienced loss of adequate water supply to their homes and properties as a result of severe drought conditions, which has caused significant hardship for the residents;

Whereas, Governor Edmund G. Brown Junior has directed all State agencies to assist these residents who are in need of water supplies with emergency and long-term assistance;

Whereas, Governor Edmund G. Brown Junior signed Assembly Bill 685 in 2012, adding Water Code section 106.3, which recognizes that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes, and which requires all relevant state agencies to consider this right when revising, adopting, or establishing pertinent policies, regulations, and grant criteria;

Whereas, the Parties have provided emergency water supplies to some residents of East Porterville that are without an adequate household water supply;

Whereas, the Parties to this MOU seek an emergency and long-term solution to the lack of adequate household water supply by developing and providing continuous water supplies to these residents;

Whereas, East Porterville is located east and adjacent to Porterville, which has an existing municipal water system that serves residents within the incorporated area of Porterville;

Whereas, some of the residents of East Porterville without an adequate household water supply could be connected to Porterville's municipal water system provided certain arrangements and projects are carried out by the Parties;

Whereas, Vandalia is a neighborhood located within Porterville, and some Vandalia residents lack adequate household water supply and these households could be connected to Porterville's municipal water system;

Whereas, the Parties have met and have discussed alternative plans and projects that would provide an emergency water supply from Porterville to some residents of East Porterville and Vandalia in an expeditious manner;

Whereas, to advance these projects, DWR has provided funding, as reflected in the agreement between DWR and Tulare attached as Exhibit 1, for a municipal well designated as "Well C1" located in Tulare County that ultimately could be used to supply water to these residents of East Porterville;

Whereas, the SWRCB has also provided funding for Well C1, as reflected in the agreement between the SWRCB and the County attached as Exhibit 2;

Whereas, the County and Porterville intend to execute an agreement, a draft of which is attached as Exhibit 3, that will connect Well C1 to Porterville's municipal water system and that will provide for an adequate household water supply for some residents of East Porterville; and

Whereas, the Parties have reached an understanding on how best to implement the project alternative that will provide an adequate household water supply to some residents of East Porterville and Vandalia, and alleviate the hardships in an expeditious, cost-effective manner.

Understanding

A. Description of Emergency Project and Long-Term Plan

1. The purpose of this MOU is to set forth in writing the intentions of the Parties of how best to move forward with plans to complete an emergency water supply project (Project) to some residents in the East Porterville and Vandalia areas, which are represented in Exhibit 4. (Map showing East Porterville and Porterville). The goal of the Project is to provide an adequate household water supply to some of the residents and properties in these areas that do not have one presently, and to end the need of the Parties to provide temporary water supplies to those residents through tanks and bottles.

2. The Parties intend to develop the Project in two phases. Phase 1 will make municipal water connections to the properties in East Porterville that have dry wells and are adjacent to Porterville's existing municipal water distribution system. It is estimated that this phase will serve 40 properties with dry wells that are currently receiving temporary household water supplies.

3. The Parties intend that Phase 2 of the Project will provide municipal water supply to approximately 500 properties in East Porterville and in Vandalia that have dry wells or otherwise lack an adequate source of water and have not been connected by Phase 1. In order to complete Phase 2, the residents of these properties will likewise need to connect to Porterville's municipal water system.

4. As soon as possible, Porterville and DWR will undertake Phase 1 of the Project and connect the properties in East Porterville that are adjacent to Porterville's existing municipal water distribution system. These connections will be accomplished as described in Water Installation Diagram attached as Exhibit 5 and based on the cost estimate, which is attached as Exhibit 6. In order to make these connections, a property owner desiring to receive public water supply will need to execute the Extraterritorial Service Agreement, a sample of which is attached as Exhibit 7, and the SWRCB's Water Connection Agreement, a sample of which is attached as Exhibit 8. Necessary signatures and agreements with property owners will be sought through SWRCB's outreach carried out with the assistance of all Parties to this MOU.

5. The Parties intend that Well C1 will be used to provide the emergency water supply in Phase 2 to about 500 properties without adequate household water supplies. The Parties presently understand that there are about 423 properties in East Porterville and approximately 80 properties in Vandalia where connections may be needed to provide emergency water supplies.

6. The Parties have created a Technical Workgroup consisting of engineers and planners, which work cooperatively on the technical issues described in this MOU. Based on recommendations of the Technical Workgroup, the Parties intend to provide the emergency water supply contemplated by this MOU.

7. The Parties intend to develop a Long-Term Water System Plan (Long-Term Plan) for the East Porterville area, which will serve other residents in the area besides those served by the Project. The Parties intend that the Project will be designed consistent with the Long-Term Plan to ensure that all water facilities constructed as part of the Project will be incorporated into the facilities ultimately developed through the Long-Term Plan. The first work product produced by the Technical Workgroup will be a Feasibility Study for the Long-Term Plan. The outline of the Feasibility Study is attached as Exhibit 9.

8. The Parties intend to use best efforts to complete both phases of the Project by December 31, 2016. The completion date of the Long-Term Plan is dependent on the completion of the Feasibility Study carried out by Technical Workgroup and on Porterville and/or the County applying for and securing sufficient funding from the SWRCB or from other sources. The Parties desire to complete the Long-Term Plan as expeditiously as possible.

B. Project Contributions of the Parties

9. Working in cooperation with the other Parties and the Technical Workgroup, DWR will prepare all environmental compliance for the Project, and design and construct the Project, both Phases 1 and 2. DWR will provide funding for Phases 1 and 2 of the Project through Emergency Drought Funding. DWR intends to serve as California Environmental Quality Act (CEQA) lead agency for the Long-Term Plan and will prepare any necessary CEQA documentation and any other necessary environmental review documents, unless the Feasibility Study recommends another lead agency.

10. SWRCB will provide the community outreach to assist in obtaining necessary property owner acceptance before proceeding with Project. SWRCB will also work with Porterville and/or County to secure funding of the Long-Term Plan. SWRCB will provide certain reviews and approvals for the permitting of the Project and the Long-Term Plan.

11. OES will coordinate all of the State's efforts under the Governor's Drought Task Force in the Project area and will be provided at no cost by Porterville up to 3,000,000 gallons of emergency water per month as needed as a result of this MOU and the agreement that Porterville and the County are in the process of considering for execution, a draft of which is attached as Exhibit 3, with regard to the Well C1.

12. Porterville will provide the needed water service to the residents of East Porterville without an adequate household water supply after they are connected to Porterville's municipal water system as described in the Project. The water service will be accomplished per the Extraterritorial Service Agreement, which requires that property owners served pay the monthly water bill. DWR is funding the residents' connection to the Project, and as a result, some of the normal connection fees will be waived provided that connection is made during Phase 1 or Phase 2. Porterville will install the water meters for each connection, which will be paid for by DWR.

13. The County intends to execute an agreement with Porterville that is consistent with this MOU and Exhibit 3, which will allow Well C1 to serve as a water supply for the Project. The County will inspect the work of the Project and the property connections at no cost to the residents.

14. The Parties to the MOU will cause the removal of all temporary water tanks from the properties upon completion of the Project and the appurtenances necessary for the receipt of municipal water service. The work for removing the water tanks will be carried out by the County under an agreement between the County and OES.

C. General Provisions

15. The Parties intend to use their best efforts to carry out this MOU. This MOU is not a binding agreement, and is not intended to create contractual rights and remedies among the Parties. However, the Parties have entered into and intend to enter into certain binding agreements in the future necessary to develop and complete the Project and the Long-Term Plan.

16. This MOU will become effective upon the signature of the all Parties. The MOU will terminate on December 31, 2016, unless extended by all of the Parties in writing.

[Signatures on following page]

This MOU has been executed by:

California Department of Water Resources

State Water Resources Control Board

California Office of Emergency Services

County of Tulare

City of Porterville

List of Exhibits

1. DWR and Tulare County Executed Well C1 Agreement
2. SWRCB and County Executed Well C1 Agreement (Water Board Grant #D-15-11-902)
3. County and Porterville Draft Well Agreement
4. Map of East Porterville
5. Household Water Service Installation Diagram
6. Household Water Service Cost Estimate
7. Sample Extraterritorial Service Agreement
8. Sample SWRCB Water Connection Agreement
9. Draft Emergency Project Feasibility Study



Amendment No. 1

To the East Porterville Water Supply Project

Memorandum of Understanding (MOU)

Regarding the Provisions of Emergency Water Supplies to East Porterville
by the California Department of Water Resources (DWR), California Office of
Emergency Service (OES), the State Water Resources Control Board (SWRCB),
the County of Tulare (County), and City of Porterville (Porterville),
which are collectively known as the "Parties"

This Amendment No.1 to the MOU is made this 7th day of November, 2016. As described below, this Amendment No.1 recognizes the MOU is still in effect, modifies certain sections of this MOU, and adds new sections to the MOU.

Recitals

Whereas, some residents living in an unincorporated area of Tulare County, commonly known as "East Porterville," have experienced loss of adequate water supply to their homes and properties as a result of severe drought conditions, which has caused significant hardship for the residents;

Whereas, Governor Edmund G. Brown Junior has directed all State agencies to assist these residents who are in need of water supplies with emergency and long-term assistance;

Whereas, the Parties to this MOU seek an emergency and long-term solution to the lack of adequate household water supply by developing and providing continuous water supplies to these residents;

Whereas, to advance these projects, DWR and the SWRCB have provided funding, as reflected in Exhibits 1 and 2, for a municipal well designated as "Well C1" located in Tulare County that ultimately could be used to supply water to these residents of East Porterville;

Whereas, the Parties have reached an understanding on how best to implement the project alternative that will provide an adequate household water supply to some residents of East Porterville and Vandalia, and alleviate the hardships in an expeditious, cost-effective manner:

Whereas, the purpose of this amendment is to clarify some sections of the MOU and to add several new sections.

NOW THEREFORE, IT IS MUTUALLY AGREED that the following changes are hereby made to the MOU:

1. Section A (2) is amended to read as follows:

The Parties intend to develop the Project in two phases. Phase 1 will make municipal water connections to the properties in East Porterville and Vandalia that have dry wells and/or water tanks. It is estimated that this phase will serve approximately 300 properties.

2. Section A (3) is amended to read as follows:

The Parties intend that Phase 2 of the Project will provide municipal water supply to approximately 800 properties in East Porterville by connecting them to the City of Porterville's water system. The total number of homes eligible for this Project is approximately 1,100.

3. Section A (5) is amended to read as follows:

The Parties intend that Well C1 will be used to provide the initial water supply. The Parties acknowledge the delay in Well C1 completion. To mitigate the effects of this on the residents of East Porterville, the City of Porterville will allow connections of homes as they become prepared for connection. These early connections will be beyond the initial 70 connections (previously 40 connections) agreed to, given the availability of capacity during the winter months. However, these additional connections to the City's water system will cease on March 1, 2017, if Well C1's connection to the City's water system is not completed by then.

4. Sections A (7) b-f shall be added and made part of this MOU:

7 (a). The Parties intend to develop a Long-Term Water System Plan (Long-Term Plan) for the East Porterville area, which will serve other residents in the area besides those served by the Project. The Parties intend that the Project will be designed consistent with the Long-Term Plan to ensure that all water facilities constructed as part of the Project will be incorporated into the facilities ultimately developed through the Long-Term Plan. The first work product produced by the Technical Workgroup will be a Feasibility Study for the Long-Term Plan. The outline of the Feasibility Study is attached as Exhibit 9.

(b). The East Porterville Water Supply Project Hydraulic Analysis Report ("Hydraulic Analysis Report," which is attached as Exhibit 10) determined that the water supply capacity required to serve all eligible residents of East Porterville is 1,435 gallons per minute (gpm). This capacity shall be based on the sustainable yield of the wells which is defined as 75 percent of the initial design capacity. Since Well C1 has a sustainable yield of 600 gpm, the Parties agree that the State will fund the construction and equipping of additional wells to provide the 835 gpm shortfall.

(c). Based on the Hydraulic Analysis, a 700,000 gallon water storage tank is required to serve the residents of East Porterville. However, based on Porterville's master plan recommendations, a 1.2 million-gallon storage tank is required for the City's buildout. The Parties therefore intend to construct a 1.2 million-gallon storage tank with cost sharing between the State and the City. The State will fund the cost of a 700,000 gallon tank required for the Project and the City of Porterville will fund the cost of the additional 500,000 gallons of storage required for the City's future use as contained in its master plan. The cost-sharing shall be proportional to the tank capacity being funded.

(d). The Parties intend to upgrade the existing Henderson-Plano Booster Pump Station and the Granite Hills Intertie which would facilitate water supply to the East Pressure Zone which serves East Porterville. The State will fund the construction of one booster pump rated at 2,100

gpm along with a variable frequency drive and the Granite Hills Intertie. The City will fund the replacement of its two existing pumps along with associated variable frequency drives as part of Phase 2 of the Project. These two pumps are more than 30-years old and their replacement will enable the City's water system to operate more efficiently and in a cost-saving manner.

(e). The Parties further agree that a booster pump station of capacity 1,670 gpm is required to convey water from the West Pressure Zone, where the new wells will be located, to the Central Pressure Zone for onward conveyance to East Porterville. The State will fund the construction of this booster pump station.

(f). Given that Well C1 has an estimated sustainable yield of 600 gpm, as well as a unit demand of 0.833 gpm per home connection based on the Hydraulic Analysis , Well C1 could effectively serve up to 720 households . The Parties agree that home connections for Phase 2 of the Project can begin as soon as Well C1 is connected to the City's water system, and the Henderson-Plano Booster Pump Station upgrade and the Granite Hills Intertie are completed. These home connections shall cease when the capacity of Well C1 is exceeded. Thereafter, additional home connections will be made after the construction of additional wells or if City staff determines that the water system can support additional home connections.

5. Section (C) 16 is amended to read as follows:

16. This MOU will become effective upon the signature of the all Parties. The MOU will terminate on June 30, 2018, unless extended by all Parties in writing.

6. The list of the Exhibits at the end of MOU is amended to read as follows:

1. DWR and Tulare County Executed Well C1 Agreement
2. SWRCB and County Executed Well C1 Agreement (Water Board Grant #D-15-11-902)
3. County and Porterville Draft Well Agreement
4. Map of East Porterville
5. Household Water Service Installation Diagram
6. Household Water Service Cost Estimate
7. Sample Extraterritorial Service Agreement
8. Sample SWRCB Water Connection Agreement
9. Draft Feasibility Study for the Long-Term Plan
10. East Porterville Water Supply Project Hydraulic Analysis Report

This MOU has been executed by:

California Department of Water Resources

State Water Resources Control Board

California Office of Emergency Services

City of Porterville

County of Tulare



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

NOV 29 2017

The Honorable Milt Stowe
Mayor of City of Porterville
291 North Main Street
Porterville, CA 93257

RECEIVED

DEC 04

CITY OF PORTERVILLE
CITY MANAGER

Dear Mayor Stowe:

The Department of Water Resources and the State Water Resources Control Board are requesting an increase to the number of household connections from 720 to 800 to the City of Porterville (City) water system, prior to the completion of the East Porterville Emergency Water Supply Project – Phase 2 (Project). The construction of all facilities is estimated to be completed by June 2019.

According to Section A(7)(f) of Amendment No. 1 to the Project's Memorandum of Understanding (MOU), the estimated sustainable yield of Well C1 is 600 gallons per minute (gpm) and therefore will serve up to 720 households. Our current projections show that approximately 800 households will need to be connected by the end of 2017.

Our current plans are to drill two additional wells which would add more than 835 gpm of sustainable yield to the City's water supply, pending land acquisition by the City. Further, our calculations indicate that Well C1 is currently capable of producing 800 gpm in the interim, which can support a total of 960 households in the short term. It is our hope that the City will complete acquisition of the properties needed to drill the two additional wells in a timely manner to ensure that the City's water supply does not become stressed.

We look forward to hearing favorably from you and thank you for your continued support in providing safe drinking water to the residents of East Porterville.

Sincerely,


James Maughan, Assistant Deputy Director
Division of Financial Assistance

cc: See next page

DEPARTMENT OF WATER RESOURCES

SOUTH CENTRAL REGION OFFICE
3374 EAST SHIELDS AVENUE, ROOM 3
FRESNO, CA 93726-6913



January 18, 2018

Mr. Michael K. Reed
Public Works Director
City of Porterville
291 North Main Street
Porterville, California 93257

RECEIVED

JAN 22 2018

City of Porterville
Public Works Dept

Approval of Funding from Local Assistance Funds to the City of Porterville for the
County Areas Water Supply Project

Dear Mr. Reed:

Your request for funds to accomplish the city of Porterville's scope of work to connect drought-impacted households in seven Tulare County areas bounded by the city has been approved. The approved funding is not to exceed the amount of \$2,812,946.00. The term of the funding is from January 18, 2018, to December 31, 2019.

The purpose of this funding is for the city of Porterville to effectuate the connection of the drought-impacted homes in seven county areas to the city's water distribution system. The project comprises water main extensions, home connections, and well destructions. These homes have been identified as having private residential wells, and the homeowners have voluntarily elected to join the project. As part of their election to participate in the project, the homeowners have consented to having their groundwater wells destroyed.

A grant agreement is being developed and will be sent to you for approval. You are allowed to start incurring costs from January 18, 2018. No reimbursement will be issued until the contract agreement is executed.

If you have any questions or need additional information regarding the agreement, please contact Steve Doe by email at Steve.Doe@water.ca.gov or by phone at (559) 230-3348.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Faulkenberry'.

Kevin Faulkenberry, Chief
South Central Region Office

Executive Department

State of California

EXECUTIVE ORDER B-40-17

WHEREAS California has endured a severe multi-year drought that has threatened the water supplies of communities and residents, devastated agricultural production in many areas, and harmed fish, animals and their environmental habitats; and

WHEREAS Californians responded to the drought by conserving water at unprecedented levels, reducing water use in communities by more than 22% between June 2015 and January 2017; and

WHEREAS the State Water Resources Control Board, the Department of Water Resources, the Department of Fish and Wildlife, the Office of Emergency Services, and many other state agencies worked cooperatively to manage and mitigate the effects of the drought on our communities, businesses, and the environment; and

WHEREAS the State provided 66,344,584 gallons of water to fill water tanks for communities suffering through drought-related water shortages, outages, or contamination, and provided emergency assistance to drill wells and connect communities to more robust water systems; and

WHEREAS the State took a number of important actions to preserve and protect fish and wildlife resources, including stream and species population monitoring, fish rescues and relocations, infrastructure improvements at trout and salmon hatcheries, and infrastructure to provide critical habitat for waterfowl and terrestrial animals; and

WHEREAS the State established a Statewide Water Efficiency and Enhancement Program for agricultural operations that provides financial assistance for the implementation of irrigation systems that save water; and

WHEREAS water content in California's mountain snowpack is 164 percent of the season average; and

WHEREAS Lake Oroville, the State Water Project's principal reservoir, is 101 percent of average, Lake Shasta, the federal Central Valley Project's largest reservoir, is at 110 percent of average, and the great majority of California's other major reservoirs are above normal storage levels; and

WHEREAS despite winter precipitation, the effects of the drought persist in areas of the Central Valley, including groundwater depletion and subsidence; and

WHEREAS our changing climate requires California to continue to adopt and adhere to permanent changes to use water more wisely and to prepare for more frequent and persistent periods of limited water supply; and

WHEREAS increasing long-term water conservation among Californians, improving water use efficiency within the State's communities and agricultural production, and strengthening local and regional drought planning are critical to California's resilience to drought and climate change.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, do hereby **TERMINATE THE JANUARY 17, 2014 DROUGHT STATE OF EMERGENCY** for all counties in California except the Counties of Fresno, Kings, Tulare, and Tuolumne.

I FURTHER ORDER THAT:

1. The orders and provisions contained in my April 25, 2014 Emergency Proclamation, as well as Executive Orders B-26-14, B-28-14, B-29-15, and B-36-15 are rescinded.
2. The orders and provisions contained in Executive Order B-37-16, **Making Water Conservation a California Way of Life**, remain in full force and effect except as modified by this Executive Order.
3. As required by the State Emergency Plan and Government Code section 8607(f), the Office of Emergency Services, in coordination with other state agencies, shall produce an after-action report detailing the State's response to the drought and any lessons learned in carrying out that response.

MAINTAINING CONSERVATION AS A WAY OF LIFE

4. The State Water Resources Control Board (Water Board) shall continue development of permanent prohibitions on wasteful water use and requirements for reporting water use by urban water agencies, and to provide a bridge to those permanent requirements, shall maintain the existing emergency regulations until they expire as provided by the Water Code. Permanent restrictions shall prohibit wasteful practices such as:
 - Hosing off sidewalks, driveways and other hardscapes;
 - Washing automobiles with hoses not equipped with a shut-off nozzle;
 - Using non-recirculated water in a fountain or other decorative water feature;
 - Watering lawns in a manner that causes runoff, or within 48 hours after measurable precipitation; and
 - Irrigating ornamental turf on public street medians.
5. The Water Board shall rescind those portions of its existing emergency regulations that require a water supply stress test or mandatory conservation standard for urban water agencies.

6. The Department of Water Resources (Department) shall continue work with the Water Board to develop standards that urban water suppliers will use to set new urban water use efficiency targets as directed by Executive Order B-37-16. Upon enactment of legislation, the Water Board shall adopt urban water use efficiency standards that include indoor use, outdoor use, and leaks as well as performance measures for commercial, industrial, and institutional water use. The Department shall provide technical assistance and urban landscape area data to urban water suppliers for determining efficient outdoor use.
7. The Water Board and the Department shall continue to direct actions to minimize water system leaks that waste large amounts of water. The Water Board, after funding projects to address health and safety, shall use loans from the Drinking Water State Revolving Fund to prioritize local projects that reduce leaks and other water system losses.
8. The Water Board and the Department shall continue to take actions to direct urban and agricultural water suppliers to accelerate their data collection, improve water system management, and prioritize capital projects to reduce water waste. The California Public Utilities Commission is requested to work with investor-owned water utilities to accelerate work to minimize leaks.
9. The Water Board is further directed to work with state agencies and water suppliers to identify mechanisms that would encourage and facilitate the adoption of rate structures and other pricing mechanisms that promote water conservation.
10. All state agencies shall continue response activities that may be needed to manage the lingering drought impacts to people and wildlife. State agencies shall increase efforts at building drought resiliency for the future, including evaluating lessons learned from this current drought, completing efforts to modernize our infrastructure for drought and water supply reliability, and shall take actions to improve monitoring of native fish and wildlife populations using innovative science and technology.

CONTINUED DROUGHT RESPONSE IN FRESNO, KINGS, TULARE, AND TUOLUMNE COUNTIES

11. The Water Board will continue to prioritize new and amended safe drinking water permits that enhance water supply and reliability for community water systems facing water shortages or that expand service connections to include existing residences facing water shortages.
12. The Department and the Water Board will accelerate funding for local water supply enhancement projects and will continue to explore if any existing unspent funds can be repurposed to enable near-term water conservation projects.
13. The Water Board will continue to work with local agencies to identify communities that may run out of drinking water, and will provide technical and financial assistance to help these communities address drinking water

shortages. It will also identify emergency interconnections that exist among the State's public water systems that can help these threatened communities. The Department, the Water Board, the Office of Emergency Services, and the Office of Planning and Research will work with local agencies in implementing solutions to those water shortages.

14. For actions taken in the Counties of Fresno, Kings, Tulare, and Tuolumne pursuant to directives 11–13, the provisions of the Government Code and the Public Contract Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements, as well as Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division, are hereby suspended. These suspensions apply to any actions taken by state agencies, and for actions taken by local agencies where the state agency with primary responsibility for implementing the directive concurs that local action is required, as well as for any necessary permits or approvals required to complete these actions.
15. California Disaster Assistance Act Funding is authorized until June 30, 2017 to provide emergency water to individuals and households who are currently enrolled in the emergency water tank program.
16. State departments shall commence all drought remediation projects in Fresno, Kings, Tulare, and Tuolumne Counties within one year of the date of this Executive Order.

This Executive Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 7th day of April 2017.


EDMUND G. BROWN JR.
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State





CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Proposed Sidewalk Vending Ordinance

SOURCE: Community Development

COMMENT: On September 17, 2018, Governor Brown signed Senate Bill 946 to decriminalize sidewalk vending, prohibit local bans, and provide a guideline regarding permissible regulations. SB 946 allows cities to adopt reasonable regulations, within defined limits, on sidewalk vending. Staff prepared the attached Ordinance to enact a permitting system for the City to regulate sidewalk vending.

A “sidewalk vendor” is someone who sells food, beverages, or merchandise from non-motorized conveyances or from his or her person in the public right-of-way or other pedestrian path. A non-motorized conveyance includes a pushcart, stand, display, pedal-driven cart, wagon, showcase, and rack. A sidewalk vendor may be stationary, operating from a fixed location, or roaming.

SB 946 lists a number of impermissible regulations. First, the City is prevented from requiring a sidewalk vendor to operate within specific parts of the public right-of-way. However, the City may prohibit sidewalk vendors near certified farmers’ markets, swap meets, or areas subject to a temporary special permit. Second, the City may not prohibit a sidewalk vendor from selling food or merchandise in a City park, except where the City has contracted with a concessionaire for the exclusive sale of food or merchandise. Third, the City may not require a sidewalk vendor to obtain the consent or approval of any non-governmental entity or person before selling food or merchandise. Fourth, the City may not restrict sidewalk vending to a designated neighborhood or other area, although the City may prohibit a stationary sidewalk vendor from operating in an exclusively residential zone. Lastly, the City may not restrict the number of sidewalk vendors permitted in the City.

Notwithstanding these five (5) prohibitions, the City may impose additional regulations if they directly relate to objective health, safety or welfare concerns. The City may also regulate the time, place, and manner of sidewalk vending, including, but not limited to, any of the following:

- Restricting the hours of operation;
- Requiring maintenance of sanitary conditions;
- Complying with disability access standards;
- Obtaining a use permit and/or business license;
- Possessing a valid California seller’s permit for sales tax compliance;
- Requiring additional licenses from other state or local agencies as required by

law;

- Requiring compliance with other generally applicable laws; and
- Providing information on vendor operations.

Sidewalk Vending Ordinance Amendment:

The draft ordinance, attached as Exhibit A, incorporates the permissible regulations listed above, including the following:

- (1) prohibiting stationary sidewalk vending in residential areas;
- (2) limiting roaming sidewalk vendors within residential areas to the hours of 9:00 AM through 5:00 PM; and
- (3) prohibiting sidewalk vending within five hundred (500) feet of a permitted certified farmers' market, permitted swap meet, or any area subject to a temporary use permit or Community Civic Event for the duration of the permit, among others.

The Ordinance also creates a detailed permitting process requiring applicants to:

- (1) provide personal identification;
- (2) list the items they intend to sell;
- (3) undergo criminal background checks; and
- (4) submit evidence of health permits and seller's permits, as required.

In addition, the Ordinance imposes a number of regulations on health, safety, and welfare grounds, including:

- (1) requiring sidewalk vendors of food or beverages to wear a hairnet and food service gloves;
- (2) preventing sidewalk vendors from emitting loud, unnecessary or unusual noises;
- (3) prohibiting sidewalk vendors from leaving their equipment within the public right-of-way from 10:00 PM to 8:00 AM;
- (4) requiring sidewalk vendors to display their vending permits; and
- (5) preventing sidewalk vending on public rights-of-way with a slope greater than five percent (5%).

The Ordinance charges the Finance Department, Business License Division with administering and enforcing the City's sidewalk vending permitting program. Operating without a permit or in violation of a permit is punishable by an administrative fine set by a graduated schedule of fines set at the maximum levels allowed by state law. A sidewalk vendor unable to pay a fine may request an ability-to-pay determination under SB 946, which may result in a reduction of the fine amount to up to 20 percent (20%) of the total.

The Ordinance is proposed to be included in Chapter 8 Peddlers, Solicitors and Canvassers as a separate chapter and identified as "8A Sidewalk Vending."

On February 21, 2019, the Environmental Coordinator made a preliminary determination that the adoption of this sidewalk vending ordinance will not have a significant effect on the environment. Accordingly, under the provisions of §15061(b)(3) and §15378(b)(5) of Division 6 of Title 14 of the California Code of Regulations, the CEQA Guidelines, the adoption of this Ordinance is not

subject to the requirements of the California Environmental Quality Act.

RECOMMENDATION: That the City Council approve the draft Ordinance to enact a permitting system to regulate sidewalk vending, give first reading to the Ordinance, waive further reading, and order the Ordinance to print.

ATTACHMENTS: 1. Draft Ordinance Sidewalk Vending
2. Senate Bill 946 Chaptered

Appropriated/Funded:

Review By:

Department Director:

Jenni Byers, Community Development Director

Final Approver: John Lollis, City Manager

ORDINANCE NO. ____-2019

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ADDING PORTERVILLE MUNICIPAL CODE CHAPTER 8A, SECTIONS 8A-1 THROUGH 8A-6, ENTITLED “SIDEWALK VENDING”

WHEREAS, on September 17, 2018, Governor Brown signed Senate Bill No. 946 (“SB 946”), adding sections 51036–51039 to the Government Code; and

WHEREAS, SB 946 decriminalizes sidewalk vending and limits local regulations to those expressly provided for in the bill or are otherwise “directly related to objective health, safety, or welfare concerns”; and

WHEREAS, SB 946 only applies to sidewalk vending in public rights-of-way, and private rights-of-way are still subject to private and local control; and

WHEREAS, although Porterville’s Municipal Code does not regulate “sidewalk vendors”, as that term is defined in SB 946, it does regulate “peddling” (Porterville Municipal Code, Chapter 8), which may include sidewalk vendors; and

WHEREAS, the City desires to adopt a sidewalk vending ordinance and amend its peddling ordinance to ensure compliance with state law; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PORTERVILLE, AS FOLLOWS, TO WIT:

Section 1. The City Council finds that all the facts, findings, and conclusions set forth above in this Ordinance are true and correct.

Section 2. The City Council hereby finds and determines that there is no possibility the adoption of a sidewalk vending ordinance and the amendment to its peddling ordinance will have a significant effect on the environment. Accordingly, under the provisions of §15061(b)(3) and §15378(b)(5) of Division 6 of Title 14 of the California Code of Regulations, the CEQA Guidelines, the adoption of this ordinance is not subject to the requirements of the California Environmental Quality Act.

Section 3. The City Council hereby adds Chapter 8A, Sections 8A-1 through 8A-6, to the Porterville Municipal Code to read as follows:

Chapter 8A Sidewalk Vending

8A-1 – Definitions

As used in this chapter the following meanings shall apply:

“Sidewalk vendor” means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

“Roaming sidewalk vendor” means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

“Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

8A-2 – Sidewalk Vending Permits

- A. Only sidewalk vendors with valid sidewalk vending permits issued by the Finance Director may vend upon the city’s public right-of-way.
- B. To apply for a sidewalk vending permit, the applicant must provide:
 - 1. A completed application form containing:
 - a. Their name and mailing address;
 - b. Description of the merchandise offered for sale or exchange;
 - c. If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal and any owners of the company, partnership, or corporation; and
 - d. Certification that the information is true to his or her knowledge and belief.
 - 2. A copy of a California’s driver’s license or identification number, an individual taxpayer identification number, or a social security number. Such information is not a public record and will remain confidential as required by Government Code section 51038(c)(4).
 - 3. A copy of a valid California Department of Tax and Fee Administration seller’s permit, as required.
 - 4. A copy of a valid Mobile Food Permit issued by the Tulare County Department of Health and Human Services, as required.
- C. To ensure the safety of residents and the merchantability of products sold by vendors without a fixed place of business, the city requires all sidewalk vending applicants to undergo a fingerprinting background check and to submit the results to the city as an attachment to their application.
- D. The sidewalk vending permit application shall require the applicant to agree, in writing, to comply with all the provisions of this chapter and all applicable provisions of the Porterville Municipal Code.

8A-3 – General Regulations

- A. To maintain accessibility standards for the city’s disabled residents, every sidewalk vendor operating on any sidewalk or public right-of-way must ensure that no obstruction is placed in the sidewalk or public right-of-way that would reduce the width of the sidewalk to less than 48 inches, exclusive of the top of the curb. No

obstruction shall be located in a sidewalk or public right-of-way less than six feet in width when the sidewalk is adjacent to the curb.

- B. To prevent food-borne illness and protect the health and safety of the city's residents, every sidewalk vendor selling any food or beverage is required to wear a hairnet and food service gloves.
- C. To prevent dangerous distractions and promote the general welfare of the city's residents, sidewalk vendors are prohibited from emitting any loud, unnecessary and unusual noises including, but not limited to, using a loudspeaker, blowing any bugle, horn or trumpet, or beating any drum, or ringing any bell, or in any other manner, for the purpose of advertising, announcing or calling attention to any goods, wares, or merchandise.
- D. A sidewalk vending permit does not provide an exclusive right to operate within any specific portion of the public right-of-way.
- E. No equipment or objects used for sidewalk vending purposes may be left or maintained in public spaces or in any portion of the public right-of-way from 10:00 p.m. to 8:00 a.m. Any equipment or objects left overnight in public spaces or in any portion of the public right-of-way will be considered discarded and shall be seized or disposed of by the city.
- F. To facilitate the enforcement of this chapter, every sidewalk vendor must display their city-issued sidewalk vending permit on the street side portion of their pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance when operating in the public right-of-way.
- G. To prevent unintended rolling or slipping, a sidewalk vendor is prohibited from operating a pushcart, pedal-driven cart, wagon, or other non-motorized conveyance on a public-right-of-way with a slope greater than five percent.

8A-4 – Specific Regulations

- A. Sidewalk vending hours' limitations in areas zoned for nonresidential use will be as restrictive as any limitations on hours of operation imposed on other businesses or uses on the same street, excluding those permitted to operate 24 hours.
- B. Sidewalk vending is limited to the hours of 9:00 a.m. through 5:00 p.m. for areas that are exclusively residential.
- C. Stationary sidewalk vendors are prohibited from operating in areas that are exclusively residential.

- D. A stationary sidewalk vendor is prohibited from operating in a city park if the City has entered into exclusive agreements for the sale of food or merchandise by one or more concessionaires for that city park.
- E. A sidewalk vendor is prohibited from operating within 500 feet of a permitted certified farmers' market, a permitted swap meet, or any area subject to a temporary use permit or Community Civic Event for the duration of the permit.

8A-5 – Violation—Penalty

- A. Every person vending without a sidewalk vending permit is guilty of an administrative violation punishable by an administrative fine not to exceed:
 - 1. Two hundred fifty dollars (\$250.00) for a first violation; or
 - 2. Five hundred dollars (\$500.00) for a second violation within one year of the first violation; or
 - 3. One thousand dollars (\$1,000.00) for each additional violation within one year of the first violation.
 - 4. Upon proof of a valid permit issued by the Finance Department, the administrative fine in Section 8A-5(A) will be reduced to the corresponding administrative fine in Section 8A-5(B).
- B. Every person violating any other provision of this chapter is guilty of an administrative violation punishable by an administrative fine not to exceed:
 - 1. One hundred dollars (\$100.00) for a first violation; or
 - 2. Two hundred dollars (\$200.00) for a second violation within one year of the first violation; or
 - 3. Five hundred dollars (\$500.00) for each additional violation within one year of the first violation.
 - 4. The Finance Director may rescind a sidewalk vendor permit for the remaining term of the permit upon a fourth or subsequent violation of this chapter.
- C. Failure to pay an administrative fine is not punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized will not be assessed. However, the City may levy a lien on the violator's real or personal property, including the vehicle used for vending purposes.
- D. An administrative violation constitutes a separate and distinct violation for each day that it exists and each such violation may be subject to the maximum fine permitted under this chapter.

8A-6 – Ability-to-Pay Determination

- A. Any fine issued under Section 8A-5 will be accompanied with a notice of and instruction regarding the right to request an ability-to-pay determination.

- B. If the requestor is receiving public benefits under Government Code section 68632, subdivision (a), or has a monthly income which is 125 percent or less than the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services, the Finance Director will limit the total amount of the requestor's administrative fine to 20 percent of the total and may:
1. Allow the person to complete community service in lieu of paying the total administrative fine; or
 2. Waive the administrative fine; or
 3. Offer an alternative disposition.

Section 4. Severability Clause: Should any section, clause, or provision of this Ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the Ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

Section 5. This Ordinance shall be in full force and effect thirty (30) days after its passage, adoption and approval and shall supersede any conflicting provision of any City of Porterville ordinance.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2019.

Martha A. Flores, Mayor

ATTEST:
John D. Lollis, City Clerk

By _____
Patrice Hildreth, Chief Deputy City Clerk

Senate Bill No. 946

CHAPTER 459

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

[Approved by Governor September 17, 2018. Filed with
Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 946, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending, as specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, as specified. A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk

vending, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.

(2) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.

(3) Sidewalk vending contributes to a safe and dynamic public space.

(4) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.

(5) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.

(6) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk.

(b) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

SEC. 2. Chapter 6.2 (commencing with Section 51036) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.2. SIDEWALK VENDORS

51036. For purposes of this chapter, the following definitions apply:

(a) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

(b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(c) “Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location.

(d) “Local authority” means a chartered or general law city, county, or city and county.

51037. (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

51038. (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

(b) A local authority’s sidewalk vending program shall comply with all of the following standards:

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.

(ii) Necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(3) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.

(4) (A) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.

(B) Notwithstanding subparagraph (A), a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority,

unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:

(1) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.

(2) Requirements to maintain sanitary conditions.

(3) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.

(4) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order.

(5) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.

(6) Requiring additional licenses from other state or local agencies to the extent required by law.

(7) Requiring compliance with other generally applicable laws.

(8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

(A) The name and current mailing address of the sidewalk vendor.

(B) A description of the merchandise offered for sale or exchange.

(C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

(D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.

(E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

(d) Notwithstanding subdivision (b), a local authority may do both of the following:

(1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the

Food and Agricultural Code and any regulations adopted pursuant to that chapter. A “swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(2) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority’s temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. For purposes of this paragraph, a temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

51039. (a) (1) A violation of a local authority’s sidewalk vending program that complies with Section 51038 is punishable only by the following:

(A) An administrative fine not exceeding one hundred dollars (\$100) for a first violation.

(B) An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation.

(C) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3) (A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (1):

(i) An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.

(ii) An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation.

(iii) An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (1), respectively.

(b) The proceeds of an administrative fine assessed pursuant to subdivision (a) shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (a) shall not be assessed.

(d) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

(2) Notwithstanding any other law, paragraph (1) shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(f) (1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to subdivision (a).

(3) The local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(g) (1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under paragraph (1), the court shall presume the petitioner satisfies the criteria in paragraph (1) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in paragraph (1), the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under paragraph (1).

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 51038 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this act.



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Consideration of Rentable Park Area Fees

SOURCE: Parks and Leisure Services

COMMENT: The public has the opportunity to reserve a park table and/or covered pavilion up to one year in advance for a fee. The current reservation fee of \$34 per day is the same without regard to the size of the area, or whether it be for an uncovered table or a covered pavilion. Staff feels that due to the various covered and uncovered rentable areas, along with the length of time the current fee has been in place (over 15 years), fees should be evaluated to see if an adjustment is appropriate.

Some of the ways in which cities have their park fee structure set include:

- A daily rate (what is currently used in Porterville)
- An hourly rate
- Non-profit, profit and commercial rates
- A base fee (daily or hourly) with additional fees dependent on amenities at the reserved location
- Park premium fees

Below are a few examples of park fees from other cities in the valley:

- Hanford: \$30/day (proposing \$45/day resident, \$60/day non-resident)
- Kerman: \$45/day
- Lemoore: \$40/4 hours, \$60/day
- Reedley: \$19.25/hour
- Tulare: \$50-\$95/day
- Visalia: \$27-\$207/day (amenity based)

The Parks and Leisure Services Commission, at its meeting on February 1, 2019, recommended \$35/day for all uncovered rentable park tables and \$45/day for all covered pavilions. At its meeting on February 5, 2019, the City Council directed staff to bring the subject back with options to analyze. Staff has tested the reservation software currently used to ensure various options discussed at the February 5th meeting would be possible to implement. Although some options would be labor intensive, requiring some system downtime to implement, all options are viable.

Here are a few options Council may wish to consider:

Option 1- \$40/day uncovered, \$60/day covered

Option 2- \$35/4 hours or \$50/day uncovered, \$50/4 hours or \$65/day covered
This option would include 4-hour reservations, allowing for potentially two (2) reservations at the same area on the same day. This would require staggered pre-set blocks of time per park in order for staff to clean the area prior to the second reservation. For example: Veterans Park reservation times 10:00 AM - 2:00 PM and 3:30 - 7:30 PM, with staff cleaning from 2:00 - 3:30 PM. This option would result in an estimated annual part-time staff increase of \$13,000. The 2018 total revenue from rentable park space was \$26,384. This schedule would be recommended for daylight savings time months only.

Option 3- \$10/hour uncovered, \$15/hour covered (minimum 2 hours)
This option would require some time buffers to be set between reservations in order for the area to be cleaned.

Additional considerations that could be applied to any of the stated options include a non-resident fee increase, amenity-based pricing and various fees for peak and off-peak days/times/seasons.

RECOMMENDATION: That the City Council:
1. Conduct a Public Hearing to solicit comment on the proposed rentable park area fees; and
2. Consider adoption of new park rental fees.

ATTACHMENTS: 1. Rentable Space Example Photos
 2. Park Areas

Appropriated/Funded:

Review By:

Department Director:
Donnie Moore, Parks and Leisure Services Director

Final Approver: John Lollis, City Manager

Rentable Park Space Examples



CITY PARKS RENTABLE SPACES				Paid
	Seated	Electrical		2018
Location	Capacity	Outlet	BBQ	Bookings
Centennial Pavilion	0	Yes	No	37
Fallen Heroes Pavilion 1	26	Yes	Yes	60
Fallen Heroes Pavilion 2	26	Yes	Yes	45
Murry Park Pavilion 1	48	Yes	Yes	50
Murry Park Pavilion 2	32	Yes	Yes	40
Murry Park Pavilion 3	36	Yes	Yes	49
Murry Park Pavilion 4	28	No	Yes	34
Murry Park Area 5	16	No	Yes	2
Murry Park Area 6	16	No	Yes	3
Murry Park Area 7	24	No	Yes	6
Murry Park Area 8	24	No	Yes	4
Murry Park Area 9	24	No	Yes	6
Pool Pavilion	36	No	Yes	1
Veterans Park Pavilion 1	60	Yes	Yes	68
Veterans Park Pavilion 2	36	Yes	Yes	57
Veterans Park Pavilion 3	55	Yes	Yes	57
Veterans Park Area 4	12	No	No	7
Zalud Park Pavilion 1	48	Yes	Yes	78
Zalud Park Area 2	18	No	Yes	4
Zalud Park Area 3	14	No	Yes	2
Zalud Park Area 4	14	No	Yes	1
Zalud Park Area 5	16	No	Yes	2
Zalud Park Pavilion 6	28	Yes	Yes	26
Pavilions are covered tables.				



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Second Reading - Ordinance 1850 to Amend Municipal Code Chapter 15, Article IX: Massage Businesses and Practitioners

SOURCE: Administrative Services

COMMENT: Ordinance No. 1850, An Ordinance of the City Council of the City of Porterville Amending Licensing Requirements for Massage Businesses and Practitioners, was given first reading on February 19, 2019, and has been printed.

RECOMMENDATION: That the Council give Second Reading to Ordinance No. 1850, waive further reading, and adopt said Ordinance.

ATTACHMENTS: 1. Ordinance No. 1850

Appropriated/Funded:

Review By:

Department Director:

Patrice Hildreth, Administrative Services Dir

Final Approver: John Lollis, City Manager

ORDINANCE NO. 1850

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AMENDING LICENSING REQUIREMENTS FOR MASSAGE BUSINESSES AND
PRACTITIONERS

WHEREAS, on January 19, 2016, the City Council adopted Ordinance 1831, establishing licensing requirements for massage businesses and practitioners;

WHEREAS, licensing of massage businesses is a legitimate and reasonable means of accountability to ensure that operators of massage businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal activities or conduct such as: (1) purchasing persons for purposes of prostitution; or (2) engaging in pimping or pandering, or lewd or obscene conduct;

WHEREAS, under the current City regulations, it is unlawful for any individual to practice massage therapy for compensation as a sole practitioner or therapist or employee of a massage business or in any capacity within the city unless that individual certified by the California Massage Therapy Council (CAMTC) as a certified massage therapist, certified massage practitioner, or conditionally certified massage practitioner pursuant to Chapter 10.5 of Division 2 of the California Business and Professions Code Sections 4600 et seq.;

WHEREAS, some massage therapists and practitioners have received their training prior to the availability of certification through the CAMTC from schools that are no longer in operation, and said individuals may be otherwise licensed and in good standing in other jurisdictions but cannot do business within the City unless they are able to obtain the CAMTC certification; and

WHEREAS, the City Council desires to create a limited exception to the business license requirements for said individuals who are in the process of obtaining their certification from CAMTC, and in the meantime wish to do business within the City as a massage therapist or practitioner pending CAMTC certification.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PORTERVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Section 15-126 of Chapter 15, Article IX is amended to read as follows:

Sec. 15-126. - EXEMPTIONS.

The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

- (a) Complete exemption. The requirements of this chapter shall not apply to the following individuals:

- (1) Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of California and persons working directly under the supervision of or at the direction of the licensed persons, working at the same location as the licensed person, and administering massage services subject to review or oversight by the licensed person.
 - (2) Barbers and beauticians who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, except that this exemption shall only apply if the massaging of the neck, face and/or scalp, hands or feet of the clients is ancillary to the primary service being provided by the barber or beautician.
 - (3) Hospitals, nursing homes, mental health facilities, or any other health facilities duly licensed by the State of California, and employees of these licensed institutions, while acting within the scope of their employment.
 - (4) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.
 - (5) Any other business or profession exempt from the provisions of this chapter by state law.
- (b) Limited Exemption. In addition to any other applicable provisions of this article, businesses that offer ancillary massage services shall only be required to comply with the provisions set forth in this section for the massage portion of the business. The business shall comply with the following provisions:
- (1) Massage services must be performed by a certified massage practitioner or therapist;
 - (2) Subsection 15-128F of this article related to facility requirements as they pertain to the portion of business that is utilized for massage;
 - (3) Subsection 15-128G of this article related to operational requirements; and
 - (4) Section 15-136 of this article related to inspections.
- (c) Additional Limited Exemption/Temporary Permit. An individual who is currently not a certified massage practitioner or therapist by CAMTC as defined in Section 15-125, due to his or her school having closed on or before June 30, 2016, may obtain a license to practice massage therapy for compensation as a sole practitioner or therapist or employee of a massage business for one six-month period, pending CAMTC certification under its Closed School Policy(ies), provided that all the following requirements are met:
- (1) Prior to applying for a permit under this section, he or she is possesses a valid business license for massage therapy services and was at all times in good standing in another U.S. city's jurisdiction.
 - (2) The individual provides sufficient evidence to and as determined by the City of Porterville that he or she is applying to the CAMTC for certification as a certified massage therapist or practitioner.

- (3) The individual provides evidence of current membership with the Associated Bodywork & Massage Professionals, including proof of current insurance coverage obtained through that Association.
 - (4) The individual's business location and operations must comply with all other provisions of this Article and Chapter 21 of the Porterville Municipal Code. A Non-CAMTC certified owner of a business where the an individual will be engaging in massage therapy services shall continue to be required to comply with all applicable requirements specified in Article IX, including but not limited to 15-128B.11, even if the massage therapy services qualify as ancillary massage services.
 - (5) If the individual does not receive his or her CAMTC certification within the period specified above, the permit shall expire and the individual will no longer be able to practice massage therapy services in the City. The City may extend the permit for a maximum of one additional six-month period, upon a showing by the individual that CAMTC certification/approval is pending, after which no further extensions shall be granted.
- (d) Furnish Evidence: Any person claiming an exemption under this section shall furnish satisfactory evidence to the city manager upon request that he or she is entitled to the exemption, including, proof of bona fide employment or, if applicable, a citation to the particular provision of state law upon which that person relies.

SECTION 2: If any section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional for any reason by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 3: This ordinance shall be in full force and effect not sooner than thirty (30) days from and after the ordinance's publication and passage.

PASSED, APPROVED AND ADOPTED this 5th day of March, 2019.

Martha A. Flores, Mayor

ATTEST:
John D. Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Purchase of CAD/RMS and 9-1-1 System

SOURCE: Police

COMMENT: The Porterville Police Department currently utilizes the West Covina Computer Aided Dispatch (CAD) and Records Management System (RMS), provided through the West Covina Service Group (WCSG) for the Department's public safety software needs. The Department began utilizing this system in February 1998, and while this system has been mostly adequate, the system has started to experience system outages several times a week, which although are quickly remedied by reboots of the program, can happen at inopportune times.

In addition to these system outages, the system has remained stagnant and has not been substantially upgraded to meet the progress that other CAD/RMS systems have experienced. Examples of this include:

The West Covina CAD/RMS system utilizes multiple databases. This prevents the system from providing alerts across system modules which would give dispatchers and Officers valuable information regarding suspects and/or locations while responding to incidents.

With multiple databases, data inconsistencies are not readily noticeable and can cause delays in investigations due to the need for additional follow-up and investigation.

Even with multiple databases, these databases do not provide for transferring of information to crime/incident reports due to the lack of a report writing module. This requires the Officers to repeatedly fill in different report documents for single incidents, as well as requiring Officers to move information to and from portable storage devices. This increases time spent on report completion as well as increasing the risk of loss of information.

The Department currently reports criminal activity to the Federal Bureau of Investigations in conformance with the Uniform Crime Reporting standards. In January 2021, departments will be required to report criminal activity according to the National Incident Based Reporting System standards. A recent meeting was held between PPD and West Covina staff and it was learned that in less than three (3) years, West Covina will no longer offer their CAD/RMS system (discussed later) and although they are aware of the new requirement, it is not their intention to upgrade their system to allow for this reporting.

Timely, comprehensive, accurate data is vital to command staff in making decisions about allocation of resources and optimal policing strategies. The West Covina CAD/RMS system does not have an analytics package to allow non-convoluted or non-time intensive access to this necessary data.

Over the course of many years, there have been multiple statements by members of West Covina that the system would be receiving various types of upgrades, with none coming to fruition.

Because of the above issues, the Department began exploring options to replace the CAD/RMS system. Because lease/purchasing a new CAD/RMS system is a major and expensive project, Department staff wanted to ensure that the option of remaining with the current provider was fully considered, provided they could finally make improvements as promised multiple times. Staff met with West Covina Service Group (WCSG) staff and learned, although not officially announced yet, their CAD/RMS platform will be completely retired within three (3) years and they were working toward merging with a new CAD/RMS provider. Because of this, the Department will be required to find a new CAD/RMS vendor, and because it can take up to fourteen (14) months from contract signing to “going live” with a new system, it is critical to select a vendor as soon as possible.

In addition to considering the option of remaining with the West Covina Service Group (which is no longer an option), several other CAD/RMS systems were researched. It quickly became apparent that the only viable solution was the Motorola Solutions Spillman Flex CAD/RMS system. Locally, the Visalia Police Department and Kings County Sheriff’s Office have purchased the Motorola Solutions Spillman Flex CAD/RMS system, and the Tulare County Sheriff’s Office is also expected to purchase the system. Because the Motorola Solutions Spillman Flex CAD/RMS system provides data sharing capabilities between agencies, by purchasing this system, the Department would be able to share data with the Visalia Police Department and Kings County Sheriff’s Office, and potentially the Tulare County Sheriff’s Office, more effectively thereby enhancing coordination and policing across jurisdictional lines. No other CAD/RMS system would provide that capability.

Also, the Department is currently in the process of participating in a communications center consolidation study with the Visalia Police Department, the Tulare County Sheriff’s Office (which includes all other agencies in Tulare County with the exception of Dinuba Police Department) and the Tulare Police Department. Should that study show that consolidation is the most logical choice for the Department, it would be required to migrate to the Motorola Solutions Spillman Flex CAD/RMS system. Choosing a different CAD/RMS vendor at this point introduces the risk of losing that investment if the Department chooses to go the direction of consolidation. However, the majority of costs associated with a Motorola Solutions Spillman Flex CAD/RMS lease-purchase would not be lost due to the ability of the system to be transferred in the event of a consolidation.

Based on the above information, it is the Department's determination that the Motorola Solutions Spillman Flex CAD/RMS system is the only system that is viable for the Department at this time and as such, should be considered a sole source vendor.

The cost of a lease-purchase for the Motorola Solutions Spillman Flex CAD/RMS system is \$652,438.18 plus \$39,040.67 in CA sales tax.. Beginning year two (2), ongoing maintenance costs will be \$56,135.64. The Porterville Police Department also qualifies for a seven (7) year financing option at zero percent (0%) interest financing, representing a near \$200,000 savings in finance charges over the seven (7) year period. The annual payment over the seven (7) year term is \$146,898.96, with the first payment being due March 1, 2020. After completing seven (7) annual payments at this cost, the yearly ongoing maintenance cost will be \$56,135.64, subject to very minor inflation costs per year thereafter.

It should be noted that currently, the Department's current maintenance costs for the West Covina CAD/RMS system are substantial, at \$77,000 for an inferior product, and an additional \$1,000 for the Fire Department's Zoll program. Upon completion of the initial seven (7) year lease-purchase of Motorola Solutions Spillman Flex CAD/RMS system, the Department's annual cost for this system, at \$56,134.64, will represent an approximate \$20,000 per year savings.

The ongoing maintenance costs for the Motorola Solutions Spillman Flex CAD/RMS system are for software related services only. Department staff expects to evaluate the need for Managed Services, supplied by Motorola Solutions 2, for hardware and server maintenance. If this option is determined to be in the best interest of the Department, as determined by Department staff and City IT personnel, an item will be brought to the City Council for this additional cost which has been quoted to be \$36,828.00 annually.

Funds for the lease-purchase of Motorola Solutions Spillman Flex CAD/RMS system will be available in the Department's General Fund, Measure H, and Measure I budgets.

In addition to the need of the Department to upgrade the CAD/RMS system, it is also necessary to upgrade the 9-1-1 system. This system is scheduled to be upgraded every five (5) years and the upgrade is funded by the California Office of Emergency Services (Cal OES) through reimbursement. The last upgrade was completed in the first quarter of 2014.

For this upgrade, the Department has few options. By choosing to purchase Motorola Solutions Spillman Flex as their CAD/RMS system, the Department will also convert the 9-1-1 system to CallWorks. While the Motorola Solutions Spillman Flex CAD/RMS system can operate in conjunction with various 9-1-1 systems, CallWorks, which is also a Motorola solution, provides the only fully-integrated solution and is the only system that has integrated call control and hardware integration with Motorola Solutions Spillman Flex CAD/RMS

system. Choosing another 9-1-1 system would require additional time and money-intensive work to ensure adequate levels of cooperation between the CAD/RMS and 9-1-1 system. Even with that cooperation, other 9-1-1 systems would require additional equipment and dispatcher time to transfer data.

The Callworks 9-1-1 system has been quoted at \$269,390.88, which includes a 5 (5) year system maintenance term package. Based on the Cal OES evaluation of the Department's 9-1-1 emergency call volume, the Department qualifies for a Fixed Allotment in the amount of \$287,000.00, which will pay for the 9-1-1 system upgrade. The Department will be required to purchase the 9-1-1 system, and upon acceptance of the project, will be reimbursed by Cal OES.

Funds for the purchase of Callworks 9-1-1 system are available in the Department's Equipment Replacement fund and upon reimbursement, those funds will be placed back into the Equipment Replacement fund.

In addition to the need for the Department to obtain a new CAD/RMS and 9-1-1 system, it is also necessary to upgrade the existing communications center within the Department. This upgrade will include new consoles and associated wiring and electrical work, as well as flooring. Upon approval by Council to lease-purchase Motorola Solutions Spillman Flex CAD/RMS and CallWorks 9-1-1 systems, Department staff will submit further agenda items seeking authorization for those upgrades.

RECOMMENDATION: That the City Council:

1. Authorize staff to negotiate the purchase of Motorola Solutions Spillman Flex Computer Aided Dispatch and Records Management System; and,
2. Authorize staff to negotiate the purchase of CallWorks 9-1-1 System; and
3. Authorize staff to complete all documents necessary for these purchases.

ATTACHMENTS:

1. Motorola Solutions Lease Agreement
2. CallWorks Agreement

Appropriated/Funded: MB

Review By:

Department Director:

Eric Kroutil, Police Chief

Final Approver: John Lollis, City Manager



2/2119

City of Porterville
291 North Main Street
Porterville CA 93257

RE: Municipal Lease # 24542

Enclosed for your review, please find the **Municipal Lease** documentation in connection with the [radio equipment] to be leased from Motorola. The interest rate and payment streams outlined in Equipment Lease-Purchase Agreement #24542 are valid for contracts that are executed and returned to Motorola on or before **March 15, 2019**. After **3/15/19**, the Lessor reserves the option to re-quote and re-price the transaction based on current market interest rates.

Please have the documents executed where indicated and forward the documents to the following address:

Motorola Solutions Credit Company LLC
Attn: Bill Stancik / 44th Floor
500 W. Monroe
Chicago IL 60661

Should you have any questions, please contact me at 847-538-4531.

Thank You,

A handwritten signature in black ink, appearing to read 'Bill Stancik', written in a cursive style.

MOTOROLA SOLUTIONS CREDIT COMPANY LLC
Bill Stancik

LESSEE FACT SHEET

Please help Motorola provide excellent billing service by providing the following information:

1. Complete Billing Address City of Porterville

E-mail Address: _____
Attention: _____
Phone: _____
2. Lessee County Location: _____
3. Federal Tax I.D. Number _____
4. Purchase Order Number to be referenced on invoice (if necessary) or other "descriptions" that may assist in determining the applicable cost center or department: _____
5. Equipment description that you would like to appear on your invoicing: _____

Appropriate Contact for Documentation / System Acceptance Follow-up:

6. Appropriate Contact & Mailing Address

Phone: _____
Fax: _____

7. Payment remit to address:

**Motorola Solutions Credit Company LLC
P.O. Box 71132
Chicago IL 60694-1132**

Thank you

EQUIPMENT LEASE-PURCHASE AGREEMENT

Lease Number: 24542

LESSEE:

City of Porterville
291 North Main Street
Porterville CA 93257

LESSOR:

Motorola Solutions, Inc.
500 W. Monroe
Chicago IL 60661

Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, the equipment and/or software described in Schedule A attached hereto ("Equipment") in accordance with the following terms and conditions of this Equipment Lease-Purchase Agreement ("Lease").

1. TERM. This Lease will become effective upon the execution hereof by Lessor. The Term of this Lease will commence on date specified in Schedule A attached hereto and unless terminated according to terms hereof or the purchase option, provided in Section 18, is exercised this Lease will continue until the Expiration Date set forth in Schedule B attached hereto ("Lease Term").

2. RENT. Lessee agrees to pay to Lessor or its assignee the Lease Payments (herein so called), including the interest portion, in the amounts specified in Schedule B. The Lease Payments will be payable without notice or demand at the office of the Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and will commence on the first Lease Payment Date as set forth in Schedule B and thereafter on each of the Lease Payment Dates set forth in Schedule B. Any payments received later than ten (10) days from the due date will bear interest at the highest lawful rate from the due date. Except as specifically provided in Section 5 hereof, the Lease Payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, or recoupment for any reason whatsoever. Lessee reasonably believes that funds can be obtained sufficient to make all Lease Payments during the Lease Term and hereby covenants that a request for appropriation for funds from which the Lease Payments may be made will be requested each fiscal period, including making provisions for such payment to the extent necessary in each budget submitted for the purpose of obtaining funding. It is Lessee's intent to make Lease Payment for the full Lease Term if funds are legally available therefor and in that regard Lessee represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to its proper, efficient and economic operation.

3. DELIVERY AND ACCEPTANCE. Lessor will cause the Equipment to be delivered to Lessee at the location specified in Schedule A ("Equipment Location"). Lessee will accept the Equipment as soon as it has been delivered and is operational. Lessee will evidence its acceptance of the Equipment either (a) by executing and delivering to Lessor a Delivery and Acceptance Certificate in the form provided by Lessor; or (b) by executing and delivering the form of acceptance provided for in the Contract (defined below).

Even if Lessee has not executed and delivered to Lessor a Delivery and Acceptance Certificate or other form of acceptance acceptable to Lessor, if Lessor believes the Equipment has been delivered and is operational, Lessor may require Lessee to notify Lessor in writing (within five (5) days of Lessee's receipt of Lessor's request) whether or not Lessee deems the Equipment (i) to have been delivered and (ii) to be operational, and hence be accepted by Lessee. If Lessee fails to so respond in such five (5) day period, Lessee will be deemed to have accepted the Equipment and be deemed to have acknowledged that the Equipment was delivered and is operational as if Lessee had in fact executed and delivered to Lessor a Delivery and Acceptance Certificate or other form acceptable to Lessor.

4. REPRESENTATIONS AND WARRANTIES. Lessor acknowledges that the Equipment leased hereunder is being manufactured and installed by Lessor pursuant to contract (the "Contract") covering the Equipment. Lessee acknowledges that on or prior to the date of acceptance of the Equipment, Lessor intends to sell and assign Lessor's right, title and interest in and to this Agreement and the Equipment to an assignee ("Assignee").

LESSEE FURTHER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE OR KIND WHATSOEVER, AND AS BETWEEN LESSEE AND THE ASSIGNEE, THE PROPERTY SHALL BE ACCEPTED BY LESSEE "AS IS" AND "WITH ALL FAULTS". LESSEE AGREES TO SETTLE ALL CLAIMS DIRECTLY WITH LESSOR AND WILL NOT ASSERT OR SEEK TO ENFORCE ANY SUCH CLAIMS AGAINST THE ASSIGNEE. NEITHER LESSOR NOR THE ASSIGNEE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER AS A RESULT OF THE LEASE OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, PROPERTY DAMAGE OR LOST PRODUCTION WHETHER SUFFERED BY LESSEE OR ANY THIRD PARTY.

Lessor is not responsible for, and shall not be liable to Lessee for damages relating to loss of value of the Equipment for any cause or situation (including, without limitation, governmental actions or regulations or actions of other third parties).

5. NON-APPROPRIATION OF FUNDS. Notwithstanding anything contained in this Lease to the contrary, Lessee has the right to not appropriate funds to make Lease Payments required hereunder in any fiscal period and in the event no funds are appropriated or in the event funds appropriated by Lessee's governing body or otherwise available by any lawful means whatsoever in any fiscal period of Lessee for Lease Payments or other amounts due under this Lease are insufficient therefor, this Lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Lease Payments or other amounts herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available. The Lessee will immediately notify the Lessor or its Assignee of such occurrence. In the event of such termination, Lessee agrees to peaceably surrender possession of the Equipment to Lessor or its Assignee on the date of such termination, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States designated by Lessor. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment. Non-appropriation of funds shall not constitute a default hereunder for purposes of Section 16.

6. LESSEE CERTIFICATION. Lessee represents, covenants and warrants that: (i) Lessee is a state or a duly constituted political subdivision or agency of the state of the Equipment Location; (ii) the interest portion of the Lease Payments shall be excludable from Lessor's gross income pursuant to Section 103 of the Internal Revenue Code of 1986, as it may be amended from time to time (the "Code"); (iii) the execution, delivery and performance by the Lessee of this Lease have been duly authorized by all necessary action on the part of the Lessee; (iv) this Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; (v) Lessee will comply with the information reporting requirements of Section 149(e) of the Internal Revenue Code of 1986 (the "Code"), and such compliance shall include but not be limited to the execution of information statements requested by Lessor; (vi) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the Lease to be an arbitrage bond within the meaning of Section 148(a) of the Code; (vii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, this Lease to be a private activity bond within the meaning of Section 141(a) of the Code; (viii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the interest portion of the Lease Payment to be or become includible in gross income for Federal income taxation purposes under the Code; and (ix) Lessee will be the only entity to own, use and operate the Equipment during the Lease Term.

Lessee represents, covenants and warrants that: (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect, (ii) it has complied with all laws relative to public bidding where necessary, and (iii) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal period.

If Lessee breaches the covenant contained in this Section, the interest component of Lease Payments may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, notwithstanding anything to the contrary contained in Section 11 of this Agreement, Lessee agrees to pay promptly after any such determination of taxability and on each Lease Payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludibility (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Section 6 shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that this Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment for federal income tax purposes.

7. TITLE TO EQUIPMENT; SECURITY INTEREST. Upon shipment of the Equipment to Lessee hereunder, title to the Equipment will vest in Lessee subject to any applicable license; provided, however, that (i) in the event of termination of this Lease by Lessee pursuant to Section 5 hereof; (ii) upon the occurrence of an Event of Default hereunder, and as long as such Event of Default is continuing; or (iii) in the event that the purchase option has not been exercised prior to the Expiration Date, title will immediately vest in Lessor or its Assignee, and Lessee shall immediately discontinue use of the Equipment, remove the Equipment from Lessee's computers and other electronic devices and deliver the Equipment to Lessor or its Assignee. In order to secure all of its obligations hereunder, Lessee hereby (i) grants to Lessor a first and prior security interest in any and all right, title and interest of Lessee in the Equipment and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds therefrom; (ii) agrees that this Lease may be filed as a financing statement evidencing such security interest; and (iii) agrees to execute and deliver all financing statements, certificates of title and other instruments necessary or appropriate to evidence such security interest.

8. USE; REPAIRS. Lessee will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and shall comply with all laws, ordinances, insurance policies, the Contract, any licensing or other agreement, and regulations relating to, and will pay all costs, claims, damages, fees and charges arising out of the possession, use or maintenance of the Equipment. Lessee, at its expense will keep the Equipment in good repair and furnish and/or install all parts, mechanisms, updates, upgrades and devices required therefor.

9. ALTERATIONS. Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.

10. LOCATION; INSPECTION. The Equipment will not be removed from, [or if the Equipment consists of rolling stock, its permanent base will not be changed from] the Equipment Location without Lessor's prior written consent which will not be unreasonably withheld. Lessor will be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

11. LIENS AND TAXES. Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. Lessee shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, licensing, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes, Lessee shall reimburse Lessor therefor within ten days of written demand.

12. RISK OF LOSS: DAMAGE; DESTRUCTION. Lessee assumes all risk of loss or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Lease Payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, Lessee will immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair (an "Event of Loss") , Lessee at the option of Lessor will: either (a) replace the same with like equipment in good repair; or (b) on the next Lease Payment date, pay Lessor the sum of : (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease payment due on such date; and (ii) an amount equal to all remaining Lease Payments to be paid during the Lease Term as set forth in Schedule B.

In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Lease Payment and the Balance Payment (as set forth in Schedule B) to be made by Lessee with respect to that part of the Equipment which has suffered the Event of Loss.

13. INSURANCE. Lessee will, at its expense, maintain at all times during the Lease Term, fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts,

covering such risks, and with such insurers as shall be satisfactory to Lessor, or, with Lessor's prior written consent, Lessee may self-insure against any or all such risks. All insurance covering loss of or damage to the Equipment shall be carried in an amount no less than the amount of the then applicable Balance Payment with respect to such Equipment. The initial amount of insurance required is set forth in Schedule B. Each insurance policy will name Lessee as an insured and Lessor or its Assigns as an additional insured, and will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or its Assigns as their interests may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event that Lessee has been permitted to self-insure, Lessee will furnish Lessor with a letter or certificate to such effect. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto.

14. INDEMNIFICATION. Lessee shall, to the extent permitted by law, indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages or liabilities, including attorneys' fees and court costs, arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, licensing, possession, use, operation, rejection, or return and the recovery of claims under insurance policies thereon.

15. ASSIGNMENT. Without Lessor's prior written consent, Lessee will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Lease or the Equipment or any interest in this Lease or the Equipment or; (ii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign its rights, title and interest in and to this Lease, the Equipment and any documents executed with respect to this Lease and/or grant or assign a security interest in this Lease and the Equipment, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Lease. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Lessee covenants and agrees not to assert against the Assignee any claims or defenses by way of abatement, setoff, counterclaim, recoupment or the like which Lessee may have against Lessor. No assignment or reassignment of any Lessor's right, title or interest in this Lease or the Equipment shall be effective unless and until Lessee shall have received a notice of assignment, disclosing the name and address of each such assignee; provided, however, that if such assignment is made to a bank or trust company as paying or escrow agent for holders of certificates of participation in the Lease, it shall thereafter be sufficient that a copy of the agency agreement shall have been deposited with Lessee until Lessee shall have been advised that such agency agreement is no longer in effect. During the Lease Term Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Code, and the regulations, proposed or existing, from time to time promulgated thereunder. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge such assignments in writing if so requested.

After notice of such assignment, Lessee shall name the Assignee as additional insured and loss payee in any insurance policies obtained or in force. Any Assignee of Lessor may reassign this Lease and its interest in the Equipment and the Lease Payments to any other person who, thereupon, shall be deemed to be Lessor's Assignee hereunder.

16. EVENT OF DEFAULT. The term "Event of Default", as used herein, means the occurrence of any one or more of the following events: (i) Lessee fails to make any Lease Payment (or any other payment) as it becomes due in accordance with the terms of the Lease when funds have been appropriated sufficient for such purpose, and any such failure continues for ten (10) days after the due date thereof; (ii) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure is not cured within twenty (20) days after written notice thereof by Lessor; (iii) the discovery by Lessor that any statement, representation, or warranty made by Lessee in this Lease or in writing delivered by Lessee pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; (iv) proceedings under any bankruptcy, insolvency, reorganization or similar legislation shall be instituted against or by Lessee, or a receiver or similar officer shall be appointed for Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within twenty (20) days after the institution or occurrence thereof; or (v) an attachment, levy or execution is threatened or levied upon or against the Equipment.

17. REMEDIES. Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, Lessor may, at its option, exercise any one or more of the following remedies: (i) by written notice to Lessee, declare all amounts then due under the Lease, and all remaining Lease Payments due during the fiscal period in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable; (ii) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly discontinue use of the Equipment, remove the Equipment from all of Lessee's computers and electronic devices, return the Equipment to Lessor in the manner set forth in Section 5 hereof, or Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same; (iii) sell or lease the Equipment or sublease it for the account of Lessee, holding Lessee liable for all Lease Payments and other amounts due prior to the effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, Lessee or sublessee pursuant to such sale, lease or sublease and the amounts payable by Lessee hereunder; (iv) promptly return the Equipment to Lessor in the manner set forth in Section 5 hereof; and (v) exercise any other right, remedy or privilege which may be available to it under applicable laws of the state of the Equipment Location or any other applicable law or proceed by appropriate court action to enforce the terms of the Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Equipment. In addition, Lessee will remain liable for all covenants and indemnities under this Lease and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

18. PURCHASE OPTION. Upon thirty (30) days prior written notice from Lessee to Lessor, and provided that no Event of Default has occurred and is continuing, or no event, which with notice or lapse of time, or both could become an Event of Default, then exists, Lessee will have the right to purchase the Equipment on the Lease Payment dates set forth in Schedule B by paying to Lessor, on such date, the Lease Payment then due together with the Balance Payment amount set forth opposite such date. Upon satisfaction by Lessee of such purchase conditions, Lessor will transfer any and all of its right, title and interest in the Equipment to Lessee as is, without warranty, express or implied, except that the Equipment is free and clear of any liens created by Lessor.

19. NOTICES. All notices to be given under this Lease shall be made in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to such mailing.

20. SECTION HEADINGS. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

21. GOVERNING LAW. This Lease shall be construed in accordance with, and governed by the laws of, the state of the Equipment Location.

22. DELIVERY OF RELATED DOCUMENTS. Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease.

23. ENTIRE AGREEMENT; WAIVER. This Lease, together with Schedule A Equipment Lease-Purchase Agreement, Schedule B, Evidence of Insurance, Statement of Essential Use/Source of Funds, Certificate of Incumbency, Certified Lessee Resolution (if any), Information Return for Tax-Exempt Governmental Obligations and the Delivery and Acceptance Certificate and other attachments hereto, and other documents or instruments executed by Lessee and Lessor in connection herewith, constitutes the entire agreement between the parties with respect to the Lease of the Equipment, and this Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of the Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

24. EXECUTION IN COUNTERPARTS. This Lease may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ____ day of March, 2019.

LESSEE:
City of Porterville

LESSOR:
MOTOROLA SOLUTIONS, INC.

By: _____
Title: _____

By: _____
Title: Treasurer

CERTIFICATE OF INCUMBENCY

I, _____ do hereby certify that I am the duly elected or
(Printed Name of Secretary/Clerk)

appointed and acting Secretary or Clerk of the City of Porterville, an entity duly organized and existing under the laws of the State of California that I have custody of the records of such entity, and that, as of the date hereof, the individual(s) executing this agreement is/are the duly elected or appointed officer(s) of such entity holding the office(s) below his/her/their respective name(s). I further certify that (i) the signature(s) set forth above his/her/their respective name(s) and title(s) is/are his/her/their true and authentic signature(s) and (ii) such officer(s) have the authority on behalf of such entity to enter into that certain Equipment Lease Purchase Agreement number 24542, between City of Porterville and Motorola Solutions, Inc. If the initial insurance requirement on Schedule B exceeds \$1,000,000, attached as part of the Equipment Lease Purchase Agreement is a Certified Lessee Resolution adopted by the governing body of the entity.

IN WITNESS WHEREOF, I have executed this certificate and affixed the seal of City of Porterville , hereto this ____ day of March 2019.

By: _____
(Signature of Secretary/Clerk)

SEAL

OPINION OF COUNSEL

With respect to that certain Equipment Lease-Purchase Agreement 24542 by and between Motorola Solutions, Inc. and the Lessee, I am of the opinion that: (i) the Lessee is, within the meaning of Section 103 of the Internal Revenue Code of 1986, a state or a fully constituted political subdivision or agency of the State of the Equipment Location described in Schedule A hereto; (ii) the execution, delivery and performance by the Lessee of the Lease have been duly authorized by all necessary action on the part of the Lessee, (III) the Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; and (iv) Lessee has sufficient monies available to make all payments required to be paid under the Lease during the current fiscal year of the Lease, and such monies have been properly budgeted and appropriated for this purpose in accordance with State law. This opinion may be relied upon by the Lessor and any assignee of the Lessor's rights under the Lease.

Attorney for City of Porterville

**SCHEDULE A
EQUIPMENT LEASE-PURCHASE AGREEMENT**

**Schedule A 24542
Lease Number:**

This Equipment Schedule is hereby attached to and made a part of that certain Equipment Lease-Purchase Agreement Number **24542** ("Lease"), between Lessor and Lessee.

Lessor hereby leases to Lessee under and pursuant to the Lease, and Lessee hereby accepts and leases from Lessor under and pursuant to the Lease, subject to and upon the terms and conditions set forth in the Lease and upon the terms set forth below, the following items of Equipment

QUANTITY	DESCRIPTION (Manufacturer, Model, and Serial Nos.)
	Refer to attached Equipment List.
Equipment Location:	

Initial Term: 84 Months

Commencement Date: March 15, 2019

First Payment Due Date: March 15, 2020

7 annual payments as outlined in the attached Schedule B, plus Sales/Use Tax of \$0.00, payable on the Lease Payment Dates set forth in Schedule B.



MOTOROLA SOLUTIONS

Hardware & Services

Server - Windows (100-150 Concurrent)	2 Servers with DR	\$76,995.00
GIS Server	Single Server	\$9,390.00
Data Conversion Services with Images	From West Covina	\$59,720.00
Etherlite		\$725.00
Hardware Total		\$146,830.00

Software & Hardware Total	\$652,438.18
--------------------------------------	---------------------

Ongoing Maintenance Estimate (Begins 2nd Year)

Support and maintenance includes annual software upgrades, access to online training tools, technical support, and site licensing. The 1st year maintenance is included in the software price above. The price listed here is an estimate given for your planning purposes. Ongoing maintenance will begin in the 2nd Year.

Ongoing Maintenance Estimate Including All Options	\$56,135.64
---	--------------------

Financing 7-Year Option

6 Years of Maintenance (1st year is included)	\$336,813.84
Total Software and Hardware with all options	\$652,438.18
Sales Tax California	\$39,040.67
Total Purchase Price	\$1,028,292.69
Zero Interest Financing	\$0.00
Purchase Price with Discount	\$1,028,292.69
Total Payment Each Year for 7 Years (Maintenance Included)	\$146,898.96

Managed Services with failover testing and application monitoring	\$36,828.00
Total Payment with managed services	\$183,726.96



MOTOROLA SOLUTIONS

Software & Services

Core System Software

Hub	Site License	\$99,813.36
Learning Management System	Site License	\$3,726.12
Imaging	Site License	\$22,913.28
CAD	Site License	\$49,696.60
CAD Mapping	Site License	\$23,350.08
E9-1-1 Interface	Site License	\$10,475.50
California CLETS Direct StateLink	Site License	\$33,161.44
Law Records	Site License	\$45,826.56
Core System Software Total		\$288,962.94

Mobile Software

Mobile Voiceless CAD	Site License	\$17,085.12
Mobile Records	Site License	\$18,021.12
Mobile Field Report with Field Interview	Site License	\$22,850.88
Mobile State & National Queries	Site License	\$18,021.12
Mobile Arrest Form	Site License	\$17,272.32
Mobile AVL and Mapping	Site License	\$18,707.52
Core System Software Total		\$111,958.08

Additional Ancillary Software Modules

CompStat Management Dashboard	Site License	\$34,850.00
Command Staff Productivity Dashboard	Site License	\$17,455.00
Pin Mapping	Site License	\$13,740.48
California State Crash Form	Site License	\$23,403.60
ZOLL RescueNet FRMS Interface	Site License	\$0.00
InSight - Multi-Agency Sharing Software	Site License	\$15,238.08
Ancillary Software Total		\$104,687.16

City of Porterville (Schedule B)

Compound Period: Annual

Nominal Annual Rate: 0.000%

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Lease	3/15/2019	\$ 1,028,292.69	1		
2 Lease Payment	3/15/2020	\$ 146,898.96	7	Annual	3/15/2026

AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

	Date	Lease Payment	Interest	Principal	Balance
Lease	3/15/2019				\$ 1,028,292.69
1	3/15/2020	\$ 146,898.96	\$ -	\$ 146,898.96	\$ 881,393.73
2	3/15/2021	\$ 146,898.96	\$ -	\$ 146,898.96	\$ 734,494.77
3	3/15/2022	\$ 146,898.96	\$ -	\$ 146,898.96	\$ 587,595.81
4	3/15/2023	\$ 146,898.96	\$ -	\$ 146,898.96	\$ 440,696.85
5	3/15/2024	\$ 146,898.96	\$ -	\$ 146,898.96	\$ 293,797.89
6	3/15/2025	\$ 146,898.96	\$ -	\$ 146,898.96	\$ 146,898.93
7	3/15/2026	\$ 146,898.96	\$ 0.03	\$ 146,898.93	\$ -
Grand Totals		\$ 1,028,292.72	\$ 0.03	\$ 1,028,292.69	

ORIGINAL ISSUE DISCOUNT:

Lessee acknowledges that the amount financed by Lessor is \$895,878.33 and that such amount is the issue price for this Lease Payment Schedule for federal income tax purposes. The difference between the principal amount of this Lease Payment Schedule and the issue price is original issue discount as defined in Section 1288 of the Code. The yield for this Lease Payment Schedule for federal income tax purposes is 3.57%. Such issue price and yield will be stated in the applicable Form 8038-G.

INITIAL INSURANCE REQUIREMENT: \$1,028,292.69

Except as specifically provided in Section five of the Lease hereof, Lessee agrees to pay to Lessor or its assignee the Lease Payments, including the interest portion, in the amounts and dates specified in the above payment schedule.

EVIDENCE OF INSURANCE

Fire, extended coverage, public liability and property damage insurance for all of the Equipment listed on Schedule A number **24542** to that Equipment Lease Purchase Agreement number **24542** will be maintained by the City of Porterville as stated in the Equipment Lease Purchase Agreement.

This insurance is provided by:

Name of insurance provider

Address of insurance provider

City, State and Zip Code

Phone number of local insurance provider

E-mail address

In accordance with the Equipment Lease Purchase Agreement Number **24542** , City of Porterville , hereby certifies that following coverage are or will be in full force and effect:

Type	Amount	Effective Date	Expiration Date	Policy Number
Fire and Extended Coverage	_____	_____	_____	_____
Property Damage	_____	_____	_____	_____
Public Liability	_____	_____	_____	_____

Certificate shall include the following:

Description: All Equipment listed on Schedule A number 24542 to that Equipment Lease Purchase Agreement number 24542. Please include equipment cost equal to the Initial Insurance Requirement on Schedule B to Equipment Lease Purchase Agreement number 24542 and list any deductibles.

Certificate Holder:

MOTOROLA SOLUTIONS, INC. and or its assignee as additional insured and loss payee
1303 E. Algonquin Road
Schaumburg, IL 60196

If self insured, contact Motorola representative for template of self insurance letter.

STATEMENT OF ESSENTIAL USE/SOURCE OF FUNDS

To further understand the essential governmental use intended for the equipment together with an understanding of the sources from which payments will be made, please address the following questions by completing this form or by sending a separate letter:

1. What is the specific use of the equipment?
2. Why is the equipment essential to the operation of **City of Porterville**?
3. Does the equipment replace existing equipment?
If so, why is the replacement being made?
4. Is there a specific cost justification for the new equipment?
If yes, please attach outline of justification.
5. What is the expected source of funds for the payments due under the Lease for the current fiscal year and future fiscal years?

CERTIFIED LESSEE RESOLUTION

At a duly called meeting of the Governing Body of the Lessee (as defined in the Lease #24542) held on or before ***March*** _____, ***2019***, the following resolution was introduced and adopted.

BE IT RESOLVED by the Governing Board of Lessee as follows:

1. Determination of Need. The Governing Body of Lessee has determined that a true and very real need exists for the acquisition of the Equipment or other personal property described in the Lease between City of Porterville (Lessee) and Motorola Solutions, Inc. (Lessor).
2. Approval and Authorization. The Governing body of Lessee has determined that the Lease, substantially in the form presented to this meeting, is in the best interests of the Lcscc for the acquisition of such Equipment or other personal property, and the Governing Board hereby approves the entering into of the Lease by the Lessee and hereby designates and authorizes the following person(s) referenced in the Lease to execute and deliver the Lease on Lessee's behalf with such changes thereto as such person deems appropriate, and any related documents, including any escrow agreement, necessary to the consummation of the transactions contemplated by the Lease.
3. Adoption of Resolution. The signatures in the Lease from the designated individuals for the Governing Body of the Lessee evidence the adoption by the Governing Body of this Resolution.

Form **8038-G**

(Rev. September 2018)

Department of the Treasury
Internal Revenue Service**Information Return for Tax-Exempt Governmental Bonds**

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.► Go to www.irs.gov/F8038G for instructions and the latest information.

OMB No. 1545-0720

Part I Reporting AuthorityIf Amended Return, check here ☐

1 Issuer's name City of Porterville		2 Issuer's employer identification number (EIN)
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions) 291 North Main Street		3b Telephone number of other person shown on 3a
4 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	5 Report number (For IRS Use Only) 3
6 City, town, or post office, state, and ZIP code Porterville CA 93257		7 Date of issue 3/15/2019
8 Name of issue Equipment Lease-Purchase Agreement 24542		9 CUSIP number
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		10b Telephone number of officer or other employee shown on 10a

Part II Type of Issue (enter the issue price). See the instructions and attach schedule.

11 Education	11		
12 Health and hospital	12		
13 Transportation	13		
14 Public safety	14	895,878.33	
15 Environment (including sewage bonds)	15		
16 Housing	16		
17 Utilities	17		
18 Other. Describe ►	18		
19a If bonds are TANs or RANs, check only box 19a ☐			
b If bonds are BANs, check only box 19b ☐			
20 If bonds are in the form of a lease or installment sale, check box ☒			

Part III Description of Bonds. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	3/15/26	\$ 895,878.33	\$ 895,878.33	7 years	3.57 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest	22		
23 Issue price of entire issue (enter amount from line 21, column (b))	23	895,878.33	
24 Proceeds used for bond issuance costs (including underwriters' discount)	24		
25 Proceeds used for credit enhancement	25		
26 Proceeds allocated to reasonably required reserve or replacement fund	26		
27 Proceeds used to refund prior tax-exempt bonds. Complete Part V	27		
28 Proceeds used to refund prior taxable bonds. Complete Part V	28		
29 Total (add lines 24 through 28)	29		
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	895,878.33	

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded	►	_____ years
32 Enter the remaining weighted average maturity of the taxable bonds to be refunded	►	_____ years
33 Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY)	►	_____
34 Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)		_____

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 9-2018)

Part VI Miscellaneous

- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) **35**
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions **36a**
- b** Enter the final maturity date of the GIC ► (MM/DD/YYYY) _____
- c** Enter the name of the GIC provider ► _____
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units **37**
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ► ☐ and enter the following information:
- b** Enter the date of the master pool bond ► (MM/DD/YYYY) _____
- c** Enter the EIN of the issuer of the master pool bond ► _____
- d** Enter the name of the issuer of the master pool bond ► _____
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ► ☐
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ► ☐
- 41a** If the issuer has identified a hedge, check here ► ☐ and enter the following information:
- b** Name of hedge provider ► _____
- c** Type of hedge ► _____
- d** Term of hedge ► _____
- 42** If the issuer has superintegrated the hedge, check box ► ☐
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ► ☐
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box ► ☐
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ► ☐ and enter the amount of reimbursement ► _____
- b** Enter the date the official intent was adopted ► (MM/DD/YYYY) _____

Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

► _____ Date _____ Type or print name and title _____

Signature of issuer's authorized representative

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Firm's name ►	Firm's EIN ►			
Firm's address ►	Phone no.			

EQUIPMENT LEASE PURCHASE AGREEMENT DELIVERY AND ACCEPTANCE CERTIFICATE

The undersigned Lessee hereby acknowledges receipt of the Equipment described below ("Equipment") and Lessee hereby accepts the Equipment after full inspection thereof as satisfactory for all purposes of lease Schedule A to the Equipment Lease Purchase Agreement executed by Lessee and Lessor.

Equipment Lease Purchase Agreement No.: 24542

Lease Schedule A No. : 24542

EQUIPMENT INFORMATION

QUANTITY	MODEL NUMBER	EQUIPMENT DESCRIPTION
		Equipment referenced in lease Schedule A# 24542. See Schedule A for a detailed Equipment List.

LESSEE:

City of Porterville

By: _____

Date: _____



Cal OES
GOVERNOR'S OFFICE
OF EMERGENCY SERVICES

August 16, 2018

Tracking Number: 21716

Robin Rapp, Senior Dispatcher
Porterville Police Department
350 N. "D" Street
Porterville, CA 93257

Subject: Customer Premise Equipment (CPE) Fixed Allotment Funding

Dear Ms. Rapp,

The California 9-1-1 Emergency Communications Branch (CA 9-1-1 Branch) has received your August 9, 2018, Advance Notification for CPE Funding letter of intent to replace the 9-1-1 telephone system at your Public Safety Answering Point (PSAP). Acceptance of CPE Allotment funds from the CA 9-1-1 Branch commits your agency to PSAP operations 24 hours-a-day, seven days-a-week, for a minimum of five years. If PSAP operations are not maintained at that level, the City of Porterville Police Department may become financially responsible for all subsequent CPE maintenance and 9-1-1 network service charges. Our evaluation of recent 9-1-1 emergency call volume qualifies the City of Porterville Police Department for a Fixed Allotment in the amount of \$287,000.00. The Fixed Allotment funding will expire June 30, 2019 if your CPE approval process has not been initiated. Years six (6) and seven (7) of extended maintenance will not be deducted from your Fixed Allotment. Extended maintenance cost in year eight (8) and beyond is the PSAPs responsibility.

The CA 9-1-1 Branch has implemented a non-mandatory Master Purchase Agreement (MPA) that enables participating vendors to invoice the CA 9-1-1 Branch directly for the purchase of 9-1-1 systems and services. User instructions for the MPA are available at:
<http://www.caloes.ca.gov/for-governments-tribal/public-safety/ca-9-1-1-emergency-communications-branch/ca-9-1-1-services-contracts>

Please contact me directly with any questions at yvonne.winn@caloes.ca.gov or (916) 657-9470.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Yvonne Winn'.

YVONNE WINN, 9-1-1 Advisor
California 9-1-1 Emergency Communications Branch

SECTION 7

PRICING

7.1 PRICING SUMMARY- PRIMARY STAND ALONE

Emergency CallWorks Base Pricing Summary		
	LIST PRICE	OFFER PRICE
Hardware and Software	\$194,984.00	\$106,235.78
Applicable CA State Taxes 8.25% (\$124,711.52)	\$8,764.45	
Professional Services (Project Management, System Engineering, Staging, Training, Testing, System Activation and Cutover, 24 Hour Post-Cut on-site Support)	\$21,107.08	\$20,051.72
System Installation	\$14,233.83	\$13,522.14
Base System Total including State Taxes:	\$239,089.36	\$148,574.08
5 Year System Maintenance Term Package		
Total Base System with 5-Year Prepaid Software Support, System Installation, On-Site Support, Extended Hardware Warranty, and State Taxes	\$269,390.88	
System Spares		
Recommended System Spares	\$3,326.00	\$2,179.59

****Above Pricing is valid until March 31, 2019 and is subject to change without notice ****

7.2 PRE-PAID MAINTENANCE SUPPORT FOR 6 AND 7 YEARS

Emergency CallWorks Base Pricing Summary	
Pre-Paid Maintenance Term Package	
Total Base System with 6-Year Prepaid Software Support, System Installation, On-Site Support, Extended Hardware Warranty, and State Taxes	\$294,625.11
Total Base System with 7-Year Prepaid Software Support, System Installation, On-Site Support, Extended Hardware Warranty, and State Taxes	\$319,859.34

SECTION 8

COMMUNICATION SYSTEM AGREEMENT

Motorola Solutions, Inc. ("Motorola"), through its subsidiary, CallWorks, Inc. ("ECW") and Porterville Police Department enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the System, as described below. The names Motorola and CallWorks may be used interchangeably herein. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

Section 1 EXHIBITS

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibits and any inconsistency between Exhibits A through F will be resolved in their listed order.

- Exhibit A "Software License Agreement"
- Exhibit B "Payment Schedule"
- Exhibit C The Motorola Proposal dated November 20, 2018 Revised December 3, 2018 (the "Proposal"), which includes among other things the following Technical and Implementation Documents as applicable
 - C-1 "System Description" Reference Section 2.1 of the Proposal
 - C-2 "Equipment List" Reference Section 2.13 of the Proposal
 - C-3 "Statement of Work" Reference Section 3 of the Proposal
 - C-4 "Acceptance Test Plan" or "ATP" Reference Section 6 of the Proposal
 - C-5 "Performance Schedule"
- Exhibit D Maintenance and Support n Terms
- Exhibit E Maintenance Statement(s) of Work Reference Section 4 of the Proposal
- Exhibit F "System Acceptance Certificate"

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

"Acceptance Tests" means those tests described in the Acceptance Test Plan.

"Administrative User Credentials" means an account that has total access over the operating system, files, and user accounts and passwords at either the System level or box level. Customer's personnel with access to the Administrative User Credentials may be referred to as the Administrative User.

"Beneficial Use" means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).

"Confidential Information" means all information consistent with the fulfillment of this Agreement that is (i) disclosed under this Agreement in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated or marked as confidential or its equivalent. Confidential Information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by the discloser by submitting a written document to the recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.



“Contract Price” means the price for the System and Services, excluding applicable sales or similar taxes.

“Deliverables” means all written information (such as reports, specifications, designs, plans, drawings, or other technical or business information) that Motorola prepares specifically for Customer and is obligated to provide to Customer under this Agreement. The Deliverables, if any, are more fully described in the Statement of Work.

“Derivative Proprietary Materials” means derivatives of the Proprietary Materials that Motorola may from time to time develop or use, or to which Motorola provides Customer access.

“Effective Date” means that date upon which the last Party executes this Agreement.

“Equipment” means the hardware components of the Solution that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.

“Force Majeure” means an event, circumstance, or act of a third party that is beyond a Party’s reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).

“Infringement Claim” means a third party claim alleging that the Equipment manufactured by Motorola or the ECW Software directly infringes a United States patent or copyright.

“ECW Software” means software that ECW or its affiliated companies owns.

“Non-ECW Software” means software that a party other than ECW or its affiliated companies owns.

“Open Source Software” (also called “freeware” or “shareware”) means software with either freely obtainable source code, license for modification, or permission for free distribution.

“Proprietary Materials” means certain software tools and/or other technical materials, including data, modules, components, designs, utilities, subsets, objects, program listings, models, methodologies, programs, systems, analysis frameworks, leading practices and specifications which Motorola or ECW has developed or which Motorola or ECW licenses from third parties.

“Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola or ECW under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola, ECW or another party.

“Services” means the services provided under this Agreement which are further described in the applicable SOW.

“Software” means the ECW Software and Non-ECW Software, including all modifications, enhancements, new versions or new releases, in object code format that is furnished with the System or Equipment or provided to enable Services.

“Solution” means the combination of the System(s) and Services provided by Motorola under this Agreement.

“Specifications” means the functionality and performance requirements that are described in the Technical and Implementation Documents.

“Subsystem” means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.

“System” means the Equipment, including incidental hardware and materials, Software, and design, installation and implementation services that are combined together into an integrated system; the System is described in the Technical and Implementation Documents.

“System Acceptance” means the Acceptance Tests have been successfully completed.

“Warranty Period” for Equipment and ECW Software means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System, and perform its other contractual responsibilities to provide the Solution, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price, Performance Schedule, or both, and will reflect the adjustment in a change order. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.3. **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the expiration of the Warranty Period.

3.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For three (3) years after the expiration date of the Agreement, Customer may order additional Equipment or Software, if it is then available. Each purchase order must refer to this Agreement, the expiration date of the Agreement, and must specify the pricing and delivery terms. The Parties agree that, notwithstanding expiration of the Agreement, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Additional or contrary terms in the purchase order will be inapplicable, unless signed by both parties. Title and risk of loss to additional Equipment will pass at shipment, warranty will commence upon delivery, and payment is due within thirty (30) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through Motorola Online (“MOL”), and this Agreement will be the “Underlying Agreement” for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <https://businessonline.motorolasolutions.com> and the MOL telephone number is (800) 814-0601.

3.6. **ECW SOFTWARE.** Any ECW Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement in Exhibit A (“Software License Agreement”). Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. **NON-ECW SOFTWARE.** Any Non-ECW Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola or ECW the right to sublicense the Non-ECW Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor’s rights and protections under the Software License Agreement concerning the copyright owner’s Software. Motorola or ECW makes no representations or warranties of any kind regarding Non-ECW Software. Non-ECW Software may include Open Source Software.

3.8. **SUBSTITUTIONS.** At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any substitution will be reflected in a change order.



Section 4 SERVICES

4.1 **MAINTENANCE AND SUPPORT SERVICES.** During the Warranty Period, in addition to warranty services, Motorola will provide maintenance Services for the Equipment and support for the ECW Software pursuant to the Statement of Work set forth in Exhibit E, and these maintenance and support Services during the Warranty Period are included in the Contract Price. Maintenance and support services to be provided after the Warranty Period will be covered by the Maintenance and Support terms in Exhibit D, the applicable Statement of Work set forth in Exhibit E, and the pricing as set forth in the Proposal. .

4.2 **SUBSCRIPTION SERVICES.** If Motorola provides any of the Software on a "software as a service" subscription basis, different terms and conditions apply. Those terms and conditions will be provided.

4.3 **CUSTOMER OBLIGATIONS.** If the Statement of Work contains assumptions that affect the Services or Deliverables, Customer will verify that they are accurate and complete. Any information that Customer provides to Motorola concerning the Services or Deliverables will be accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for Motorola to perform the Services and its other duties under this Agreement. Unless the Statement of Work states the contrary, Motorola may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions and Customer-provided information, decisions and approvals described in this paragraph.

4.4 **PROPRIETARY MATERIALS.** Customer acknowledges that Motorola may use and/or provide Customer with access to Proprietary Materials and Derivative Proprietary Materials. The Proprietary Materials and the Derivative Proprietary Materials are the sole and exclusive property of Motorola who retains all right, title and interest in and to the Proprietary Materials and Derivative Proprietary Materials.

Section 5 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with the Performance Schedule. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance.

Section 6 CONTRACT PRICE, PAYMENT AND INVOICING

6.1. **CONTRACT PRICE.** The Contract Price in U.S. dollars is \$_____. If applicable, a pricing summary is included with the Payment Schedule.

6.2. **INVOICING AND PAYMENT.** Motorola will submit invoices to Customer according to the Payment Schedule. Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. For reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800.

6.3. **FREIGHT, TITLE, AND RISK OF LOSS.** Motorola will pre-pay and add all freight charges to the invoices. Title to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer. Motorola will pack and ship all Equipment in accordance with good commercial practices.

6.4. **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to the Customer at the following address:

The address which is the ultimate destination where the Equipment will be delivered to Customer is:

The Equipment will be shipped to the Customer at the following address (insert if this information is known):

Customer may change this information by giving written notice to Motorola.

Section 7 SITES AND SITE CONDITIONS

7.1. **ACCESS TO SITES.** In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the work sites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work.

7.2. **SITE CONDITIONS.** Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola may inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section.

7.3. **SITE ISSUES.** If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

Section 8 TRAINING

Any training to be provided by Motorola to Customer will be described in the Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required.

Section 9 SYSTEM ACCEPTANCE

9.1 **COMMENCEMENT OF ACCEPTANCE TESTING.** Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

9.2 **SYSTEM ACCEPTANCE.** System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System



Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

9.3 BENEFICIAL USE. Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System.

9.4 FINAL PROJECT ACCEPTANCE. Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

Section 10 REPRESENTATIONS AND WARRANTIES

10.1. SYSTEM FUNCTIONALITY. Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control; or Customer changes to load usage or configuration outside the Specifications.

10.2 EQUIPMENT WARRANTY. During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.

10.3 SOFTWARE WARRANTY. Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Software in accordance with the warranty terms set forth in the Software License Agreement and the provisions of this Section 10 that are applicable to the Software.

10.4. EXCLUSIONS TO EQUIPMENT AND SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) batteries (because they carry their own separate limited warranty) or consumables; (iii) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (iv) normal or customary wear and tear.

10.5 SERVICE WARRANTY. During the Warranty Period, Motorola warrants that the Services will be provided in a good and workman like manner and will conform in all material respects to the applicable Statement of Work. Services will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services is completed. Customer acknowledges that the Deliverables may contain recommendations, suggestions or advice from Motorola to Customer (collectively, "recommendations"). Motorola makes no warranties concerning those recommendations, and Customer alone accepts responsibility for choosing whether and how to implement the recommendations and the results to be realized from implementing them.

10.6 **WARRANTY CLAIMS.** To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid Equipment or Software warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or ECW Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or ECW Software. These actions will be the full extent of Motorola's liability for the warranty claim. In the event of a valid Services warranty claim, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

10.7 **ORIGINAL END USER IS COVERED.** These express limited warranties are extended to the original user purchasing the System or Services for commercial, industrial, or governmental use only, and are not assignable or transferable.

10.8 **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND ECW SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

Section 11 DELAYS

11.1 **FORCE MAJEURE.** Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

11.2 **PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER.** If Customer (including its other contractors) delays the Performance Schedule, the Parties will execute a change order to extend the Performance Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay.

Section 12 DISPUTES

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

12.1 **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State in which the System is installed.

12.2 **NEGOTIATION.** Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation.

12.3 **MEDIATION.** The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.



12.4. LITIGATION, VENUE AND JURISDICTION. If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the state in which the System is installed. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

12.5 CONFIDENTIALITY. All communications pursuant to subsections 12.2 and 12.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

Section 13 DEFAULT AND TERMINATION

13.1 DEFAULT BY A PARTY. If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan.

13.2. FAILURE TO CURE. If a defaulting Party fails to cure the default as provided above in Section 13.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges.

Section 14 INDEMNIFICATION

14.1 GENERAL INDEMNITY BY MOTOROLA. MOTOROLA will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Motorola, ECW, their subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement. Notwithstanding the above, Motorola shall be classified as a service provider as defined by the Next Generation 9-1-1 Advancement Act of 2012 ("NG911 Act") and therefore is entitled to the immunity protections granted under the NG911 Act.

14.2 GENERAL INDEMNITY BY CUSTOMER. Customer will indemnify and hold Motorola harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Motorola to the extent it is caused by the negligence of Customer, its other contractors, or their employees or agents, while performing their duties under this Agreement, if Motorola gives Customer prompt, written notice of any the claim or suit. Motorola will cooperate with Customer in its defense or settlement of the claim or suit. This section sets forth the full extent of Customer's general indemnification of Motorola from liabilities that are in any way related to Customer's performance under this Agreement.

14.3 PATENT AND COPYRIGHT INFRINGEMENT.

14.3.1 Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the ECW Software ("ECW Product") directly



infringes a United States patent or copyright ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

14.3.2 If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the ECW Product; (b) replace or modify the ECW Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the ECW Product and grant Customer a credit for the ECW Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

14.3.3 Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the ECW Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the ECW Product; (c) ECW Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the ECW Product by a party other than Motorola; (e) use of the ECW Product in a manner for which the ECW Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the ECW Software that is intended to correct the claimed infringement.

14.3.4 This Section 14 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 14 are subject to and limited by the restrictions set forth in Section 15.

Section 15 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, regardless of the cause of action or theory of liability, will be limited to the direct damages recoverable under law, but not to exceed the Contract Price. With respect to annual Services such as maintenance and subscription Services, Motorola's total liability will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Services preceding the incident giving rise to the claim. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, LOSS TIME, DATA, SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision.

Section 16 CONFIDENTIALITY AND PROPRIETARY RIGHTS

16.1 CONFIDENTIAL INFORMATION.

16.1.1 Each Party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this Agreement. All Deliverables will be deemed to be Motorola's Confidential Information. During the term of this Agreement and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those



employees (including, but not limited to, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must be directly involved with the Confidential Information for the purpose and who are bound by confidentiality terms substantially similar to those in this Agreement; (iii) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (v) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this agreement; and (vi) only use the Confidential Information as needed to fulfill this Agreement.

16.1.2 Recipient is not obligated to maintain as confidential, Confidential Information that Recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this agreement; (ii) is explicitly approved for release by written authorization of Discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the Recipient prior to such disclosure; or (v) is independently developed by Recipient without the use of any of Discloser's Confidential Information or any breach of this Agreement.

16.1.3 All Confidential Information remains the property of the Discloser and will not be copied or reproduced without the express written permission of the Discloser, except for copies that are absolutely necessary in order to fulfill this Agreement. Within ten (10) days of receipt of Discloser's written request, Recipient will return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The Discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

16.2 PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS. Motorola and ECW, the third party manufacturer of any Equipment, and the copyright owner of any Non-ECW Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

16.3 VOLUNTARY DISCLOSURE. Except as required to fulfill its obligations under this Agreement, Motorola will have no obligation to provide Customer with access to its Confidential Information or trade secrets.

Section 17 GENERAL

17.1 TAXES. The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. Motorola will be solely responsible for reporting taxes on its income or net worth.

17.2 ASSIGNABILITY AND SUBCONTRACTING. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates, as part of a major corporate restructuring (such as an acquisition or a merger), or its right to receive

payment without the prior consent of Customer. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.3 WAIVER. Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

17.4 SEVERABILITY. If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

17.5 INDEPENDENT CONTRACTORS. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

17.6 HEADINGS AND SECTION REFERENCES. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

17.7 NOTICES. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express or UPS), and will be effective upon receipt:

Motorola Solutions, Inc.

Attn: _____

Porterville Police Department

Attn: _____

17.8 COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment.

17.9 AUTHORITY TO EXECUTE AGREEMENT. Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

17.10 ADMINISTRATOR LEVEL ACCOUNT ACCESS. If applicable to the type of System purchased by Customer, Motorola will provide Customer with Administrative User Credentials. Customer agrees to only grant access to the Administrative User Credentials to those personnel with the training and experience to correctly use them. Customer is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity.

17.11 SURVIVAL OF TERMS. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.6 (ECW Software); Section 3.7 (Non-ECW Software); if any payment obligations exist, Sections 6.1 and 6.2 (Contract Price and Invoicing and Payment); Subsection 10.8 (Disclaimer of Implied Warranties); Section 12 (Disputes); Section 15 (Limitation of Liability); and Section 16 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 17.



17.12 ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase or purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola Solutions, Inc.

Porterville Police Department

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____



Exhibit A

SOFTWARE LICENSE AGREEMENT

This Exhibit A Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and Porterville Police Department ("Licensee").

For good and valuable consideration, the parties agree as follows:

Section 1 DEFINITIONS

- 1.1 "Designated Products" means products provided by MOTOROLA to Licensee with which or for which the Software and Documentation is licensed for use.
- 1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).
- 1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.
- 1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.
- 1.5 "Primary Agreement" means the agreement to which this exhibit is attached.
- 1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.
- 1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by MOTOROLA; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

Section 2 SCOPE

MOTOROLA and Licensee enter into this Agreement in connection with MOTOROLA's delivery of certain proprietary software or products containing embedded or pre-loaded proprietary software, or both. This Agreement contains the terms and conditions of the license MOTOROLA is providing to Licensee, and Licensee's use of the proprietary software and related documentation.

Section 3 GRANT OF LICENSE

- 3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, MOTOROLA grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under MOTOROLA's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.



3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, MOTOROLA will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; and (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found).

Section 4 LIMITATIONS ON USE

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of MOTOROLA's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by MOTOROLA in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to MOTOROLA of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to MOTOROLA at the time temporary transfer is discontinued.

4.4. Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. MOTOROLA or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. MOTOROLA is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by MOTOROLA and the Auditor will be kept in strict confidence by MOTOROLA and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

Section 5 OWNERSHIP AND TITLE

MOTOROLA, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights,



trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by MOTOROLA or another party, or any improvements that result from MOTOROLA's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by MOTOROLA in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in MOTOROLA, and Licensee will not have any shared development or other intellectual property rights.

Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1. Unless otherwise stated in the Primary Agreement, the commencement date and the term of the Software warranty will be a period of ninety (90) days from MOTOROLA's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, MOTOROLA warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by MOTOROLA solely with reference to the Documentation. MOTOROLA does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. MOTOROLA makes no representations or warranties with respect to any third party software included in the Software. Notwithstanding, any warranty provided by a copyright owner in its standard license terms will flow through to Licensee for third party software provided by MOTOROLA.

6.2. MOTOROLA's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If MOTOROLA cannot correct the defect within a reasonable time, then at MOTOROLA's option, MOTOROLA will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and MOTOROLA disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not MOTOROLA knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, MOTOROLA disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

Section 7 TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without MOTOROLA's prior written consent. MOTOROLA's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are MOTOROLA's radio products and Licensee transfers ownership of the MOTOROLA radio products to a third party, Licensee may assign its right to use the Software (other than CPS and MOTOROLA's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided that* Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by MOTOROLA upon request, obligating the transferee to be bound by this Agreement.



Section 8 TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by MOTOROLA, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by MOTOROLA.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to MOTOROLA that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to MOTOROLA or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that MOTOROLA made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to MOTOROLA for which monetary damages would be inadequate. If Licensee breaches this Agreement, MOTOROLA may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

Section 9 Commercial Computer Software

9.1 U.S. GOVERNMENT END USERS. The Software, Documentation and updates are commercial items as that term is defined at 48 C.F.R. Part 2.101, consisting of "commercial computer software" and "computer software documentation" as such terms are defined in 48 C.F.R. Part 252.227-7014(a)(1) and 48 C.F.R. Part 252.227-7014(a)(5), and used in 48 C.F.R. Part 12.212 and 48 C.F.R. Part 227.7202, as applicable. Consistent with 48 C.F.R. Part 12.212, 48 C.F.R. Part 252.227-7015, 48 C.F.R. Part 227.7202-1 through 227.7202-4, 48 C.F.R. Part 52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, the Software, Documentation and Updates are distributed and licensed to U.S. Government end users: (i) only as commercial items, and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions contained herein.

9.2 If Licensee is licensing Software for end use by the United States Government or a United States Government agency, Licensee may transfer such Software license, but only if: (i) Licensee transfers all copies of such Software and Documentation to such United States Government entity or interim transferee, and (ii) Licensee has first obtained from the transferee (if applicable) and ultimate end user an enforceable end user license agreement containing restrictions substantially identical to the ones contained in this Agreement. Except as stated in the foregoing, Licensee and any transferee(s) authorized by this subsection 9.2 may not otherwise use or transfer or make available any MOTOROLA software to any third party nor permit any party to do so.

Section 10 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain MOTOROLA's valuable proprietary and Confidential Information and are MOTOROLA's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

Section 11 LIMITATION OF LIABILITY

The Limitation of Liability provision is described in the Primary Agreement.

Section 12 NOTICES

Notices are described in the Primary Agreement.

Section 13 GENERAL

13.1. **COPYRIGHT NOTICES.** The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. **COMPLIANCE WITH LAWS.** Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of MOTOROLA and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3. **ASSIGNMENTS AND SUBCONTRACTING.** MOTOROLA may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.4. **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, or the internal substantive laws of the State of Illinois if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.5. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of MOTOROLA and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.6. **SURVIVAL.** Sections 4, 5, 6.3, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.7. **ORDER OF PRECEDENCE.** In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.8 **SECURITY.** MOTOROLA uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, MOTOROLA will take the steps set forth in Section 6 of this Agreement.



Exhibit B

Payment Schedule

Motorola will submit invoices to the Customer according to the Payment Schedule. Except for a payment that is due on the Effective Date, the Customer will make payments to Motorola within twenty (20) days after the date of each invoice. The Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution and in accordance with the following milestones.

1. 30% of the Contract Price upon contract execution.
2. 30% of the Contract Price upon shipment of equipment.
3. 30% of the Contract Price upon completion of installation.
4. 10% of the Contract Price upon acceptance.

Overdue invoices will bear simple interest at the rate of ten percent (10%) per annum, unless such rate exceeds the maximum allowed by law, in which case it will be reduced to the maximum allowable rate. Motorola reserves the right to make partial shipments of equipment and to request payment upon shipment of such equipment. In addition, Motorola reserves the right to invoice for installations or civil work completed on a site-by-site basis, when applicable.

EXHIBIT D

Additional Maintenance and Support Terms

1. **SERVICES.** These terms apply to Maintenance and Support Services to be provided by MOTOROLA as described in Exhibit E, other applicable statement of work, or attachment to MOTOROLA's proposal for additional services.
2. **PURCHASE ORDER ACCEPTANCE.** Purchase orders for additional, continued, or expanded maintenance and support services become binding only when accepted in writing by MOTOROLA.
3. **START DATE.** The "Start Date" for Maintenance, Support, and Installation Services will be indicated in the proposal or a cover page entitled "Service Agreement".
4. **AUTO RENEWAL.** Unless the cover page or SOW specifically states a termination date or one Party notifies the other in writing of its intention to discontinue the services, this Agreement will renew for an additional one (1) year term on every anniversary of the Start Date. At the anniversary date, MOTOROLA may adjust the price of the Services to reflect its current rates.
5. **TERMINATION.** Written notice of intent to terminate must be provided thirty (30) days or more prior to the anniversary date. If MOTOROLA provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at MOTOROLA's then effective hourly rates.
6. **EQUIPMENT DEFINITION.** For maintenance, support, and installation services, Equipment will be defined to mean the hardware specified in the applicable SOW or attachments to the maintenance and support proposal.
7. **ADDITIONAL HARDWARE.** If Customer purchases additional hardware from MOTOROLA that becomes part of the System, the additional hardware may be added to this Agreement and will be billed at the applicable rates after the warranty period for that additional equipment expires. Such hardware will be included in the definition of Equipment.
8. **MAINTENANCE.** Equipment will be maintained at levels set forth in the manufacturer's product manuals and routine procedures that are prescribed by MOTOROLA will be followed. MOTOROLA parts or parts of equal quality will be used for Equipment maintenance.
9. **EQUIPMENT CONDITION.** All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Customer must promptly notify MOTOROLA in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay maintenance and support fees for this Equipment will terminate at the end of the month in which MOTOROLA receives the written notice. If Equipment cannot, in MOTOROLA's reasonable opinion, be properly or economically maintained for



any reason, MOTOROLA may modify the scope of Services related to that Equipment or remove that Equipment from the Agreement.

10. **EQUIPMENT FAILURE.** Customer must promptly notify MOTOROLA of any Equipment failure. MOTOROLA will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement and applicable SOW.

11. **INTRINSICALLY SAFE.** Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

12. **EXCLUDED SERVICES.**

a) Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

b) Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. MOTOROLA has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

13. **TIME AND PLACE.** Service will be provided at the location specified in this Agreement or the SOW. When MOTOROLA performs maintenance, support, or installation at Customer's location, Customer will provide MOTOROLA, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from MOTOROLA or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that MOTOROLA may perform its Services. Unless otherwise stated in this Agreement or applicable SOW, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement or applicable SOW, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by MOTOROLA in rendering the Services, Customer agrees to reimburse MOTOROLA for those charges and expenses.

14. **CUSTOMER CONTACT.** Customer will provide MOTOROLA with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with MOTOROLA.



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Request for Direction Related to Assembly Bill 626 Regarding Microenterprise Home Kitchens Operations

SOURCE: Community Development

COMMENT: On September 18, 2018, Assembly Bill 626, California Retail Food Code: Microenterprise Home Kitchen Operations, was signed by Governor Brown. This bill established Microenterprise Home Kitchen Operation (“MEHKO”) as a new category of retail food facilities that cities or counties have the ability to opt-in and authorize a local MEHKO program. AB 626 allows retail food to be operated in a private residence, as well as the serving of meals at the private residence. MEHKOs cannot operate or be permitted until authorization is approved. Staff received a request from the Tulare County Health and Human Services Agency (“HHSA”) to identify cities interested in allowing MEHKOs in their jurisdiction.

The City of Porterville currently allows cottage food industries in the Porterville Development Ordinance under Section 301.09 Home Occupations, which allows persons using home kitchens to make and sell non-potentially hazardous foods, specifically non-perishable food items.

MEHKO would allow food to be stored, handled, prepared, and served at a private residence. No more than thirty (30) individual meals per day and no more than sixty (60) individual meals per week are allowed. In addition, the operation is limited to no more than \$50,000 in gross annual sales. Food may be served outdoors, in habitable accessory structures, and may be sold and delivered through an internet website. They are also subject to the following criteria:

- The operation has no more than one (1) full-time equivalent employee (not including a family member or household member);
- Food is prepared, cooked, and served on the same day;
- Food is consumed on-site at the MEHKO or off-site if the food is picked up by the consumer or delivered within a safe time period based on holding equipment capacity;
- Food preparation does not involve processes that require a Hazardous Analysis Critical Control Point Plan or the production, service, or sale of raw milk products;
- The service and sale of raw oysters is prohibited;
- The operation only sells food directly to consumers and not to any wholesaler or retailer;
- Abstain from posting signage or other outdoor displays advertising the

MEHKO operation; and

-Be in compliance with applicable noise Ordinances.

HHSA would be responsible for the application procedures, permitting, and inspections of MEHKOs, and the HHSA would also be the enforcement agency to ensure compliance with the California Retail Food Code, which establishes health and sanitation standards for retail food facilities. Complaints on nuisances such as noise, odors, and parking would be directed to the local code enforcement department.

RECOMMENDATION: That the City Council consider the options within Assembly Bill 626 as provided, and if action is deemed appropriate, direct staff to work with Tulare County Health and Human Services and amend the Development Ordinance accordingly.

ATTACHMENTS: 1. Assembly Bill 626

Appropriated/Funded:

Review By:

Department Director:

Jenni

Final Approver: John Lollis, City Manager

Assembly Bill No. 626

CHAPTER 470

An act to amend Sections 110460, 111955, 113789, and 114390 of, to add Section 113825 to, and to add Chapter 11.6 (commencing with Section 114367) to Part 7 of Division 104 of, the Health and Safety Code, relating to the California Retail Food Code.

[Approved by Governor September 18, 2018. Filed with
Secretary of State September 18, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 626, Eduardo Garcia. California Retail Food Code: microenterprise home kitchen operations.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities for regulation by the State Department of Public Health, and requires local enforcement agencies to enforce these provisions. Existing law defines "food facility" as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, as specified. Existing law exempts, among others, a private home, including a registered or permitted cottage food operation, from the definition of food facility. A violation of the California Retail Food Code is generally a misdemeanor.

This bill would, among other things, include a microenterprise home kitchen operation within the definition of a food facility, and would define a microenterprise home kitchen operation to mean a food facility that is operated by a resident in a private home where food is stored, handled, and prepared for, and may be served to, consumers, and that meets specified requirements, including, among others, that the operation has no more than one full-time equivalent food employee and has no more than \$50,000 in verifiable gross annual sales. The bill would specify that the governing body of a city or county, or city and county, shall have full discretion to authorize, by ordinance or resolution, the permitting of microenterprise home kitchen operations in accordance with the provisions of this bill, except as provided. The bill would require a microenterprise home kitchen operation to be considered a restricted food service facility for purposes of certain provisions of the code, except as otherwise provided, and would exempt a microenterprise home kitchen operation from various provisions applicable to food facilities, including, among others, provisions relating to handwashing, sinks, ventilation, and animals. The bill would require the applicant for a permit to operate a microenterprise home kitchen operation to submit to the local enforcement agency written standard operating procedures that include specified information, including all food types or

products that will be handled and the days and times that the home kitchen will potentially be utilized as a microenterprise home kitchen operation.

The bill would require an Internet food service intermediary, as defined, that lists or promotes a microenterprise home kitchen operation on its Internet Web site or mobile application to, among other things, be registered with the department, to clearly and conspicuously post on its Internet Web site or mobile application the requirements for the permitting of a microenterprise home kitchen operation, as specified, prior to the publication of the microenterprise home kitchen operation's offer of food for sale, and to submit the name and permit number of a microenterprise home kitchen operation to the local enforcement agency if it receives, through its Internet Web site or mobile application, 3 or more unrelated individual food safety or hygiene complaints in a calendar year from consumers who have made a purchase through its Internet Web site or mobile application. The bill would also make related findings and declarations.

By expanding the scope of a crime, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 113789 of the Health and Safety Code proposed by AB 2178 and AB 2524 to be operative only if this bill and AB 2178, this bill and AB 2524, or all 3 bills are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) California is the largest agricultural producer and exporter in the United States.

(2) California is home to the "farm-to-table" movement, which embraces the idea that restaurants and other food sellers should prioritize locally and sustainably produced foods.

(3) Many cities have embraced the idea of locally grown, produced, and prepared foods. Sacramento, for example, proclaimed itself the farm-to-fork capital of America.

(4) Accordingly, Californians have shown a preference for supporting local agriculture and local business and for finding sustainable solutions to food insecurity.

(5) The retail and commercial food market is an integral part of California's economy.

(6) Small-scale, home-cooking operations can create significant economic opportunities for Californians that need them most — often women, immigrants, and people of color.

(7) Under existing law, individuals can sell food through retail food facilities or cottage food operations, the latter of which being limited to a restricted list that primarily consists of nonperishable food items that can be prepared in the home. Both of these options make it difficult for the vast majority of home cooks to independently benefit from their labor, skills, and limited resources.

(8) Because the bar for entry to restaurant ownership is high, and the cost of renting a retail kitchen is so great, an informal economy of locally produced and prepared hot foods exists in the form of meal preparation services, food carts, and communally shared meals.

(9) However, due to a lack of appropriate regulations, many experienced cooks in California are unable to legally participate in the locally prepared food economy and to earn an income legally therein.

(10) As a result, and because they feel they have no other option, thousands of private chefs, home caterers, and many other food microentrepreneurs cook out of private homes or unlicensed food facilities, with little access to education for best practices or safety guidelines.

(11) Many of these cooks are unable to enter the traditional food economy based on disability, family responsibilities, or lack of opportunity.

(12) Under existing law, preparing and selling food from a home kitchen normally can be treated as a criminal act and may be punishable as a misdemeanor.

(13) Providing guidelines, training, and safety resources to home cooks would also increase public health safeguards in existing informal food economies.

(14) The exchange of home-cooked food can also improve access to healthy foods for communities, particularly in food deserts with severely limited options.

(15) The California Retail Food Code establishes health and sanitation standards for retail food facilities. That law exempts private homes from the definition of a food facility and includes cottage food operations in that exemption.

(16) Therefore, the Legislature should create a framework that authorizes the safe preparation and sale of meals prepared in home kitchens, providing adequate regulations and requirements for food handling and safety.

(b) It is the intent of the Legislature that this act authorize the use of home kitchens for small-scale, direct food sales by home cooks to consumers, providing appropriate flexibility in food types and appropriate health and sanitation standards.

SEC. 2. Section 110460 of the Health and Safety Code is amended to read:

110460. No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, except those engaged exclusively in the storing, handling, or processing of dried beans. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable. This section shall not apply to a cottage food

operation that is registered or has a permit pursuant to Section 114365 or a microenterprise home kitchen, as defined in Section 113825.

SEC. 3. Section 111955 of the Health and Safety Code is amended to read:

111955. “Food processing establishment,” as used in this chapter, shall mean any room, building, or place or portion thereof, maintained, used, or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering, or otherwise preparing or handling food except restaurants. “Food processing establishment” shall not include a cottage food operation that is registered or has a permit pursuant to Section 114365 or a microenterprise home kitchen, as defined in Section 113825.

SEC. 4. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) A place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities, except as provided in paragraph (12) of subdivision (c).

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(11) Fishermen’s markets.

(12) Microenterprise home kitchen operations.

(c) “Food facility” does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home when used for private, noncommercial purposes or when used as a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code, or premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, and in the regulations adopted pursuant to those sections, that comply with Section 118375, regardless of whether there is a charge for the wine or beer tasting, if no other beverage, except for bottles of wine or beer and prepackaged nonpotentially hazardous beverages, is offered for sale or for onsite consumption and no food, except for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for sale or for onsite consumption.

(6) An outlet or location, including, but not limited to, premises, operated by a producer, selling or offering for sale only whole produce grown by the producer or shell eggs, or both, provided the sales are conducted at an outlet or location controlled by the producer.

(7) A commercial food processing establishment, as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(13) A community food producer, as defined in Section 113752.

SEC. 4.1. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) A place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

- (1) Public and private school cafeterias.
- (2) Restricted food service facilities.
- (3) Licensed health care facilities, except as provided in paragraph (12) of subdivision (c).
- (4) Commissaries.
- (5) Mobile food facilities.
- (6) Mobile support units.
- (7) Temporary food facilities.
- (8) Vending machines.
- (9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.
- (10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(11) Fishermen's markets.

(12) Microenterprise home kitchen operations.

(c) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home when used for private, noncommercial purposes or when used as a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code, or premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, and in the regulations adopted pursuant to those sections, that comply with Section 118375, regardless of whether there is a charge for the wine or beer tasting, if no other beverage, except for bottles of wine or beer and prepackaged nonpotentially hazardous beverages, is offered for sale or for onsite consumption and no food, except for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for sale or for onsite consumption.

(6) An outlet or location, including, but not limited to, premises, operated by a producer, selling or offering for sale only whole produce grown by the producer or shell eggs, or both, provided the sales are conducted at an outlet or location controlled by the producer.

(7) A commercial food processing establishment, as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.
(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(13) A community food producer, as defined in Section 113752.

(14) A limited service charitable feeding operation, as defined in Section 113819.

SEC. 4.2. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) A place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities, except as provided in paragraph (12) of subdivision (c).

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(11) Fishermen’s markets.

(12) Microenterprise home kitchen operations.

(13) Catering operation.

(14) Host facility.

(c) “Food facility” does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home when used for private, noncommercial purposes or when used as a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code, or premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, and in the regulations adopted pursuant to those sections, that comply with Section 118375, regardless of whether there is a charge for the wine or beer tasting, if no other beverage, except for bottles of wine or beer and prepackaged nonpotentially hazardous beverages, is offered for sale or for onsite consumption and no food, except for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for sale or for onsite consumption.

(6) An outlet or location, including, but not limited to, premises, operated by a producer, selling or offering for sale only whole produce grown by the producer or shell eggs, or both, provided the sales are conducted at an outlet or location controlled by the producer.

(7) A commercial food processing establishment, as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(13) A community food producer, as defined in Section 113752.

SEC. 4.3. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) A place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

- (1) Public and private school cafeterias.
- (2) Restricted food service facilities.
- (3) Licensed health care facilities, except as provided in paragraph (12) of subdivision (c).
- (4) Commissaries.
- (5) Mobile food facilities.
- (6) Mobile support units.
- (7) Temporary food facilities.
- (8) Vending machines.
- (9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

- (11) Fishermen’s markets.
- (12) Microenterprise home kitchen operations.
- (13) Catering operation.
- (14) Host facility.

(c) “Food facility” does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home when used for private, noncommercial purposes or when used as a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code, or premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, and in the regulations adopted pursuant to those sections, that comply with Section 118375, regardless of whether there is a charge for the wine or beer tasting, if no other beverage, except for bottles of wine or beer and prepackaged nonpotentially hazardous beverages, is offered for sale or for onsite consumption and no food, except for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for sale or for onsite consumption.

(6) An outlet or location, including, but not limited to, premises, operated by a producer, selling or offering for sale only whole produce grown by the

producer or shell eggs, or both, provided the sales are conducted at an outlet or location controlled by the producer.

(7) A commercial food processing establishment, as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(13) A community food producer, as defined in Section 113752.

(14) A limited service charitable feeding operation, as defined in Section 113819.

SEC. 5. Section 113825 is added to the Health and Safety Code, to read:

113825. (a) "Microenterprise home kitchen operation" means a food facility that is operated by a resident in a private home where food is stored, handled, and prepared for, and may be served to, consumers, and that meets all of the following requirements:

(1) The operation has no more than one full-time equivalent food employee, not including a family member or household member.

(2) Food is prepared, cooked, and served on the same day.

(3) Food is consumed onsite at the microenterprise home kitchen operation or offsite if the food is picked up by the consumer or delivered within a safe time period based on holding equipment capacity.

(4) Food preparation does not involve processes that require a HACCP plan, as specified in Section 114419, or the production, service, or sale of raw milk or raw milk products, as defined in Section 11380 of Title 17 of the California Code of Regulations.

(5) The service and sale of raw oysters is prohibited.

(6) Food preparation is limited to no more than 30 individual meals per day, or the approximate equivalent of meal components when sold separately, and no more than 60 individual meals, or the approximate equivalent of meal components when sold separately, per week. The local enforcement agency may decrease the limit of the number of individual meals prepared based on food preparation capacity of the operation, but shall not, in any case, increase the limit of the number of individual meals prepared.

(7) The operation has no more than fifty thousand dollars (\$50,000) in verifiable gross annual sales, as adjusted annually for inflation based on the California Consumer Price Index.

(8) The operation only sells food directly to consumers and not to any wholesaler or retailer. For purposes of this paragraph, the sale of food

prepared in a microenterprise home kitchen operation through the Internet Web site or mobile application of an Internet food service intermediary, as defined in Section 114367.6, is a direct sale to consumers. An operation that sells food through the Internet Web site or mobile application of an Internet food service intermediary shall consent to the disclosures specified in paragraphs (6) and (7) of subdivision (a) of Section 114367.6.

(b) "Microenterprise home kitchen operation" does not include either of the following:

- (1) A catering operation.
- (2) A cottage food operation, as defined in Section 113758.

(c) For purposes of this section, "resident of a private home" means an individual who resides in the private home when not elsewhere for labor or other special or temporary purpose.

SEC. 6. Chapter 11.6 (commencing with Section 114367) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 11.6. MICROENTERPRISE HOME KITCHEN OPERATION

114367. (a) Except as provided in subdivision (b), the governing body of a city or county, or city and county, shall have full discretion to authorize, by ordinance or resolution, the permitting of microenterprise home kitchen operations in accordance with this chapter.

(b) A permit issued by a county that has authorized the permitting of microenterprise home kitchen operations in accordance with this chapter shall be valid in any city within the county regardless of whether the city has separately enacted an ordinance or resolution to authorize or prohibit the permitting of microenterprise home kitchen operations within that city.

114367.1. (a) A microenterprise home kitchen operation, as defined in Section 113825, shall be considered a restricted food service facility for purposes of, and subject to all applicable requirements of, Chapter 1 (commencing with Section 113700) to Chapter 9 (commencing with Section 114265), inclusive, Chapter 12.6 (commencing with Section 114377), and Chapter 13 (commencing with Section 114380), except as otherwise provided in this chapter.

(b) A microenterprise home kitchen operation shall be exempt from all of the following provisions:

(1) Handwashing facilities requirements, as required in Section 113953, provided that a handwashing sink is supplied with warm water and located in the toilet room and supplied, as specified in Section 113953.2.

(2) Any provision in this part relating to sinks, warewashing machines, and manual or machine sanitation, including but not limited to, Sections 114099, 114099.2, 114099.4, 114099.6, 114099.7, 114101.1, 114101.2, 114103, 114107, 114123, 114125, 114163, and 114279, provided that the sink in a microenterprise home kitchen operation has hot and cold water and is fully operable.

(3) Prohibition on the presence of persons unnecessary to the food facility operation in the food preparation, food storage, or warewashing areas, as specified in Section 113945.1.

(4) No smoking sign posting requirements, as specified in Section 113978.

(5) Limitations on employee consumption of food, drink, or tobacco outside of designated areas, as specified in Sections 113977 and 114256.

(6) Limitations on consumer access to the food facility through food preparation areas, as specified in Section 113984.1.

(7) Display guard, cover, and container requirements, as specified in Section 114060, provided that any food on display that is not protected from the direct line of a consumer's mouth by an effective means is not served or sold to any subsequent consumer.

(8) Limitations on outdoor display and sale of foods, as specified in Section 114069.

(9) Requirements to provide clean drinking cups and tableware for second portions and beverage refills, as specified in Section 114075.

(10) Requirements pertaining to the characteristics and certification of utensils and equipment, as specified in Sections 114130, 114130.1, and 114139, provided that utensils and equipment are designed to retain their characteristic qualities under normal use conditions.

(11) Requirements pertaining to the characteristics, construction, and multiuse of food-contact and nonfood-contact surfaces, as specified in Sections 114130.1, 114130.3, and 114130.4, provided that food contact surfaces are smooth, easily cleanable, and in good repair.

(12) Requirements pertaining to the characteristics, construction, and disassembly of clean in place (CIP) equipment, as specified in Section 114130.5.

(13) Limitations on the use of wood as a food contact surface and in connection with other equipment, as specified in Section 114132.

(14) Any provision in this part relating to ventilation, including, but not limited to, Article 2 (commencing with Section 114149) of Chapter 6, provided that gases, odors, steam, heat, grease, vapors, and smoke are able to escape from the kitchen.

(15) Requirements that cold or hot holding equipment used for potentially hazardous food be equipped with integral or permanently affixed temperature measuring device or product mimicking sensors, as specified in subdivision (c) of Section 114157.

(16) Requirements pertaining to the installation of fixed, floor-mounted, and table-mounted equipment, as specified in Section 114169.

(17) Dedicated laundry facility requirements, as specified in Section 114185.5, provided that linens used in connection with the microenterprise home kitchen operation shall be laundered separately from the household and other laundry.

(18) Requirements pertaining to water, plumbing, drainage, and waste, as specified in Sections 114193, 114193.1, and 114245.7.

(19) Any requirement that a microenterprise home kitchen operation have more than one toilet facility or that access to the toilet facility not

require passage through the food preparation, food storage, or utensil washing areas, including, but not limited to, the requirements specified in Sections 114250 and 114276.

(20) Light intensity, light source, and lightbulb requirements, as specified in Sections 114252 and 114252.1, provided that food preparation areas are well lighted by natural or artificial light whenever food is being prepared.

(21) Requirements to provide and use lockers, storage facilities, and designated dressing areas, and that food facility premises be free of litter and items that are unnecessary to the operation, as specified in Sections 114256.1 and 114257.1, provided that personal effects and clothing not ordinarily found in a home kitchen are placed or stored away from food preparation areas and dressing takes place outside of the kitchen.

(22) Limitations on the presence and handling of animals, such as domestic, service, or patrol animals, as specified in Sections 114259.4 and 114259.5, provided that all animals, other than service animals, are kept outside of the kitchen and dining areas during food service and preparation.

(23) Requirements pertaining to floor, wall, and ceiling surfaces, as specified in Sections 114268, 114269, and 114271, provided that the floor, wall, and ceiling surfaces of the kitchen, storage, and toilet areas are smooth, of durable construction, and easily cleanable with no limitations on the use of wood, tile, and other nonfiber floor surfaces ordinarily used in residential settings.

(24) Any local evaluation or grading system for food facilities, as authorized by Section 113709.

(25) All prohibitions and limitations on the use of a kitchen in a private home as a food facility, including, but not limited to, prohibitions and limitations specified in Section 114285, provided that food is not prepared in designated sleeping quarters. Open kitchens adjacent to living and sleeping areas, kitchens in efficiency, studio, and loft-style residences, and kitchens without doors at all points of ingress and egress may be used in microenterprise home kitchen operations.

(26) Planning and permitting provisions of Sections 114380, 114381, and 114381.2.

(c) A microenterprise home kitchen operation may operate an open-air barbecue or outdoor wood-burning oven, pursuant to the requirements of Section 114143.

(d) The operator of a microenterprise home kitchen operation shall successfully pass an approved and accredited food safety certification examination, as specified in Section 113947.1.

(e) Any individual, other than the operator, who is involved in the preparation, storage, or service of food in a microenterprise home kitchen operation shall be subject to the food handler card requirements specified in Section 113948.

114367.2. (a) A microenterprise home kitchen operation shall not be open for business unless it has obtained a permit issued from the local enforcement agency.

(b) The department shall post on its Internet Web site the requirements for the permitting of a microenterprise home kitchen operation, pursuant to this chapter and any ordinance, resolution, or rules adopted by any city or county, or city and county, that has authorized the permitting of microenterprise home kitchen operations, which shall be written at a high school level.

(c) The applicant shall submit to the local enforcement agency written standard operating procedures that include all of the following information:

- (1) All food types or products that will be handled.
- (2) The proposed procedures and methods of food preparation and handling.
- (3) Procedures, methods, and schedules for cleaning utensils, equipment, and for the disposal of refuse.
- (4) How food will be maintained at the required holding temperatures, as specified in Section 113996, pending pickup by consumer or during delivery.

(5) Days and times that the home kitchen will potentially be utilized as a microenterprise home kitchen operation.

(d) (1) The local enforcement agency shall issue a permit after an initial inspection has determined that the proposed microenterprise home kitchen operation and its method of operation comply with the requirements of this chapter.

(2) A local enforcement agency shall not require a microenterprise home kitchen operation to comply with food safety requirements that are different from, or in addition to, the requirements of this chapter.

(e) For purposes of permitting, the permitted area includes the home kitchen, onsite consumer eating area, food storage, utensils and equipment, toilet room, janitorial or cleaning facilities, and refuse storage area. Food operations shall not be conducted outside of the permitted areas.

(f) A local enforcement agency may require a microenterprise home kitchen operation to renew its permit annually.

(g) A permit, once issued, is nontransferable. A permit shall be valid only for the person and location specified by that permit, and, unless suspended or revoked for cause, for the time period indicated.

(h) The permit, or an accurate copy thereof, shall be retained by the operator onsite and displayed at all times the microenterprise home kitchen operation is in operation.

(i) A local enforcement agency may collect a fee for the issuance of a permit pursuant to this chapter in an amount that does not exceed the reasonable administrative costs by the local enforcement agency in issuing the permit.

(j) Notwithstanding any other law, if there are multiple local agencies involved in the issuance of any type of permit, license, or other authorization to a microenterprise home kitchen operation, the governing body of the city or county, or city and county, shall designate one lead local agency that shall be vested with the sole authority to accept all applications for, to collect all fees for, and to issue, any permit, license, or other authorization required

for a microenterprise home kitchen operation to operate in the city or county, or city and county. A local agency other than the lead local agency shall not accept any applications for, collect any fees for, nor issue, any permits for the same purpose.

114367.3. (a) Notwithstanding any other law, after the initial inspection for purposes of determining compliance with this chapter, a microenterprise home kitchen operation shall not be subject to routine inspections, except that a representative of a local enforcement agency may access, for inspection purposes, the permitted area of a microenterprise home kitchen operation after the occurrence of either of the following:

(1) The representative has provided the microenterprise home kitchen operation with reasonable advance notice.

(2) The representative has a valid reason, such as a consumer complaint, to suspect that adulterated or otherwise unsafe food has been produced or served by the microenterprise home kitchen operation, or that the microenterprise home kitchen operation has otherwise been in violation of this part.

(b) Notwithstanding any other law, a microenterprise home kitchen operation shall not be subject to more than one inspection each year by the local enforcement agency, except in cases in which the local enforcement agency has valid reason, such as a consumer complaint, to suspect that adulterated or otherwise unsafe food has been produced or served by the microenterprise home kitchen operation, or that the microenterprise home kitchen operation has otherwise been in violation of this part.

(c) The local enforcement agency shall document the reason for the inspection, keep that documentation on file with the microenterprise home kitchen operation's permit, and provide the reason in writing to the operator of the microenterprise home kitchen operation.

(d) Access provided under this section is limited to the permitted area of the microenterprise home kitchen operation, during the posted operating hours of the microenterprise home kitchen operation, and solely for the purpose of enforcing or administering this part.

(e) A local enforcement agency may seek recovery from a microenterprise home kitchen operation of an amount that does not exceed the local enforcement agency's reasonable costs of inspecting the microenterprise home kitchen operation for compliance with this part if the microenterprise home kitchen operation is found to be in violation of this part.

114367.4. (a) (1) A city, county, or city and county shall not prohibit the operation of, require a permit to operate, require a rezone of the property for, or levy any fees on, or impose any other restriction on, a microenterprise home kitchen operation in any residential dwelling for zoning purposes. A microenterprise home kitchen operation shall be a permitted use of residential property in any residential dwelling for zoning purposes if the microenterprise home kitchen operation complies with both of the following criteria:

(A) Abstain from posting signage or other outdoor displays advertising the microenterprise home kitchen operation.

(B) Be in compliance with applicable local noise ordinances.

(2) This subdivision does not supersede or otherwise limit the investigative and enforcement authority of the city, county, or city and county with respect to violations of its nuisance ordinances.

(b) The use of a residence for the purposes of a microenterprise home kitchen operation shall not constitute a change of occupancy for purposes of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or for purposes of local building and fire codes.

(c) A microenterprise home kitchen operation shall be considered a residence for the purposes of the State Uniform Building Standards Code and local building and fire codes.

114367.5. (a) A person delivering food on behalf of a microenterprise home kitchen operation with a permit issued pursuant to Section 114367.2 shall be an employee of the operation or a family member or household member of the permitholder, and, if the person drives a motor vehicle in the delivery of the food, the person shall have a valid driver's license.

(b) The microenterprise home kitchen operation shall keep on file a copy of the valid driver's license of a person delivering food on behalf of the operation.

114367.6. (a) An Internet food service intermediary that lists or promotes a microenterprise home kitchen operation on its Internet Web site or mobile application shall meet all of the following requirements:

(1) Be registered with the department.

(2) Prior to the listing or publication of a microenterprise home kitchen operation's offer of food for sale, clearly and conspicuously post on its Internet Web site or mobile application the requirements for the permitting of a microenterprise home kitchen specified in this chapter, which shall be written at the high school level and be provided by the department.

(3) Clearly and conspicuously post on its Internet Web site or mobile application the fees associated with using its platform in a manner that allows both the consumer and the microenterprise home kitchen operation to see and understand the amount being charged for the services provided by the Internet food service intermediary. The Internet food service intermediary shall notify microenterprise home kitchen operations of any changes to these fees exceeding a 2-percent increase in writing and no later than one month before the changes take effect.

(4) Clearly and conspicuously post on its Internet Web site or mobile application whether or not it has liability insurance that would cover any incidence arising from the sale or consumption of food listed or promoted on its Internet Web site or mobile application.

(5) Provide a dedicated field on its platform for a microenterprise home kitchen operation to post the permit number, and shall provide notice to the microenterprise home kitchen operation of the requirement that the permit number be updated annually.

(6) Clearly and conspicuously post on its Internet Web site or mobile application how a consumer can contact the Internet food service

intermediary through its Internet Web site or mobile application if the consumer has a food safety or hygiene complaint and a link to the department's Internet Web site that contains information for how to file a complaint with the local enforcement agency.

(7) Submit the name and permit number of a microenterprise home kitchen operation to the local enforcement agency if it receives, through its Internet Web site or mobile application, three or more unrelated individual food safety or hygiene complaints in a calendar year from consumers that have made a purchase through its Internet Web site or mobile application. The Internet food service intermediary shall submit this information to the local enforcement agency within two weeks of the third complaint received.

(8) If it is notified by the local enforcement agency of significant food safety related complaints from a verified consumer that has made a purchase through its Internet Web site or mobile application, submit to the local enforcement agency the name and permit number of microenterprise home kitchen operation where the food was purchased, and a list of consumers who purchased food on the same day from that microenterprise home kitchen operation through its Internet Web site or mobile application.

(9) Prior to the listing or publication of a microenterprise home kitchen operation's offer of food for sale, obtain consent from the microenterprise home kitchen operation to make the disclosures to government entities required pursuant to this section.

(b) For purposes of this chapter, an "Internet food service intermediary" means an entity that provides a platform on its Internet Web site or mobile application through which a microenterprise home kitchen operation may choose to offer food for sale and from which the Internet food service intermediary derives revenues, including, but not limited to, revenues from advertising and fees for services offered to a microenterprise home kitchen operation. Services offered by an Internet food service intermediary to a microenterprise home kitchen operation may include, but are not limited to, allowing a microenterprise home kitchen operation to advertise its food for sale and providing a means for potential consumers to arrange payment for the food, whether the consumer pays directly to the microenterprise home kitchen operation or to the Internet food service intermediary. Merely publishing an advertisement for the microenterprise home kitchen operation or food cooked therein does not make the publisher an Internet food service intermediary.

SEC. 7. Section 114390 of the Health and Safety Code is amended to read:

114390. (a) Enforcement officers shall enforce this part and all regulations adopted pursuant to this part.

(b) (1) For purposes of enforcement, any authorized enforcement officer may, during the facility's hours of operation and other reasonable times, enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from a food facility, cottage food operation, or any facility suspected of being a food facility or cottage food operation, or a vehicle transporting food to or from a retail food facility, when the vehicle is

stationary at an agricultural inspection station, a border crossing, or at any food facility under the jurisdiction of the enforcement agency, or upon the request of an incident commander.

(2) If a food facility is operating under an HACCP plan, the enforcement officer may, for the purpose of determining compliance with the plan, secure as evidence any documents, or copies of documents, relating to the facility's adherence to the HACCP plan. Inspection may, for the purpose of determining compliance with this part, include any record, file, paper, process, HACCP plan, invoice, or receipt bearing on whether food, equipment, or utensils are in violation of this part.

(3) The enforcement officer may, for the purpose of determining compliance with the gross annual sales requirements for operating a microenterprise home kitchen operation or a cottage food operation, require those operations to provide copies of documents related to determining gross annual sales.

(c) Notwithstanding subdivision (a), an employee may refuse entry to an enforcement officer who is unable to present official identification showing the enforcement officer's picture and enforcement agency name. In the absence of the identification card, a business card showing the enforcement agency's name plus a picture identification card such as a driver's license shall meet this requirement.

(d) It is a violation of this part for any person to refuse to permit entry or inspection, the taking of samples or other evidence, access to copy any record as authorized by this part, to conceal any samples or evidence, withhold evidence concerning them, or interfere with the performance of the duties of an enforcement officer, including making verbal or physical threats or sexual or discriminatory harassment.

(e) A written report of the inspection shall be made, and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 8. (a) Section 4.1 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 2178. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 113789 of the Health and Safety Code, (3) Assembly Bill 2524 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 2178, in which case Sections 4, 4.2, and 4.3 of this bill shall not become operative.

(b) Section 4.2 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 2524. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 113789 of the Health and Safety Code, (3) Assembly Bill 2178 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 2524, in which case Sections 4, 4.1, and 4.3 of this bill shall not become operative.

(c) Section 4.3 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by this bill, Assembly Bill 2178,

and Assembly Bill 2524. That section of this bill shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2019, (2) all three bills amend Section 113789 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 2178 and Assembly Bill 2524, in which case Sections 4, 4.1, and 4.2 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Consideration of Tulare County Local Agency Formation Commission (LAFCO) City Representatives

SOURCE: City Manager's Office

COMMENT: The Tulare County Local Agency Formation Commission (LAFCO) is the local agency responsible for coordinating logical and timely changes in local governmental boundaries, conducting special studies which review ways to reorganize, simplify, and streamline governmental structure, and preparing Spheres of Influence for each city and special district with the county. LAFCO is comprised of five (5) Members, including two (2) members of the Tulare County Board of Supervisors, two (2) local City Councils Members, and one (1) Public Member. In addition, there is one (1) designated Alternate for the Board of Supervisors, the City Council members, and the Public Member. Though not required, the two (2) local City Council Members have historically included a representative from a large city (Dinuba, Porterville, Tulare, and Visalia) and a small city (Exeter, Farmersville, Lindsay, and Woodlake). The selection of the City Representatives are determined by the City Selection Committee, which is comprised of the Mayor's (or designees) of the county's cities.

The large city representative position is vacant with the term of the appointment to expire May 1, 2020, and the current small city representative (Mayor Rudy Mendoza, Woodlake) term will expire May 1, 2019, when the new four (4) year term will begin. Porterville Mayor Martha A. Flores, Tulare Council Member Carlton Jones (current Alternate City Representative), and Visalia Council Member Phil Cox have been nominated as the large City Representative. Lindsay Mayor Pam Kimball and Woodlake Mayor Rudy Mendoza have been nominated as the small City Representative.

RECOMMENDATION: That the City Council consider the nominees for both large and small City Representative, and provide direction to the Mayor when voting as a Member of the City Selection Committee.

ATTACHMENTS:

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager



CITY COUNCIL AGENDA – MARCH 5, 2019

SUBJECT: Cannabis Ad Hoc Committee Report

SOURCE: City Manager's Office

COMMENT: At its meeting on October 16, 2018, the City Council considered recommendations from the Cannabis Ad Hoc Committee (comprised then of Council Members Hamilton and Reyes), which included several types of license activities. After considering the Ad Hoc Committee's recommendations, the Council took no action toward amending the City's current Ordinance that prohibits commercial cannabis activity, indicating that the Ad Hoc Committee could continue to evaluate allowing a medical-only dispensary.

The November 2018 election saw Council Member Peñaloza elected, who was subsequently appointed by the Council to the Ad Hoc Committee to replace former Council Member Hamilton.

The Ad Hoc Committee met on January 9, 2019, during which the Committee members reviewed the prior recommendations of the Committee, as well as the subsequent direction of the Council. The Committee discussed several recent legal developments in regards to cannabis, including the voters of the City of Lindsay joining the Cities of Farmersville and Woodlake in allowing commercial cannabis activity, as well as the State permitting the mobile delivery of adult-use cannabis into jurisdictions with prohibitions. Given the presence of existing adult-use dispensaries in both Goshen and Woodlake, the Committee determined that it would next coordinate a visit to the Woodlake dispensary, including meeting with the dispensary operators and local city officials in regards to the development, permitting, and operation of the dispensary.

On February 14, 2019, the Committee toured the Valley Pure cannabis dispensary in Woodlake and met with its operation managers, which was followed by a meeting with the Woodlake City Manager and Community Services Director, and finally a tour of the 75,000-square foot Valley Pure indoor cultivation, manufacturing, and distribution facility that is currently under construction and expected to open this summer. The Committee was able to gain much information and insight from the tour, especially in the diligence of both local and state requirements in the development and operation of the cannabis facilities, as well as the forward thinking of the business developer.

On February 22, 2019, the Committee met to review its tour, and to develop its report and recommendations to the Council. Beginning with evaluating the feasibility of a medical-only dispensary in Porterville, given the combination of

the State allowing the delivery of adult-use cannabis into the city, as well as the State's recommended licensing requirements for dispensaries, the Committee does not recommend proceeding with a medical-only dispensary given it is essentially obsolete. As a matter of examples, there are only approximately eighty (80) California Department of Public Health Medical Marijuana Identification Cardholders in all of Tulare County, which is recommended by the State and is required for the tax-exempt sale of medical-only cannabis at a dispensary, while the adult-use dispensary in Woodlake reports more than 2,500 customers in just the Porterville area to whom it has delivered. However, it should be noted that the League of California Cities has announced that it will be joining a lawsuit against the State in regards to the allowing of cannabis delivery, as well as legislation (AB 1530, Cooley) has been introduced to preserve local authority and make it explicit that a city may adopt regulations that permit, restrict, limit, or prohibit cannabis delivery within a city.

In recognition of the current economic climate in support of adult-use cannabis, the Committee does recommend the Council consider allowing the establishment of 2 or 3 adult-use dispensaries in the city (based on a formula of allowing a dispensary for every 25,000 population), which would include a robust operator application and thorough review process for selection (please see the attached City of Woodlake Application), as well as significant considerations of location distance (up to 500 feet) from sensitive uses (childcare, education, and religious facilities). Considering current zoning and location of sensitive uses, the airport area and Downtown Retail North and South (Main Street) are generally the most favorable potential locations, and a lottery could be used if multiple operators are found to be eligible. With no voter-approved cannabis excise taxes, the City would only be able to collect the regular Bradley-Burns (\$0.0095), Measure H (\$0.005), and Measure I (\$0.01) sales and use taxes.

The Committee further recommends that the Council consider placing a general excise tax measure on the November 2020 ballot, to include dispensaries, distribution, indoor cultivation, manufacturing, and testing.

Should Council act to support the Committee's recommendations, the Committee recommends that Council direct staff to schedule a Public Hearing and prepare a draft Ordinance for the Council's consideration at its meeting of April 2, 2019.

RECOMMENDATION: That the City Council receive the Cannabis Ad Hoc Committee's report, consider its recommendations, and provide direction as determined.

ATTACHMENTS:

1. October 16, 2018 Cannabis Ad Hoc Committee Report
2. City of Woodlake Cannabis Ordinance
3. City of Woodlake Cannabis Fee Schedule
4. City of Woodlake Cannabis Dispensary Application

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager



CITY COUNCIL AGENDA – OCTOBER 16, 2018

SUBJECT: Recommendations from the City Council's Cannabis Ad Hoc Committee

SOURCE: City Manager's Office

COMMENT: At its Special Meeting on August 1, 2018, City Council directed staff to coordinate a meeting with the Cannabis Ad Hoc Committee, consisting of Councilmembers Hamilton and Reyes, to evaluate the various types of State Licenses for cannabis businesses and the potential taxing of said activities.

The Committee met on September 21, 2018. Section 26050 of the Business and Professions Code, Division 10, Chapter 5 identifies twenty (20) separate license classifications, which were reviewed by the Committee, as well as whether the license is restricted to medicinal (M) activity or broader adult (A) activity. There were a few license types that the Committee recommends would be incompatible with the community, including:

- Type 2 – Cultivation; Small (5,001 to 10,000 square feet total canopy size),
- Type 3 – Cultivation; Medium (10,001 to one acre sites total canopy size),
- Type 5 – Cultivation; Large
- Type 6 – Manufacturer 1 (Non-Volatile Solvents)
- Type 7 – Manufacturer 2 (Volatile Solvents)
- Type 9 – Retailer - Non-Storefront (Delivery Only)
- Type 11 – Distributor
- Type 12 – Microbusiness (A business engaged in at least 3 of the following 4: Cultivation, Manufacturing, Distribution and/or Retail)

Within Type 1 – Cultivation; Specialty; Small (less than or equal to 5,000 square feet of total canopy size on one premises) are four types, including outdoor, indoor, mixed-light, and cottage. The Committee eliminated all outdoor cultivation due to concerns of air quality, odor control, security, and water usage, focusing exclusively on indoor cultivation. They recommend staff further research water usage in an indoor cultivation setting, as it is likely to not require the same water demand given the grow conditions would be controlled. Public Works staff, in deference to the Sustainable Groundwater Management Act and the Council's goals for water conservation, have discouraged commercial crop cultivation in the Tule River sub-basin. However, with advancements of recycled water systems, it is possible the water usage may be less than anticipated. It was further recommended that this use be limited to Industrial and the GC (General and Service Commercial) zones, with the additional entitlement requirement of a conditional use permit.

Type 4 – Cultivation; Nursery. This classification is used solely as a nursery. Once plants begin to flower, they must be relocated to a cultivation site as identified with a Type 1, 2, 3 or 5 and tagged with a unique identifier (“UID”) and entered into the State's new track-and-trace system. This classification can include an area for research and development.

Type 8 – Testing laboratory that offers or performs tests of cannabis goods. Items that the Testing Laboratories test for are items such as cannabinoids, foreign material, heavy metals, microbial impurities, mycotoxins, moisture content and water activity, residual pesticides, residual solvents and processing chemicals, terpenoids and homogeneity. The laboratories are required to document the chain of custody for the handling, storage, transportation, and destruction of samples. An individual who holds a testing laboratory license cannot hold a license for another cannabis activity.

Type 10 – Retailer. Council would have the option of approving dispensaries for either Adult-Use Recreational or Medicinal or a dispensary that provides products for both licenses. The Committee recommends allowing only a single dispensary initially, providing both adult-use and medicinal purposes, to be reviewed after a year of operation for potential expansion. Staff recommends rather than an unlimited number of dispensaries, that the number be based on population (i.e. one per 25,000 would result in three dispensaries until such time as the City’s population reached 75,001) to be reevaluated after a specified amount of time. There have been frequent conversations regarding which zones would be appropriate for such a use, that if a dispensary is only permitted in industrial zones, more of a stigmatism is associated to the use compared to a dispensary being permitted within the more traditional commercial zones. Council could provide standards for separation criteria from sensitive uses. State law additionally allows agencies to identify a maximum square footage.

The Committee wanted to ensure if any business model was evaluated further that impacts to law enforcement, compliance with State regulations, and strain to the City's water system would be minimal. Initially, the Committee had evaluated minimalizing impacts through a potential tax measure; however, another option would be a Development Agreement with the individual business types. This could provide flexibility to the permit holder while ensuring impacts to the community are minimal.

RECOMMENDATION: That the City Council provide direction given the recommendations of the Cannabis Ad Hoc Committee and information provided.

ATTACHMENTS: 1. Business and Professions Code Section 26050

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager

ORDINANCE NO. 611

AN ORDINANCE REPEALING CHAPTER 8.50 AND CHAPTER 8.51 OF THE WOODLAKE MUNICIPAL CODE AND ADDING CHAPTER 5.48 ALLOWING CANNABIS BUSINESSES AND ESTABLISHING PERMITTING PROCEDURES AND REGULATIONS

THE CITY COUNCIL OF THE CITY OF WOODLAKE DOES ORDAIN AS FOLLOWS:

Section 1. PURPOSE. The provisions of this ordinance are intended in order to permit and regulate legal cannabis businesses in the City of Woodlake

Section 2. CODE ENACTMENT. Woodlake Municipal Code Chapter 8.50 and 8.51 are removed from the Woodlake Municipal Code. Woodlake Municipal Code Chapter 5.48 Cannabis Businesses is added and will read as follows:

Chapter 5.48 **CANNABIS BUSINESSES**

5.48.010 – Definitions

"Applicant" means a person who is required to file an application for a permit under this section.

"Business Owner" means the owner(s) of the Cannabis Business. For publicly traded companies, owner means the chief executive officer or any person or entity with an aggregate ownership interest of 5% or more. For all other businesses, other than publicly traded companies, an owner is an individual that has an aggregate ownership of interest other than a lien or encumbrance, of 20% or more in the commercial cannabis business.

"Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means cannabis as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972, and amended by the California Control, Regulate and Tax Adult Use of Cannabis Initiative, and as defined by other applicable State law.

"Cannabis business" or "cannabis industry" means any business activity in the City relating to cannabis, including but not limited to cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sales (wholesale and/or retail sales) of cannabis or cannabis products, whether or not carried on for gain or profit. A cannabis business does not include any business whose only relationship to cannabis or cannabis products is the production or sale of cannabis accessories.

"Cannabis cultivation area" means the total aggregate area(s) of cannabis cultivation by a cannabis business as measured around the outermost perimeter of each separate and discrete area of cannabis cultivation at the dripline of the canopy expected at maturity and includes, but is not limited to, the space between plants within the cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where cannabis plants are grown, excluding non-production areas, as determined by the Community Development Director or his or her designee.

"Cannabis product" means any product containing cannabis, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and those products described in Section 11018.1 of the Health and Safety Code.

"Canopy" means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether the areas are contiguous or noncontiguous. The plant canopy need not be contained to a single parcel of land in determining the total square footage that will be subject to tax under this Chapter. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

"City" means the City of Woodlake, either the entity or its territorial limits, as the context requires.

"City Council" or "Council" means the City Council of the City of Woodlake.

"Collector" means the City's Chief Financial Officer or his or her designee.

"Commercial cannabis cultivation" means cultivation conducted by, for, or as part of a cannabis business. Commercial cannabis cultivation does not include personal medical cannabis cultivation, or cultivation for personal recreational use as authorized under the "Control, Regulate and Tax Adult Use of Marijuana Act" approved by the State's voters on November 8, 2016, for which the individual receives no compensation whatsoever.

"Commercial Cannabis Business" or "Cannabis Business" or "Cannabis Operation" means any commercial marijuana activity allowed under State Law and the implementing regulations, as State Law and the implementing regulations may be amended from time to time, and all uses permitted under any subsequently enacted State law pertaining to the same or similar uses for recreational cannabis.

"Cannabis production" means the processes associated with the processing, extraction, manufacturing, testing, distribution and transportation of medical and non-medical cannabis products.

"Commercial Cannabis Regulatory Permit" or "Regulatory Permit" means the permit required under this section to have a Cannabis Business.

"Commingling" means the physical aggregation of harvest batches or nonmanufactured cannabis products by a licensee

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. "Cultivation" also includes nurseries. In addition, and without limiting the foregoing, "cultivation" includes "cultivation" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted and amended from time to time.

"Delivery" means the commercial transfer of marijuana cannabis or marijuana cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

"Delivery employee" means an individual employed by a licensed dispensary who delivers cannabis goods from the licensed dispensary premises to a physical address.

"Dispensary" means a facility where cannabis or cannabis products, are offered, either individually or in combination, for retail sale, including an establishment that engages in delivery of cannabis or cannabis products as part of a retail sale. In addition, and without limiting the foregoing, "dispensary" includes "dispensary" as defined in California Business and Professions Code section

19300.5 and any successor statute, as may be adopted or amended from time to time.

"Distributor" means a person engaged in procuring cannabis from a cultivator, and/or procuring cannabis products from a manufacturer, for sale to a licensed commercial cannabis business. In addition, and without limiting the foregoing, "distributor" includes "distributor" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.

"Distribution" means the procurement, sale, and transport of cannabis or cannabis products between licensees.

"Employee" means each and every person engaged in the operation or conduct of any cannabis business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such cannabis business for a wage, salary, commission, barter or any other form of compensation.

"Gross Receipts," means the amount a Cannabis Operation received from all sources during its accounting period, without subtracting any costs or expenses.

"Indoor cultivation" means the cultivation of cannabis within a structure using artificial light, at a rate greater than 25 watts per square foot.

"Manufacturer" means a person who conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or that packages or repackages cannabis or cannabis products or labels or re-labels its container. In addition, and without limiting the foregoing, "manufacturer" includes "manufacturer" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.

"Mixed-light cultivation" means the cultivation of cannabis using light deprivation and/or artificial lighting below a rate of 25 watts per square foot."

"Nursery" means a person who produces cannabis clones, immature plants, and/or seeds for wholesale distribution, used specifically for the planting, propagation, and cultivation of cannabis. In addition, and without limiting the foregoing, "nursery" includes "nursery" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.

"Operator" means the Business Owner and any other person designated by the Business Owner as responsible for the day to day Cannabis business operation.

"Personal medical cannabis cultivation" means cultivation, by either a qualified patient who cultivates cannabis exclusively for his or her personal medical use or by a caregiver who cultivates cannabis exclusively for medical use by qualified patients and who is exempt from State licensing requirements under the State Medical Cannabis Regulation and Safety Act.

"Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

"Responsible Party" shall mean the Business Owner, Operator, manager(s), and any employee having significant control over the cannabis businesses operations.

"State" means the State of California.

"State Law" means all regulations and laws pertaining to Cannabis Business in the State of

California.

"State license," means a State license issued pursuant to California Business & Professions Code Sections 19300, et seq. or other applicable State law.

"Testing means a laboratory, facility, or entity in the State, that offers or performs tests of cannabis or cannabis products and that is both of the following:

- 1) Accredited by an accrediting body that is independent from all other persons involved in commercial marijuana cannabis activity in the State.
- 2) Registered and Licensed by the State Department of Public Health.

"Transport" means the transfer of cannabis or cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

5.48.020 Cannabis Production Permitted Uses and Zoning.

Business Owners meeting the requirements of this section shall be allowed to conduct the following Commercial Cannabis activities in the I - Light Industrial district of the City:

- Cultivation – Indoor or Mixed Light Only
- Manufacturing.
- Testing.
- Distribution.
- Transportation.

The Commercial Cannabis Operations shall at all times be in compliance with this section as it may be amended from time to time or repealed and replaced by another section governing the Commercial Cannabis Operations.

5.48.030 Commercial Cannabis Business Minimum Operational Requirements and Restrictions.

The following operational requirements and restrictions shall apply to all commercial cannabis manufacturing, testing, distribution, transportation and cultivation and as described in 5.48.020.

- A. State Law. The Commercial Cannabis Business shall at all times be in compliance with State Law and the implementing regulations, as they may be amended from time to time, as well as all required State license(s) under State Law, and any other applicable State law. The Operator shall obtain required licenses under State Law prior to opening for business, or if the State is not ready to issue licenses under State Law prior to the time of opening, within twelve (12) months of the State being ready to issue the required license(s). Provided, however, that the Operator shall at all times be in compliance with all other requirements of State Law and implementing regulations, and any other applicable State law, regardless of the timing of the issuance of a license under State Law. If the Operator uses the approved Cannabis operations for commercial recreational cannabis, the Operator shall meet or exceed the health and safety requirements of State Law in any operations relating to recreational cannabis.
- B. Register of Employees. The Operator shall maintain a current register of the names of persons required to have Employee Permits. The register shall be available to the Police Chief or the Police Chief's designee at all times immediately upon request.

- C. Signage. There shall be no signage or markings on the Premises, or off-site, which in any way evidences that Commercial Cannabis Businesses are occurring on the property. Interior building signage is permissible provided the signage is not visible outside of the building.
- D. Cannabis Consumption. No cannabis shall be smoked, ingested or otherwise consumed on the Premises without prior City approval. Adequate signage of this prohibition shall be displayed throughout the facility.
- E. Alcoholic Beverages. Alcohol for personal consumption shall not be provided, stored, kept, located, sold, dispensed, or used on the Premises.
- F. Transportation. Transportation shall only be conducted according to activity permitted by State law.
- G. Distribution. There shall be no deliveries from the Premises of cannabis or cannabis containing products except to another local licensed or permitted cannabis business.
- H. Retail Sales. The retail sale of cannabis is expressly prohibited.
- I. Public Access. There shall be no public access to the Premises without prior written authorization from the Police Chief or the Police Chief's designee.
- J. Minors. It shall be unlawful for any Operator to employ any person who is not at least twenty-one (21) years of age, or any older age if set by the State.
- K. Distance separation from schools. Commercial Cannabis Business shall comply with the distance separation requirements from schools as required by State law. In addition, a Cannabis operation shall not be located within 1000 feet from any existing school or proposed school site as identified in the General Plan. Measurements shall be from property boundary to property boundary. For purposes of this section, school means any public or private school providing instruction in kindergarten or grades 1-12, inclusive, but does not include any private school in which education is primarily conducted in private homes.
- L. Hours of Operation. Commercial cannabis operations shall be allowed to operate per the requirements of the underlying zone district and subject to the City's noise and nuisance ordinances. Deliveries to the commercial cannabis business may only take place during regular business hours
- M. Building and Related Codes. Commercial cannabis operations shall be subject to the following requirements:
 - 1. The Premises in which the Cannabis business occur shall comply with all applicable local, State and federal laws, rules, and regulations including, but not limited to, building codes and the Americans with Disabilities Act, as certified by the Building Official of the City. The Operator shall obtain all required building permits and comply with all applicable City standards.
 - 2. The Responsible Party shall ensure that the Premises has sufficient electrical load for the Cannabis production. The use of generators is prohibited other than for temporary emergency use.
 - 3. Butane and other flammable materials are permitted to be used for extraction and processing

provided the Operator complies with all applicable fire and building codes, and any other laws and regulations relating to the use of those products, to ensure the safety of that operation. Employee training records and safety equipment must be maintained and all equipment must be compliant with State safety regulations in §§40100 – 41099 and as they may be amended. The Woodlake Fire Department shall inspect and approve the Premises for use of the products prior to City's issuance of a certificate of occupancy, or otherwise prior to opening for business, to ensure compliance with this requirement.

4. The Operator shall comply with all laws and regulations pertaining to use of commercial kitchen facilities for the Cannabis production.
 5. The Operator shall comply with all environmental laws and regulations pertaining to the Cannabis production, including the use, storage, and disposal of water and pesticides, and shall otherwise use best practices to avoid environmental harm. The cannabis business must provide proof of a Board of Equalization Seller's Permit.
- N. Odor control. Cannabis businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the facility that is distinctive to its operation is not detected outside the Premises, outside the building housing the Cannabis business, or anywhere on adjacent property or public rights-of-way. As such, Cannabis businesses must install and maintain the following equipment or any other equipment which the City's Building Official determines has the same or better effectiveness, if a smell extends beyond a property line:
1. An exhaust air filtration system with odor control that prevents internal odors and pollen from being emitted externally; or an air system that creates negative air pressure between the cannabis facility's interior and exterior so that the odors generated inside the cannabis facility are not detectable outside the cannabis facility.
- O. Consumable Products. Cannabis businesses that manufacture products in the form of food or other comestibles shall obtain and maintain the appropriate approvals from the State Department of Public Health for the provision of food or other comestibles, unless otherwise governed by State Law and licensed by the State. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law.
- P. The City does not allow the outdoor commercial cultivation of cannabis products.
- Q. Secure Building. All commercial cannabis operations shall occur entirely inside of a building that shall be secure, locked, and fully enclosed, with a ceiling, roof or top. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures (including, without limitation, commercial greenhouse structures), and include material strong enough to prevent entry except through an open door. Notwithstanding the foregoing, the roof may be of solid translucent material provided other security measures exist to ensure that the Cannabis Operation cannot be seen, heard or smelled beyond the property line. The precise building construction and material to be used shall be identified and provided to the City prior to construction and provided with the application.
- R. Premises Security. The following security conditions shall apply:
1. Alarm System (both perimeter, fire and panic).

2. Remote monitoring of alarm systems.
3. Perimeter lighting systems (motion sensor) for after-hours security.
4. Perimeter security and lighting as approved by the Police Chief and Community Development Director.
5. Use of drive gates with card key access or similar to access the facility.
6. Entrance areas to be locked at all times and under the control of a designated Responsible Party.
7. Use of access control systems to limit access to grow and processing areas.
8. Exterior and interior camera systems approved by the Police Chief. The camera systems shall meet the minimum requirements of State Law, include interior monitoring of all access points of the site from the interior, and be of a minimum 5 mega pixel in resolution.
9. All security systems at the site are attached to an uninterruptable power supply that provide 24 hour of power.
10. 24-hour security patrols by a recognized security company licensed by the California Department of Consumer Affairs or otherwise acceptable to the Police Chief.
11. All current contact information regarding the security company shall be provided to the Police Chief.
12. Woodlake Police Department or Department designee shall have access to all security systems.
13. Subject to the provisions below regarding the use and handling of Confidential Information, IP access for remote monitoring of security cameras by the Woodlake Police Department or Department designee.
14. Subject to the provisions below regarding the use and handling of Confidential Information, any and all video or audio tape recordings made for security or other purposes shall be marked with the date and time made and shall be kept, in an unaltered state, for a period of thirty (30) days and must be made available to the Woodlake Police Department or Department designee for duplication upon demand. In addition, upon request by the Woodlake Police Department the Responsible Party shall duplicate the records for the Woodlake Police Department or Department designee.
15. Hardened bullet resistant windows for exterior windows as part of any new or existing construction.
16. Accounting software systems need to be in place to provide audit trails of both product and cash, where applicable.
17. Electronic track and trace systems for cannabis products as approved by the Police Chief or or Police Chief's designee as required by State law.

18. Premises may be inspected and records of the Business Owner audited by the City for compliance on a quarterly basis.
19. State of the art network security protocols and equipment need to be in place to protect computer information.
20. The foregoing requirements shall be approved by the Police Chief or the Police Chief's designee prior to commencing operations. The Police Chief may supplement these security requirements once operations begin, subject to review by the City Council if requested by the Business Owner.
21. The City, Police Chief, Police Department employees, and any other law enforcement official acting under the direction of the Police Chief who access the Premises and video and/or audio feeds or recordings of the Premises ("Recipients") may receive or be provided with confidential information relating to the Cannabis business, which may include the following: data, records, plans, and matters relating to customers, vendors, tenants, agreements, and business records (collectively "Confidential Information").
22. To the extent Confidential Information is acquired without a warrant from access to the Premises and video and/or audio feeds or recordings as authorized under this section, the Recipients shall, to the maximum extent possible, keep such Confidential Information confidential and not disclose the Confidential Information to any third parties. Provided, however, that the Recipients may disclose Confidential Information to the State or Federal courts in California in connection with any criminal law enforcement action against the Business Owner or Operator, (including its employees, contractors and agents conducting business within the Premises) arising from or related to the Cannabis business, but only to the extent it is necessary and relevant to such criminal prosecution, and the Recipients shall file any such documents under seal to the extent they contain any Confidential Information. Notwithstanding the foregoing, the City may disclose Confidential Information:
 - a. As may be required by the California Public Records Act or pursuant to a civil subpoena, provided however, the City shall notify the Operator and provide the Operator with a reasonable opportunity to obtain a protective order before disclosing the Confidential Information.
 - b. In connection with any City enforcement proceeding relating to compliance with City's Municipal Code and this section, but only to the extent the Confidential Information is relevant to the proceeding.
23. Deliveries of Supplies and Transportation of Product. The following rules apply to the deliveries and transportation:
 - a. Deliveries to the Premises of supplies shall only occur as provided for in the diagram and floor plan on file with the City as part of the application process. Delivery vehicles shall not have any markings indicating that deliveries are being made to a commercial cannabis operation. During business hours, any shipment of cannabis goods accepted by the licensed dispensary shall not enter the premises through an entrance that is available for use by the public to enter or exit the premises. During business hours, any shipment of medical cannabis goods accepted by the licensed dispensary shall not enter the premises through an entrance that is available for use by the public to enter or exit the premises
 - b. The transportation of cannabis samples and product to and from the Premises shall be in

unmarked vehicles with no indication that the vehicles are transporting cannabis samples and products. The Responsible Party shall stagger transportation times, vary routes from the facility, and take other security measures as requested by the Police Chief.

24. Premises Maintenance. The Business Owner, Operator, and all Responsible Parties shall continually maintain the Premises and its infrastructure so that it is visually attractive and not dangerous to the health, safety and general welfare of employees, patrons, surrounding properties, and the general public. The Premises or Commercial Cannabis Operation shall not be maintained in a manner that causes a public or private nuisance.
25. Location of Uses. The Commercial Cannabis Operation permitted by this section shall only be allowed in the locations designated on the diagram and floor plan of the Premises submitted with the application for a Regulatory Permit. The Commercial Cannabis Operation shall not operate at any place other than the address of the Cannabis Operation stated in the Regulatory Permit.
26. Commercial Cannabis Regulatory Permit. No person or entity shall operate a Commercial Cannabis Operation within the City of Woodlake without first obtaining a Commercial Cannabis Regulatory Permit from the City. The Regulatory Permit shall be site specific and shall specifically identify the commercial cannabis activity that will be allowed at that site. No commercial cannabis activity will be allowed unless specifically identified in the Regulatory Permit.
27. Commercial Cannabis Conditional Use Permit. Prior to, or concurrently with, applying for a Regulatory Permit, the Applicant shall process a Commercial Cannabis Conditional Use Permit. Information that may be duplicative in the two applications can be incorporated by reference. The Cannabis Conditional Use Permit shall run with the Regulatory Permit and not the land.

5.48.040 Cannabis Dispensaries Permitted Uses and Zoning.

- A. Business Owners meeting the requirements of this section shall be allowed to conduct Cannabis Dispensary Operations in the I-Light Industrial, CC-Central Commercial or CN – Neighborhood Commercial zone districts of the City: The Cannabis Dispensary Operation shall at all times be in compliance with this section as it may be amended from time to time or repealed and replaced by another section governing the Cannabis Dispensary operation.

5.48.050 Cannabis Dispensaries Requirements and Restrictions.

- A. The City of Woodlake will limit the number regulatory permits for dispensaries to one permit plus an additional permit per every 5,000 residents.
- B. The City will conduct a request for regulatory permit applications when dispensary regulatory permits are available.
- C. State Law and Other State Laws. The Cannabis dispensary shall at all times be in compliance with State Law and the implementing regulations, as they may be amended from time to time, as well as all required State license(s) under State Law, and any other applicable State law. The Operator shall obtain required licenses under State Law prior to opening for business, or if the State is not ready to issue licenses under State Law prior to the time of opening, within twelve (12) months of the State being ready to issue the required license(s). Provided, however, that the Operator shall at all times be in compliance with all other requirements of State Law and

implementing regulations, and any other applicable State law, regardless of the timing of the issuance of a license under State Law. The Operator shall meet or exceed the health and safety requirements of State Law in any operations relating to recreational cannabis.

- D. Register of Employees. The Operator shall maintain a current register of the names of persons required to have Employee Permits. The register shall be available to the Police Chief at all times immediately upon request. All agents, officers, or other persons acting for or employed by a licensee shall display a laminated identification badge issued by the licensee. The identification badge shall, at a minimum, include the licensee's "doing business as" name and license number, the employee's first and last name, and a color photograph of the employee that shows the full front of the employee's face and that is at least 2 inches by 2 inches in size.
- E. Labeling. All cannabis products offered to customers at a retail location must provide testing and labeling at a minimum as required by State law and in compliance with any additional City regulations and as they may be amended
- F. Signage. All signage shall be approved by the City of Woodlake and consistent with the City's Signage Ordinances.
- G. Alcoholic Beverages. Alcohol for personal consumption shall not be provided, stored, kept, located, sold, dispensed, or used on the Premises.
- H. Transportation. Transportation shall only be conducted according to activity permitted by State law.
- I. Distribution. There shall be no deliveries to or from the Premises of cannabis or cannabis containing products except to local licensed or permitted cannabis business.
- J. Minors. It shall be unlawful for any Operator to employ any person who is not at least twenty-one (21) years of age, or any older age if set by the State.
- K. Distance separation from schools. Cannabis dispensaries shall comply with the distance separation requirements from schools as required by State law. In addition, a Cannabis Dispensary shall not be located within 1000 feet from any existing school or proposed school site as identified in the General Plan. Measurements shall be from property boundary to property boundary. For purposes of this section, school means any public or private school providing instruction in kindergarten or grades 1-12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law.
- L. Hours of Operation. Cannabis Dispensaries shall be allowed to operate per the requirements of the underlying zone district and subject to the City's noise and nuisance ordinances but in no case shall exceed the minimum State standards or open before 6 a.m. or remain open after 9 p.m. Pacific time.
- M. Building and Related Codes. The Cannabis Dispensary shall be subject to the following requirements:
 - 1. The Premises in which the Cannabis Dispensary operations occur shall comply with all applicable local, State and federal laws, rules, and regulations including, but not limited to, building codes and the Americans with Disabilities Act, as certified by the Building Official

of the City. The Operator shall obtain all required building permits and comply with all applicable City standards.

- N. Secure Building. All Cannabis Dispensary operations shall occur entirely inside of a building that shall be secure, locked, and fully enclosed, with a ceiling, roof or top. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for commercial structures and include material strong enough to prevent entry except through an open door.
- O. Premises Security. The following security conditions shall apply:
1. Alarm System (both perimeter, fire and panic). A licensee shall maintain an alarm system as defined in Business and Professions Code section 7590.1(n). A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors, and responds to the alarm system
 2. Remote monitoring of alarm systems.
 3. Exterior lighting systems for after-hours security.
 4. Exterior and interior camera systems approved by the Police Chief. The camera systems shall meet the minimum requirements of State Law, include interior monitoring of all access points of the site from the interior, and be of a minimum 5 mega pixels in resolution. Cameras shall record continuously 24 hours per day and at a minimum of 20 frames per second. Areas monitored are defined by State law.
 5. All security systems at the site are attached to an uninterruptable power supply that provide continuous power.
 6. Woodlake Police Department or Department designee shall have access to all security systems.
 7. Subject to the provisions below regarding the use and handling of Confidential Information, IP access for remote monitoring of security cameras by the Woodlake Police Department or Department designee.
 8. Subject to the provisions below regarding the use and handling of Confidential Information, any and all video or audio tape recordings made for security or other purposes shall be marked with the date and time made and shall be kept, in an unaltered state, for a period of thirty (30) days and must be made available to the Woodlake Police Department or Department designee for duplication upon demand. In addition, upon request by the Woodlake Police Department the Responsible Party shall duplicate the records for the Woodlake Police Department or Department designee.
 9. Hardened bullet resistant windows for exterior windows as part of any new or existing construction.
 10. Accounting software systems need to be in place to provide audit trails of both product and cash, where applicable.
 11. Electronic track and trace systems for cannabis products as approved by the City and as

required by State law.

12. Premises may be inspected and records of the Business Owner audited by the City for compliance on a quarterly basis or at any reasonable time at the City's discretion.
13. State of the art network security protocols and equipment need to be in place to protect computer information.
14. The foregoing requirements shall be approved by the Police Chief prior to commencing operations. The Police Chief may supplement these security requirements once operations begin, subject to review by the City Council if requested by the Business Owner.
15. The City, Police Chief, Police Department employees, and any other law enforcement official acting under the direction of the Police Chief who access the Premises and video and/or audio feeds or recordings of the Premises ("Recipients") may receive or be provided with confidential information relating to the Cannabis dispensary, which may include the following: data, records, plans, and matters relating to customers, vendors, tenants, agreements, and business records (collectively "Confidential Information"). To the extent Confidential Information is acquired without a warrant for access to the Premises and video and/or audio feeds or recordings as authorized under this section, the Recipients shall, to the maximum extent possible, keep such Confidential Information confidential and not disclose the Confidential Information to any third parties. Provided, however, that the Recipients may disclose Confidential Information to the State or Federal courts in California in connection with any criminal law enforcement action against the Business Owner or Operator, (including its employees, contractors and agents conducting business within the Premises) arising from or related to the Cannabis dispensary, but only to the extent it is necessary and relevant to such criminal prosecution, and the Recipients shall file any such documents under seal to the extent they contain any Confidential Information. Notwithstanding the foregoing, the City may disclose Confidential Information:
 - a. As may be required by the California Public Records Act or pursuant to a civil subpoena, provided however, the City shall notify the Operator and provide the Operator with a reasonable opportunity to obtain a protective order before disclosing the Confidential Information
 - b. In connection with any City enforcement proceeding relating to compliance with City's Municipal Code and this section, but only to the extent the Confidential Information is relevant to the proceeding.

P. Delivery.

- a. All deliveries of cannabis goods must be performed by a delivery employee of a licensed dispensary.
- b. Each delivery employee of a licensed dispensary shall be at least 21 years of age.
- c. A licensed dispensary shall not use the services of an independent contractor or courier service to deliver cannabis goods.
- d. All deliveries of cannabis goods shall be made in person. A delivery of medical cannabis goods shall not be made through the use of an unmanned vehicle.
- e. A delivery employee begins the process of delivering when the delivery employee leaves the dispensary premises with the cannabis goods for delivery. The process of delivering ends when the delivery employee returns to the licensed dispensary premises after delivering the medical cannabis goods to the medical cannabis patients or primary caregivers.
- f. A delivery employee of a licensed dispensary shall, during deliveries, carry a copy of

the dispensary's current license, the employee's government-issued identification, and an employer provided badge containing a picture and the name of the delivery employee.

- g. A licensed dispensary shall maintain an accurate list of the dispensary's delivery employees.

Q. Deliveries of Supplies and Transportation of Product. The following rules apply to the deliveries and transportation:

1. Deliveries to the Premises of supplies shall only occur as provided for in the diagram and floor plan on file with the City as part of the application process. Delivery vehicles shall not have any markings indicating that deliveries are being made to a Cannabis Dispensary.
2. The transportation of cannabis samples and product to and from the Premises shall be in unmarked vehicles with no indication that the vehicles are transporting cannabis samples and products. The Responsible Party shall stagger transportation times, vary routes from the facility, and take other security measures as requested by the Police Chief.

R. Premises Maintenance. The Business Owner, Operator, and all Responsible Parties shall continually maintain the Premises and its infrastructure so that it is visually attractive and not dangerous to the health, safety and general welfare of employees, patrons, surrounding properties, and the general public. The Premises of the Cannabis Dispensary shall not be maintained in a manner that causes a public or private nuisance.

S. Commercial Cannabis Regulatory Permit. No person or entity shall operate a Cannabis Dispensary within the City of Woodlake without first obtaining a Cannabis Regulatory Permit from the City. The Regulatory Permit shall be site specific and shall specifically identify the commercial cannabis activity that will be allowed at that site. No commercial cannabis activity will be allowed unless specifically identified in the Regulatory Permit.

T. Conditional Use Permit. Prior to, or concurrently with, applying for a Regulatory Permit, the Applicant shall process a Conditional Use Permit as required by the City's Land Use Regulations. Information that may be duplicative in the two applications can be incorporated by reference. The Conditional Use Permit shall run with the Regulatory Permit and not the land.

5.48.060 Regulatory Permit Required

A. Applications for Regulatory Permits shall be filed by the proposed Business Owner(s) with the City and include the information set forth herein. The City may request such additional information as they deem necessary to determine who the applicant is.

The applicant shall certify under penalty of perjury that all the information contained in the application is true and correct. The application shall contain the following items for the Business Owner, Operator and all Responsible Parties known at the time (if different than the Business Owner), and any other party designated below, to the extent the same shall apply:

1. The full name, present address, and telephone number, including such information to the Premises Owner.
2. Date of birth.

3. Tax identification number.
4. The address to which notices relating to the application is to be mailed.
5. Previous addresses for the five (5) years immediately preceding the present.
6. The height, weight, color of eyes and hair.
7. Photographs for identification purposes (photographs shall be taken by the Police Department).
8. All business, occupation, or employment for the five (5) years immediately preceding the date of submittal of the application form.
9. The Cannabis Operation business history, including whether the Business Owner and Responsible Parties while previously operating in this or another city, county or state has had a cannabis related license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation.
10. Complete property ownership and lease details, where applicable. If the Business Owner is not the Premises Owner, the application form must be accompanied with a notarized acknowledgment from the Premises Owner that Cannabis sales will occur on its property.
11. A descriptive business plan for the Cannabis Operation, including a detailed list of all Cannabis Business activities proposed to occur on the Premises.
12. A diagram and floor plan of the entire Premises, denoting all the use of areas proposed for Cannabis production, including, but not necessarily limited to, cultivation, processing, manufacturing, testing, transportation, deliveries, and storage.

For Cannabis Dispensaries, the floor plan should show the layout and design of the building. The diagram and floor plan need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the Premises to an accuracy of plus or minus six (6) inches.
13. The name or names of the Operator. The Operator shall designate one or more Responsible Parties, one of which shall at all times be available as a point of contact for the City, 24 hours per day. The contact information and schedule of the Operator and Responsible Parties shall be provided to the Police Chief and updated within twenty-four (24) hours of any changes.
14. The proposed security arrangements for insuring the safety of persons and to protect the Premises from theft.
15. An accurate straight-line drawing prepared within thirty (30) days prior to the application depicting the building and the portion thereof to be occupied by the Cannabis Operation and the property line of any school or any other sensitive use as set forth in the Operational Requirements.
16. Authorization for the City, its agents and employees to seek verification of the information submitted.

- B. Improper or Incomplete Application. If the applicant has completed the application improperly, or if the application is incomplete, the Police Chief shall, within thirty (30) days of receipt of the original application, notify the applicant of such fact. The Applicant shall have 15 days to remedy or correct the application. After 15 days, the application will be deemed abandoned and the Applicant shall begin the application process again.
- C. Changes in Information. Except as may otherwise be provided, the information provided in this subsection shall be updated to the Police Chief upon any change within ten (10) days.
- D. Other Permits or Licenses. The fact that an applicant possesses other types of State or City permits or licenses does not exempt the applicant from the requirement of obtaining a Regulatory Permit.

5.48.070 Employee Permit Required

- A. Every employee or independent contractor working at a Cannabis Operation or involved in transportation/delivery related services for a Cannabis Business shall obtain an Employee Permit. It shall be the duty of the Operator to ensure that Employee Permits are obtained from the Police Department prior to the employee or independent contractor commencing work. Persons who are listed as a Business Owner on a Regulatory Permit shall not be required to obtain an Employee Permit if such person also serves as an employee or contractor. All Responsible Parties, except the Business Owner, shall be required to obtain an Employee Permit.
- B. Each employee and independent contractor shall be required to provide the following information under penalty of perjury, so that the Police Department can perform a background check:
 - 1. Name, current resident address, and telephone number.
 - 2. Date of birth.
 - 3. Tax identification number.
 - 4. Height, weight, color of eyes, and hair.
 - 5. Photographs for identification purposes (photographs shall be taken by the Police Department).
 - 6. Be fingerprinted by the Police Department.
 - 7. Such other identification and information as deemed necessary by the Police Chief and pertinent to the Employee Permit.
 - 8. Authorization for the City, its agents and employees to seek verification of the information contained within the application.
 - 9. The name of the Business Owner holding the Regulatory Permit and the Operator for which such person is proposed to work.

5.48.080 Application Fees

Every new application for a Regulatory Permit, Employee Permit, or renewal shall be accompanied by a nonrefundable fee, as established by resolution of City Council. This fee shall be in addition to any other business license, tax, or permit fee imposed by this Code or other governmental agencies. The fee shall include an amount to cover the costs of fingerprinting, photographing, background checks as well as general ongoing monitoring for compliance and processing of the application.

5.48.090 Investigation and Action on Application.

- A. Upon the filing of a properly completed application and the payment of the fee, the Police Chief shall conduct an investigation of the application, including a background check of the applicant and all employees and independent contractors. All applicants for a Regulatory Permit and Employee Permit shall be required to submit to a fingerprint-based criminal history records check conducted by the Woodlake Police Department.
- B. For Regulatory Permits, after the background checks and investigation are complete, and in no case later than ninety (90) days after receipt of a properly completed application, the City shall issue a recommendation that the City Council approve or deny a Regulatory Permit in accordance with the provisions of this section. The recommendation for approval shall include conditions the City deems reasonable under the circumstances to protect the public health, safety, and welfare of the community. The recommendation shall be forwarded to the City Council for action following any required noticing and public hearings, and may be processed concurrently with any other entitlements necessary for the Cannabis Operation.
- C. For Employee Permits, after the background checks and investigation are complete, and in no case later than thirty (30) days after receipt of a properly completed application, the Police Chief shall either approve or deny an Employee Permit. At the discretion of the Police Chief, Employee Permits may be conditionally approved pending the background investigation.

5.48.100 Term of Permits and Renewals.

- A. Regulatory Permits issued under this Chapter shall expire on December 31st each year. Applications for renewal shall be made at least forty-five (45) days prior to the expiration date of the permit and shall be accompanied by the nonrefundable fee referenced in this section. When made less than forty-five (45) days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on similar to applications for permits except that the Police Chief shall renew annual permits for additional one year periods if the circumstances and information provided with the initial application have not materially changed. Regulatory fees may be pro-rated based on the term of the Regulatory Permit.

5.48.110 Grounds for Denial of Regulatory Permit.

The grounds for denial of a Regulatory Permit shall be one or more of the following:

- A. The business or conduct of the business at a particular location is prohibited by any local or State law, statute, rule or regulation.
- B. The Business Owner or Operator has been issued a local or State permit related to Cannabis operations at any other location in California, or another state, and that permit was suspended or revoked, or the Business Owner or Operator has had disciplinary action relating to the permit.

- C. The Business Owner or Operator has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application.
- D. Consistent with State Law or other applicable State law, the Business Owner or Operator, or any Responsible Person, has been:
 - 1. Convicted of a serious or violent offense as listed under California Penal Code sections 667.5 and 1192.7(c); or
 - 2. Convicted of any of the offenses listed in Business and Professions Code section 19323; or.
 - 3. Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or
 - 4. Convicted of a felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless the individual has received a Certificate of Rehabilitation as defined in the Act; or
 - 5. Has engaged in misconduct related to the qualifications, functions or duties of a permittee, such as lying on an application, falsifying legal documents, or anything that would otherwise ban the permittee from obtaining a State license under State Law.
 - 6. Consistent with State Law or other applicable State law, the Business Owner or Operator has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.
 - 7. The Business Owner or Operator is under twenty-one (21) years of age, or any older other age set by the State.
 - 8. The Cannabis Operation does not comply with the zoning ordinance standards of the City of Woodlake or the development standards set forth in this Title.
 - 9. The required annual business license fee, annual regulatory fee or revenue raising fee has not been paid.

5.48.120 Grounds for Denial of Employee Permit.

The grounds for denial of an Employee Permit shall be one or more of the following:

- A. The applicant has been issued a local or State permit related to Cannabis production at any other location in California, or another state, and that permit was suspended or revoked, or the applicant has had disciplinary action relating to the permit.
- B. Consistent with State Law or other applicable State law, the applicant has been:
 - 1. Convicted of a serious or violent offense as listed under California Penal Code sections 667.5 and 1192.7(c); or
 - 2. Convicted of any of the offenses listed in Business and Professions Code section 19323; or.

3. Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or
4. Convicted of a felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless the individual has received a Certificate of Rehabilitation as defined in State Law; or has engaged in misconduct related to the qualifications, functions or duties of a permittee.
5. Consistent with State Law or other applicable State law, the applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.
6. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocation of a permit.
7. An applicant is under eighteen (21) years of age, or any older age set by the State.

5.48.130 Notice of Decision and Final Action.

A. Regulatory Permit. Action on the Regulatory Permit shall be as follows:

1. The Police Chief shall cause a written notice of his or her recommendation on the issuance or denial of a Regulatory Permit, and the date and time when the City Council will consider action on the Regulatory Permit, to be personally delivered or mailed to the applicant by certified U.S. mail, postage prepaid.
2. Following a public hearing before the City Council, the Council may grant the Regulatory Permit subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the community, or it may deny the issuance of the Regulatory Permit for any of the grounds specified in this section. The decision of the Council shall be final, subject to judicial review below.
3. Employee Permit. Action on the Employee Permit shall be as follows:
4. The Police Chief shall cause a written notice of his or her determination on the issuance or denial of an Employee Permit to be personally delivered or mailed to the applicant by certified U.S. mail, postage prepaid. The Police Chiefs decision on an Employee permit shall be final, subject to judicial review.

5.48.140 Suspension and Revocation of Regulatory Permit or Employee Permit.

A. Regulatory Permit. The City Council may suspend or revoke the Regulatory Permit of a Commercial Cannabis Operation when any of the following occur:

1. The Cannabis Operation is conducted in violation of any provision of this section, State Law, or any other applicable State law.
2. The Cannabis Operation is conducted in such a manner as to create a public or private nuisance.
3. A failure to pay the Regulatory Fee or Revenue Raising Fee required by this section.

4. A failure to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the Premises, traffic control problems, or obstruction of the operation of another business.
 5. A failure to comply with the terms and conditions of the Regulatory Permit or any conditional use permit issued in connection therewith.
 6. Any act which would be considered grounds for denial of the Regulatory Permit in the first instance.
- B. Employee Permit. The Police Chief may suspend or revoke an Employee Permit when the permittee or the employee has committed any one or more of the following acts:
1. Any act which would be considered a ground for denial of the permit in the first instance.
 2. Violates any provision of this section, State Law, or any other applicable law relating to the Cannabis Operation.
 3. Violates or fails to comply with the terms and conditions of the Employee Permit.
- C. Procedures for Revoking Regulatory Permits. For Regulatory Permits, the procedures for revoking conditional use permits shall be utilized except that the matter shall be heard by the City Council in the first instance, and shall be subject to the same judicial process as applied to a Conditional Use Permit. (See, Woodlake Municipal Code section 17.74.080).
- D. Procedures/or Revoking Employee Permits. Prior to suspension or revocation of an Employee Permit, the Police Chief shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid. Any permittee aggrieved by the decision of the Police Chief in suspending or revoking an Employee Permit shall have no appeal rights and the Police Chiefs decision shall be final, subject to judicial review as set forth in this section.
- E. Immediate Suspension. The Police Chief may immediately suspend or revoke a Regulatory Permit and an Employee Permit without notice or a hearing, subject to the appeal rights set forth herein, under either of the following circumstances:
1. The Business Owner or Operator is convicted of a public offense in any court for the violation of any law which relates to the Cannabis Operation, or in the case of an Employee Permit, the employee is convicted of a public offense in any court for the violation of any law which relates to the permit.
 2. The Police Chief determines that immediate suspension is necessary to protect the public health, safety, and welfare of the community. The Police Chief shall articulate the grounds for the immediate suspension in writing and the suspension shall only be for as long as necessary to address the circumstances which led to the immediate suspension.

5.48.150 Effect of Denial or Revocation.

When the City Council shall have denied a Regulatory Permit or revoked a Regulatory Permit, or the Police Chief shall have denied or revoked an Employee Permit, no new application for a Regulatory Permit and no new application for an Employee Permit shall be accepted and no Regulatory Permit or Employee Permit shall be issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one (1) year after denying or revoking the Regulatory Permit or Employee Permit.

5.48.160 Abandonment.

In addition to the suspension or revocation of a Regulatory Permit, a Regulatory Permit shall be deemed abandoned if Cannabis production ceases for a period of more than ninety (90) consecutive days. Before restarting operations, a new Regulatory Permit shall be secured. The 90 day period shall be tolled during periods of force majeure, which shall be defined as follows: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; or any other causes beyond the reasonable control of the permittee.

5.48.170 Water Availability.

As a condition of opening for business, the Premises Owner, Business Owner, Operator, and all Responsible Parties shall be deemed to have acknowledged and agreed to the following if the Cannabis Operation is connected to the City's water system.

The City cannot provide any guarantees that City water will be available for operations. Under circumstance where the City cannot or elects to not provide water, the Cannabis Operation may be required to find alternative sources of water supply. The Premises Owner, Business Owner, and Operator assume all risk associated with water supply to the Site, including all costs associated therewith.

The Premises Owner, Business Owner, Operator, and all Responsible Parties shall hold harmless, release, indemnify, and defend the City, its officers, employees, and agents, from any liability associated with the curtailment of water because of the foregoing. This release includes any damages to the Premises Owner, Business Owner, Operator, and all Responsible Parties, its employees and contractors, and third parties, and includes the risk of lost revenue, profits and consequential damages.

If the Premises Owner, Business Owner, Operator, or Responsible Party procures their own source of water they must comply with all State and Federal water reporting laws and procedures.

5.48.180 Other Licenses, Permits, Taxes, Fees, or Charges.

Except as expressly provided in this Chapter, nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other title or Chapter of this Code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or Chapter of this Code or any other ordinance or resolution of the City. Any references made or contained in any other title or Chapter of this Code to any permits,

licenses, taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the permits, licenses, taxes, fees or charges, or schedule of license fees, provided for in other titles or Chapters of the Woodlake City Code unless otherwise expressly provided.

5.48.190 Violation Deemed Misdemeanor.

Any person who violates any provision of this Chapter or who other than by a sworn statement, knowingly or intentionally misrepresents to any officer or employee of the City any material fact herein required to be provided is guilty of a misdemeanor punishable as provided in Section 5.04.420 of this Code. A person who on a sworn statement states as true a material fact that he or she knows to be false is guilty of perjury.

5.48.200 Actions to Collect.

The amount of any tax, fee, penalty and/or interest imposed pursuant to this Chapter shall be deemed a debt owed to the City. An action may be commenced in the name of the City in any court of competent jurisdiction, for the amount of any delinquent tax, fees, penalties and interest thereon.

5.48.210 Severability.

If any provision of this Chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

5.48.220 Remedies Cumulative.

All remedies prescribed under this Chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

5.48.230 Amendment or Repeal.

This Chapter may be repealed or amended by ordinance of the Woodlake City Council.

5.48.240 Penalties.

Any entity that fails to pay the fees required by this chapter within fifteen (15) days after the due date shall pay in addition to the taxes a penalty for nonpayment in the sum equal to twenty-five percent (25%) of the total amount due. Additional penalties will be assessed in the following manner: ten percent (10%) shall be added on the first day of each calendar month following the month of the imposition of the twenty-five percent (25%) penalty if the fee remains unpaid – up to a maximum of one hundred percent (100%) of the fee payable on the due date. Receipt of the fee payment by the City shall govern the determination of whether the fee is delinquent. Postmarks will not be accepted as adequate proof of a timely payment.

Section 3. CEQA REVIEW. The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) [there is no possibility the activity in question may have a significant

affirmative effect on the environment]. In addition to the foregoing general exemption, the City Council further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 categorical exemption [regulatory activity to assure the protection of the environment]. The City Manager is hereby directed to ensure that a *Notice of Exemption* is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

Section 4. NO LIABILITY. The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to person or property upon the City of Woodlake, or any official, employee or agent thereof.

Section 5. PENDING ACTIONS. Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 6. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Woodlake hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 7. CONSTRUCTION. The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Woodlake Municipal Code as amended by this ordinance are substantially the same as provisions in the Woodlake Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 8. EFFECTIVE DATE. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof. Prior to the expiration of fifteen (15) days from the enactment hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the Foothills Sun-

Gazette, a newspaper printed and published in the City of Woodlake, State of California, together with the names of the Council members voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the City Council of the City of Woodlake, State of California, on August 14, 2017 at a regular meeting of said Council duly and regularly convened on said day by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Rudy Mendoza

Mayor, City of Woodlake

ATTEST:

Irene Zacarias

City Clerk

**City of Woodlake
Fee Schedule
Commercial Cannabis**

Description	Fee
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Application Fees

Pre-Application Fee	\$250	each
Retail		
Phase 1	\$537	
Phase 2	\$2,399	annually
Phase 3	\$816	
Manufacturing	\$2,399	annually
Testing	\$2,399	annually
Distribution	\$2,399	annually
Cultivation	\$2,399	annually
Employee Permit	\$300	each
Annual Renewal Permit	TBD	
Annual Fire Permit	\$498	annually

Regulatory Fees by Category

Retail	\$10,144	annually
Manufacturing	\$20,234	annually
Testing Laboratory	\$4,450	annually
Distribution	\$4,454	annually
Cultivation (5000 sq ft)	\$10,139	annually
Cultivation (10000 sq ft)	\$12,674	annually
Cultivation (22000 sq ft)	\$15,209	annually
License Combinations	Fee Reduction	
Combination of 2	10%	
Combination of 3 or more	15%	

**City of Woodlake
Fee Schedule
Commercial Cannabis Tax Rates**

Description		Tax
Cannabis Tax Rates		
Retail	5%	Gross Receipts
Cultivation	\$6	sqft
Manufacturing	4%	Gross Receipts
Distributor	4%	Gross Receipts
Distributor Transport	0%	Gross Receipts
Testing	0%	Gross Receipts
Nursery	\$2	sqft

City of Woodlake Commercial Cannabis Business Application Package – Dispensary

Application Fees

Phase I: \$537 per applicant

Phase II: \$2,399

Phase III: \$816 (if applicable)



Included

Phase I

- ☐ Pay \$537 fee per applicant
- ☐ Submit background check/Live Scan documents to the Woodlake Police Department (forms attached)

Phase II

- ☐ Pay \$2,399 application fee
- ☐ Submit application with responses to each of the five (5) narrative descriptions listed in the Phase II section of the application package
- ☐ Submit Indemnification Agreement and Acknowledgement Form

Phase III (if applicable)

- ☐ Pay \$816 application fee
- ☐ Attend final interview and discuss the three topics listed in the Phase III section of the application

Final Approval (if applicable)

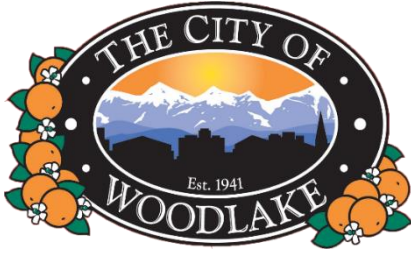
- ☐ Submit Conditional Use Permit application and pay permit fees
- ☐ Submit building plans/request building permits (if applicable)

All applications must be submitted in person.

NOTE:

INCOMPLETE OR INCORRECT APPLICATIONS WILL BE REJECTED AND REQUIRE RESUBMITTING

It is the responsibility of the applicant to ensure that all pages are included in the application package and that the application is complete when returned to the City of Woodlake Community Development Department.



Commercial Cannabis Business Application

COMMUNITY DEVELOPMENT DEPARTMENT
350 N Valencia Boulevard
Woodlake, CA 93286
Phone: (559) 564-8055

- ☐ Application to Operate a Commercial Cannabis Medicinal Retail Facility
- ☐ Application to Operate a Commercial Cannabis Non-Medicinal Retail Facility (available January 1, 2018)

Release Date: October 2nd, 2017

Phase I & II Submittal Deadline: November 3rd, 4:00 pm

Notification to Applicants Invited to Phase III Final Selection (Phase III): November 22nd, 2017

Scheduled Phase III Interviews: November 27th, 2017 through December 1st, 2017

Final Selection Announced: December 11th, 2017

The City of Woodlake is now seeking applications from parties who wish to develop and operate a cannabis retail location in Woodlake, which will be subject to the following requirements:

- This application process will result in the issuance of up to two commercial cannabis retail regulatory permit (hereinafter referred to as "permit"). The Applicants will still be required to obtain the required Conditional Use Permit through the entitlement process described below;
- The approved cannabis retail facility (hereinafter referred to as "facility") shall be located only in the City's CC (Central Commercial) Industrial (ML), or CN (Neighborhood Commercial) zoning districts
- The facility shall not be located within a 1,000-foot radius of a school providing instruction in kindergarten or any grades 1 through 12 as prescribed by State law;
- If permitted by state law, this facility may operate as and sell both Medicinal and Recreational products.
- Prior to or concurrently with applying for the regulatory permit, the applicant shall process a Conditional Use Permit as required by the City's Land Use Regulations.
- The approved cannabis retail facility shall follow the strict operating, security, odor control, recordkeeping, facilities, zoning and signage regulations as set forth in the ordinance;
- Payment of applicable application fees as required; and
- Additional conditions of approval may be imposed by the City in order to ensure the operator remains compliant with all state and local laws as well as the conditions set forth in the operator's application.

Per the requirements of the adopted as part of the City of Woodlake Municipal Code, Chapter 5.48 Cannabis Businesses, the facility must operate in accordance with the Medicinal Adult-Use Cannabis Regulation Safety Act (MAUCRSA) and subsequent regulations adopted by the State of California. In addition to said regulations applicants must comply with all local regulations.

The facility shall be configured primarily for product sales, and shall not operate as a restaurant, cafe, or lounge serving food or drinks for consumption on site. No alcohol or tobacco sales will be allowed on site. Additional restrictions on the operations of the facility are outlined in the adopted ordinance. Applicants should review the City of Woodlake Municipal Code, Chapter 5.48 Cannabis Industry Tax and Operations requirements carefully before responding to this application. It is expected that the facility shall fully integrate itself into the surrounding neighborhood and shall contribute in a positive manner to the broader Woodlake community

Overview of the Application Process and Fee Structure

The application process is structured with three phases, outlined below. The non-refundable application processing fees associated with each step of the process are outlined following the description of each phase. Fees for Phases I and II are due at the time of application submittal. Fees for Phase III shall be required only for those applicants who advance beyond Phase II.

Event	Date
Application Release	October 2 nd
Applicant Questions Due	October 26 th
Phase I & II Applications Due	November 3 rd

Phase I - Background

Phase I requires each applicant to complete the Phase I background materials, which include the attached live scan form and commercial cannabis employee permit application, as well as an indemnification agreement to hold harmless the City of Woodlake. Each applicant will be required to submit to a criminal background investigation. Fingerprints and Photograph shall be required from each applicant as part of this process.

All applicants must pass the background investigation in order to proceed forward to Phase II. Once applications are received, applicants will be contacted to schedule a time to conduct the live scan at the Woodlake Police Department. NOTE: Live Scans must be conducted in person at the Woodlake Police Department located at Woodlake City Hall at 350 N. Valencia Blvd., Woodlake, CA 93286.

Phase I fees: \$537 for **each applicant** payable to the “City of Woodlake”.

Phase II – Overview

All applicants that successfully pass the Phase I criminal background investigation will advance to the second phase of the application process, which will include the Police Chief’s review of the completed Commercial Cannabis Retail Regulatory Permit Application in addition to the narrative descriptions of the (1) proposed business plan summary and budgets, (2) site location and development plan, (3) proof of capitalization, (4) management team, and (5) summary of security practices.

All application materials will be objectively scored and ranked according to the application requirements outlined below.

Phase II Fees: \$2,399 non-refundable application fee due at time of initial application submittal, payable in one check to the “City of Woodlake”. If Background check is not cleared and applicant backs out, the \$2,399 application fee will not be refunded.

Phase II - Application Requirements

1. Business Plan Summary and Budget – 20 points possible

The applicant shall submit a summary of the business plan for the day-to-day operations of the facility. The business plan summary shall include but not be limited to:

- A description of the day-to-day operations of the facility, including a description of the cannabis-related products and/or services being sold, as well as any additional accessory services or related facilities. Please provide, in the business plan for the proposed facility, a detailed list of all cannabis operations proposed to occur on the premises and their processes including but not limited to standard operating procedures, number of employees, training program, inventory and quality control procedures, lists of both recreational and medicinal products anticipated to be available, waste management plan, transportation and distribution of product processes, delivery processes, testing, quality control practices and

procedures, visitor and vendor protocols (logs, non-disclosures, etc.), and the track and trace procedures and policies;

2. Site Location and Development Proposal – 20 points possible

- The applicant shall identify and describe the location in which the retail facility will be located by providing the following information:
 - Address, Assessor's Parcel Number, Site Area and Dimensions;
 - Proof of ability to lease/purchase property (Property Owner Affidavit)
- The applicant shall provide a conceptual layout of the sites intended development including but not limited to, all proposed uses, building floor area, number of stories, parking, ingress/egress, elevations (if available), and floor plan. The conceptual plan shall be to scale but does not need to be drawn by a licensed engineer or architect.
- The Retail Operation may be component of a larger proposed or existing development proposal which can be described in this application.

3. Proof of Capitalization – 20 points possible

The applicant shall submit proof demonstrating sufficient capital is in place to pay startup costs and at least three months of operating costs. Proof of capitalization shall be in the form of:

- Documentation of cash or other liquid assets (e.g., bank statement)
- Letter of Credit

4. Management Team – 20 points possible

The applicant shall submit:

- An organizational chart with name and role of each known member of the management team including roles that are known but unfilled should also be included.
- Resumes for each member of the management team.
- A discussion of the experience of the management team.
- The application shall include information concerning any special business or professional qualifications or licenses of the management team that would add to the number or quality of services that the facility would provide, especially in areas related to medicinal cannabis, such as scientific or health care fields.

5. Summary of Security Plan – 20 points possible

Applicants shall describe their approach to operational security including but not limited to:

- General security policies.
- Employee-specific policies and training.
- Discussion of transactional security, visitor security, third-party contractor security, and delivery security.
- Financial Security

In particular, applicants should address ingress and egress access, perimeter security, product security (at all hours), internal security measures for limited access areas, types of security systems (alarms, cameras, etc.), and security personnel to be employed. This discussion must also include a description of how cannabis will be tracked and monitored to prevent diversion, such as by verifying the status of recommending physicians and retaining copies of all written recommendations from recommending physicians when applicable. Applicants are encouraged to provide a sample written policy that has been developed.

Security plans shall not be made public, unless required by court action. Security plan details that could aid persons who wish to commit security violations shall be considered to be confidential and shall not be released to the public unless ordered by a court of law.

Please refer to Section 5.48 of the Woodlake Municipal Code and Ordinance No. 611 for all the security requirements that should be included in your proposal.

Phase III – Overview

After all applications from Phase II have been ranked and scored, a sub-set of finalists shall be invited to advance to Phase III, at which point the Phase III non-refundable application fee shall be due, and Phase III applicants will be invited to an interview to discuss the Phase II items listed below. The number of applications that will be invited to submit a Phase III response will be set by the selection committee.

Phase III fees: Non-refundable fee of \$816, payable in one check to the “City of Woodlake.” Please note that this application fee is applicable only to applicants who advance to Phase III.

Phase III - Application Requirements

1. Product Safety and Labeling

The application shall state how the facility will ensure enhanced consumer safety by testing or confirming that testing has been certified for biological and chemical contaminants. The applicant must also submit a discussion regarding the product labeling standards to be employed and how they will be in compliance with state and local laws, regulations, and policies. The applicant must also provide information on product labeling sufficient to ensure that cannabis and edible products containing cannabis clearly identify the percentage level of delta-9 (trans) tetrahydrocannabinol, cannabidiol, and cannabinol, and have adequate warnings.

2. Community Benefits

The applicant must provide a discussion of how they intend to provide the City of Woodlake and its residents with community benefits and mitigate any nuisance and/or negative impacts that the facility’s existence may create. Applicants must provide the City a description of how they plan to develop and implement a Community Benefits Program. Examples of benefits could include, but are not limited to, supporting or funding community programs, employment and job training programs, contributing to local substance abuse programs, funding foreclosure prevention programs, or other activities that benefit the local neighborhood as well as the City of Woodlake.

The applicant must also demonstrate how they will ensure that they will minimize any nuisance and/or negative impacts on the surrounding community, including minimizing noise, odor, increased foot and vehicle traffic, increased waste production and water usage, and increased safety concerns, among others.

3. Hiring and Employment Practices

The applicant must submit a description of their labor and employment practices. These policies and practices could include, but are not necessarily limited to, the following:

- Discussion of Hiring Plan
- Training and continuing education opportunities—the applicant should discuss the introductory and on-going training opportunities that will be provided to the employees of the facility.
- For an applicant with 20 or more employees, provide a statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement.
- Providing Equal Benefits and/or signing a Declaration of Non-Discrimination.

Final Selection

Following an objective ranking of the above application materials, applicants may be invited for interview(s) with City staff and/or representatives. Following completion of the interview(s), City staff intends to bring forward for the City Council’s consideration up to two recommended facility operators. The recommended operator should be prepared to attend a City Council meeting in Woodlake in order to provide a public presentation before the Mayor and City Council introducing their team and providing an overview of their proposal. The City of Woodlake reserves the right to request any other additional information or documentation deemed necessary to review

the applications throughout the entire application and facility permitting process. The City also reserves the right to request references from applicants.

Following the review and approval by the City Council, the selected operator will be invited to submit, within 90 days, a Conditional Use Permit (CUP) application along with any other necessary land use entitlement applications to the Woodlake Community Development Department for processing. Once the conditional use permit and other applicable land use entitlements have been secured the applicant will be issued an official regulatory permit from the Police Department within 30 days.

Submission Process and General Conditions

Should applicants have questions about this application or require additional clarification about the contents of the application, such questions shall be due by 5:00pm on October 26th. Questions must be sent via email to: jwaters@ci.woodlake.ca.us. Questions posed in person or by phone will not be answered. Answers to questions will be subsequently posted on the City's program website.

Applicants should submit the following materials before the Phase I/II deadline outlined above:

- Completed "Live Scan/Background Packet" form for all Applicants. Background packets will be required for owners and Live Scan will be required for employees.
- Indemnification Agreement and Acknowledgement Form
- One (1) Response to the Phase II Application, outlined above

In addition, applicant must submit, in person, checks as follows:

- Application check for \$2,399 payable to the "City of Woodlake"
- Fees for background checks (\$537 x the number of applicants)

All of the above materials shall be submitted to:

Jason Waters, Community Development Director
City of Woodlake – Community Development Department
350 N. Valencia Blvd.
Woodlake, CA 93286

Deadline for submitting applications: November 3rd, 2017

By submitting a proposal, the applicant represents and warrants that:

1. The information provided is genuine and not a sham, collusive, or made in the interest or on behalf of any party not therein named, and that the applicant has not directly or indirectly induced or solicited any other applicant to put in a sham proposal, or any other applicant to refrain from presenting information and that the prospective provider has not in any manner sought by collusion to secure an advantage.
2. The applicant has not paid or agreed to pay any fee or commission, or any other thing of value contingent upon the award of an exclusive operating area, to any employee, official, or existing contracting consultant of the City of Woodlake.
3. All costs of preparation of proposals including travel for any interviews scheduled shall be borne by the applicants.
4. All proposals become the property of the City of Woodlake. The City reserves the right to reject any and all submittals; to request clarification of information submitted; to request additional information from competitors; and to waive any irregularity in the submission and review process. None of the materials submitted will be returned to the bidder.

5. Information or materials submitted in response to this application will be stored on file with the City of Woodlake, and may subject to the requirements of the California Public Records Act, or subject to public disclosure as ordered by a court of law. Proposed security plans shall be considered confidential.
6. The City reserves the right to request additional information not included in this application from any or all applicants.
7. The City reserves the right to contact references not provided in the submittals.
8. The City reserves the right to incorporate its standard agreement language into any contract resulting from this application.



COMMERCIAL MARIJUANA APPLICATION INDEMNIFICATION AGREEMENT BY AND BETWEEN CITY OF WOODLAKE AND

THIS INDEMNIFICATION AGREEMENT ("Agreement") is entered into this ____ day of _____, 20____ by and between the City of Woodlake ("City") and _____ ("Applicant").

RECITALS

WHEREAS, the Applicant has a legal and/or equitable interest in the certain real property located at Assessor Parcel Number(s): _____ ("Property"); and

WHEREAS, the Applicant has submitted an application to the City for a cannabis business on the Property, pursuant to Chapter 5.48 of the City of Woodlake Municipal Code, hereafter referred to as the "Project."

TERMS

NOW, THEREFORE, pursuant to Chapter 5.48 of the City of Woodlake Municipal Code, and in consideration of the premises, covenants and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Nothing in this Agreement shall be construed to limit, direct, impede or influence the City's review and consideration of the Project.
2. Applicant shall defend, indemnify, save and hold harmless the City of Woodlake, its elected and appointed officials, officers, employees, agents and volunteers from any and all claims, actions, proceedings or liability of any nature whatsoever (including, but not limited to: any approvals issued in connection with any of the above described application(s) by City; any action taken to provide related environmental clearance under the California Environmental Quality Act ("CEQA") by City's advisory agencies, boards or commissions, appeals boards, or commissions, Planning Commission, or City Council; and attorneys' fees and costs awards) arising out of, or in connection with the City's review or approval of the Project or arising out of or in connection with the acts or omissions of the Applicant, its agents, employees or contractors.

With respect to review or approval, this obligation shall also extend to any effort to attack, set aside, void, or annul the approval of the Project, including any contention the Project or its approval is defective because a City ordinance, resolution, policy, standard or plan is not in compliance with local, State or federal law. With respect to acts or omissions of the Applicant, its agents, employees or contractors, its obligation, hereunder shall apply regardless of whether the City prepared, supplied or approved plans, specifications or both.

3. The obligations of the Owner and Applicant under this Indemnification shall apply regardless of whether any permits or entitlements are issued.
4. The City will promptly notify Owner and Applicant of any such claim, action, or proceeding that is or may be subject to this Indemnification and will cooperate fully in the defense. The City may, within its unlimited discretion, participate in the defense of any such claim, action, or proceeding if the City defends the claim, action, or proceeding in good faith.
5. The City Council shall have the absolute right to approve any and all counsel employed to defend the City. To the extent the City uses any of its resources to respond to such claim, action or proceeding, or to assist the defense, the Applicant will reimburse the City upon demand. Such resources include, but are not limited to, staff time, court costs, City Counsel's time at its regular rate for non-City agencies, or any other direct or indirect cost associated with responding to, or assisting in defense of, the claim, action or proceedings.
6. For any breach of this obligation the City may rescind its approval of the Project.
7. The Applicant shall not be required to pay or perform any settlement unless the settlement is approved in writing by the Applicant, which approval shall not be unreasonably withheld. The City must approve any settlement affecting the rights and obligations of the City.
8. The parties agree that this Agreement shall constitute a separate agreement from any Project approval, and that if the Project, in part or in whole, is invalidated, rendered null or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Agreement, which shall survive such invalidation, nullification or setting aside.
9. This Agreement shall be construed and enforced in accordance with the laws of the State of California.
10. The Applicant shall pay all court ordered costs and attorney fees.
11. The defense and indemnification of City set forth herein shall remain in full force and effect throughout all stages of litigation including appeals of any lower court judgments rendered in the proceeding.

After review and consideration of all of the foregoing terms and conditions, Applicant, but its signature below, hereby agrees to be bound by and to fully and timely comply with all of the foregoing terms and conditions.

Dated: _____

Applicant(s):

Printed Name

Signature

Printed Name

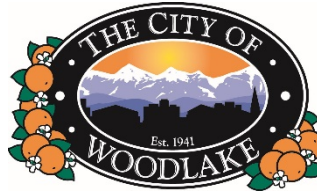
Signature

Printed Name

Signature

Printed Name

Signature



Commercial Cannabis Permit Application Acknowledgement Form

- ✓ I/we have read, fully understand and agree to operate within the regulations identified in The City of Woodlake's Ordinance's and all other applicable state laws and regulations as it relates to commercial cannabis operations and further understand that my permit(s) may be revoked for not operating in compliance with said regulations.
- ✓ I/we understand the City reserves the right to reduce the size of area allowed for cultivation under any clearance or license issued, in the event that environmental conditions, such as a sustained drought or low flows in the watershed will not support diversions for irrigation.
- ✓ I/we understand that it is our responsibility as the applicant to obtain will serve letters from all utility companies that will be serving my development. I/we understand that we will bear the sole cost of any upgrades, transmission improvements needed to serve my development as required by the utility companies.
- ✓ I/we agree that all structures utilized for Commercial Cannabis Businesses will be planned and built in accordance with applicable Building Codes and to the satisfaction of the City.
- ✓ I/we understand that the information I provide with my application may be released as required by law, judicial order, or subpoena, and could be used in a criminal prosecution.
- ✓ I/we agree to defend, indemnify, and hold harmless the City from any defense costs, including attorneys' fees or other loss connected with any legal challenge brought as a result of the City's review and/or approval of this license issuance. I/we agree to execute a formal agreement to this effect on a form provided by the City and available for my inspection.
- ✓ I/we understand that the application fee is non-refundable even if I cancel my application or it is denied during the process.
- ✓ I/we acknowledge that without a complete application package my application may be delayed.
- ✓ I/we recognize that the Community Development Department and Police Chief reserves the right to request additional information if necessary to complete review or processing of the application, and confirm or promote conformance to ordinance-specific requirements and standards.
- ✓ I/we authorize the City, its agents, and employees to seek verification of the information contained within the application including a background check of the applicant and all employees and independent contractors.

Printed Name

Signature

Date

Printed Name

Signature

Date

Property Owner Affidavit

I, _____, authorize the Commercial Cannabis activity entitled _____, to use/purchase this property as a Commercial Cannabis facility, as those terms are defined in the City of Woodlake Municipal Code, should this facility obtain the appropriate Permit. I further understand that I am responsible for, and also subject to, enforcement actions regarding any violations and/or nuisance activity which may occur at this property if leasing the property to the applicant.

Legal Property Owner: _____ Date: _____

Name (Please print) Title: _____

Signature

Legal Building Owner: _____ Date: _____

Name (Please print) Title: _____

Signature

Attach:

- ☐ Proof of possession of the premises and approval of use (deed, lease, lease assignment, agreement showing willingness to sell property if applicant obtains permit)

Notary Use Only:

State of California
County of Tulare

On this, the _____ day of _____, 20____, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that the he/she executed the same for the purpose therein contained.

I witness hereof, I hereunto set my hand and official seal.

Notary Public

Building Owner Affidavit

I, _____, authorize the Commercial Cannabis Facility entitled _____ to use/purchase this property as a Commercial Cannabis facility, as those terms are defined in the City of Woodlake Municipal Code, should this facility obtain a Permit. I further understand that I am responsible for, and also subject to, enforcement actions regarding any violations and/or nuisance activity which may occur at this property if leasing the property to the applicant.

Property Manager Affidavit (if applicable)

I, _____, authorize the Commercial Cannabis Facility entitled _____ to use this property as a Commercial Cannabis facility, as those terms are defined in the City of Woodlake Municipal Code, should this facility obtain a Permit. I further understand that I am responsible for, and also subject to, enforcement actions regarding any violations and/or nuisance activity which may occur at this property.



Background Investigation Packet – Business Owners (Must be completed by each owner)

Under penalty of perjury, I acknowledge that I have personal knowledge of the information stated in this application. I hereby certify that all of the answers provided and statements made in this questionnaire are true and complete. I understand any misstatements of material fact, omissions, incomplete answers, or inaccurate responses will subject me to disqualification or dismissal.

Owner Name: _____

Home or Cell Phone: _____

Home Address: _____

Date of Birth: _____

Tax ID Number: _____

Height: _____

Weight: _____

Hair Color: _____

Signature: _____

Date: _____

Items to be completed as part of the Packet at the Woodlake Police Department:

Live Scan (attached)

Photograph (taken at the Woodlake Police Department)

Fingerprinting (done at the Woodlake Police Department)

Copy of Driver's License, DMV issued ID Card or Passport

Proof of address (DMV-issued ID/driver's license, and/or recent utility bill under Owner's name)

Staff use only: Pass background check

☐

Add more pages as necessary to accommodate responses.

1. Indicate whether, the owner has been convicted of any of the violent felonies listed below as specified in subdivision (c) of Section 667.5 of the Penal Code or a serious felony as specified in subdivision (c) of Section 1192.7 of the Penal Code including:

Section 667.5

- ☐ Murder or voluntary manslaughter.
- ☐ Mayhem.
- ☐ Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- ☐ Sodomy as defined in subdivision (c) or (d) of Section 286.
- ☐ Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- ☐ Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- ☐ Any felony punishable by death or imprisonment in the state prison for life.
- ☐ Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- ☐ Any robbery.
- ☐ Arson, in violation of subdivision (a) or (b) of Section 451.
- ☐ Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- ☐ Attempted murder.
- ☐ A violation of Section 18745, 18750, or 18755.
- ☐ Kidnapping.
- ☐ Assault with the intent to commit a specified felony, in violation of Section 220.
- ☐ Continuous sexual abuse of a child, in violation of Section 288.5.
- ☐ Carjacking, as defined in subdivision (a) of Section 215.
- ☐ Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- ☐ Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22.
- ☐ Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22.
- ☐ Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- ☐ Any violation of Section 12022.53.
- ☐ A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

Section 1192.7

- ☐ Murder or voluntary manslaughter
- ☐ Mayhem
- ☐ Rape
- ☐ sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person
- ☐ oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
- ☐ lewd or lascivious act on a child under 14 years of age;
- ☐ any felony punishable by death or imprisonment in the state prison for life;
- ☐ any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm;
- ☐ attempted murder;
- ☐ assault with intent to commit rape or robbery;
- ☐ assault with a deadly weapon or instrument on a peace officer;
- ☐ assault by a life prisoner on a noninmate;
- ☐ assault with a deadly weapon by an inmate;
- ☐ arson;
- ☐ exploding a destructive device or any explosive with intent to injure;
- ☐ exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;
- ☐ exploding a destructive device or any explosive with intent to murder;
- ☐ any burglary of the first degree;
- ☐ robbery or bank robbery;
- ☐ kidnapping;
- ☐ holding of a hostage by a person confined in a state prison;
- ☐ attempt to commit a felony punishable by death or imprisonment in the state prison for life;
- ☐ any felony in which the defendant personally used a dangerous or deadly weapon;
- ☐ selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code;
- ☐ any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;
- ☐ grand theft involving a firearm;
- ☐ carjacking;
- ☐ any felony offense, which would also constitute a felony violation of Section 186.22;
- ☐ assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220;
- ☐ throwing acid or flammable substances, in violation of Section 244;
- ☐ assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245;
- ☐ assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5;
- ☐ discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section

246;

- ☐ commission of rape or sexual penetration in concert with another person, in violation of Section 264.1;
- ☐ continuous sexual abuse of a child, in violation of Section 288.5;
- ☐ shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100;
- ☐ intimidation of victims or witnesses, in violation of Section 136.1;
- ☐ criminal threats, in violation of Section 422;
- ☐ any attempt to commit a crime listed in this subdivision other than an assault;
- ☐ any violation of Section 12022.53;
- ☐ a violation of subdivision (b) or (c) of Section 11418; and
- ☐ any conspiracy to commit an offense described in this subdivision.

If yes, explain.

2. Does the owner have a conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor? If yes, explain.
3. Does the owner have a felony conviction involving fraud, deceit, or embezzlement? If yes, explain.

4. Does the applicant have a felony conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code? If yes, explain.
5. Does the applicant, or any of its officers, directors, or owners, has been subject to fines, penalties, or otherwise been sanctioned for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code? If yes, explain.
6. Does the applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unauthorized commercial cannabis activities, has had a license suspended or revoked under this division in the three years immediately preceding the date the application is filed with the licensing authority? If yes, explain.

7. Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. If yes, explain.

8. Are you a member or have you been associated with any criminal street gang? If yes, explain.

9. Is there anything else, you feel the background investigator should know about you or your experiences?

10. List 5 references that the City may contact.

Name:_____ Relationship:_____ Phone:_____

Name:_____ Relationship:_____ Phone:_____

Name:_____ Relationship:_____ Phone:_____

Name:_____ Relationship:_____ Phone:_____

Name:_____ Relationship:_____ Phone:_____



Background Investigation Packet – Employee (Must be completed by each employee)

Under penalty of perjury, I acknowledge that I have personal knowledge of the information stated in this application. I hereby certify that all of the answers provided and statements made in this questionnaire are true and complete. I understand any misstatements of material fact, omissions, incomplete answers, or inaccurate responses will subject me to disqualification or dismissal.

Employee Name: _____

Home or Cell Phone: _____

Home Address: _____

Date of Birth: _____

Height: _____

Weight: _____

Hair Color: _____

Signature: _____

Date: _____

Items to be completed as part of the Packet at the Woodlake Police Department:

Live Scan (attached)

Photograph (taken at the Woodlake Police Department)

Fingerprinting (done at the Woodlake Police Department)

Copy of Driver's License, DMV issued ID Card or Passport

Proof of address (DMV-issued ID/driver's license, and/or recent utility bill under Employee's name)

Staff use only: Pass background check

☐



REQUEST FOR LIVE SCAN SERVICE

Applicant Submission

CA0540800

ORI (Code assigned by DOJ)

Authorized Applicant Type

Type of License/Certification/Permit OR Working Title (Maximum 30 characters - if assigned by DOJ, use exact title assigned)

Contributing Agency Information:

WOODLAKE POLICE DEPARTMENT

Agency Authorized to Receive Criminal Record Information

350 N. VALENCIA BLVD.

Street Address or P.O. Box

WOODLAKE

City

CA

State

93286

ZIP Code

Mail Code (five-digit code assigned by DOJ)

MICHAEL MARQUEZ

Contact Name (mandatory for all school submissions)

(559) 564-3346

Contact Telephone Number

Applicant Information:

Last Name

First Name

Middle Initial

Suffix

Other Name

(AKA or Alias) Last

First

Suffix

Date of Birth

Sex



Male



Female

Driver's License Number

Height

Weight

Eye Color

Hair Color

Billing
Number

141384

(Agency Billing Number)

Misc.

Number

(Other Identification Number)

Place of Birth (State or Country)

Social Security Number

Home

Address Street Address or P.O. Box

City

CA

State

ZIP Code

Your Number: CA0540800

OCA Number (Agency Identifying Number)

Level of Service:



DOJ



FBI

If re-submission, list original ATI number:

(Must provide proof of rejection)

Original ATI Number

Employer (Additional response for agencies specified by statute):

Employer Name

Mail Code (five digit code assigned by DOJ)

Street Address or P.O. Box

City

State

ZIP Code

Telephone Number (optional)

Live Scan Transaction Completed By:

Name of Operator

Date

Transmitting Agency

LSID

ATI Number

Amount Collected/Billed