



**CITY COUNCIL AGENDA  
CITY HALL, 291 N. MAIN STREET  
PORTERVILLE, CALIFORNIA  
APRIL 4, 2023, 5:30 PM**

The City of Porterville is allowing for and encouraging electronic participation at City Council Meetings. Porterville City Council Meetings will be live streamed on YouTube at <https://www.youtube.com/channel/UC5KuhSrNMNL9nwHJVtnJvvA>

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

**Topic: City of Porterville – City Council Meeting of April 4, 2023**

Please use the following link below to join the webinar:

<https://us06web.zoom.us/j/84533071134?pwd=RTgrNWVmTHlvKzdQU1krRU5ZajdyZz09>

Or via Telephone: **1-669-900-6833** Webinar ID: **845 3307 1134** Passcode: **008819**

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: APNs: 269-050-063, 269-050-064 and 269-050-065. Agency Negotiator: John Lollis and Jason Ridenour. Negotiating Parties: City of Porterville and California Highway Patrol. Under Negotiation: Terms and Price.
- 2** - Government Code Section 54957.6 – Conference with Labor Negotiator. Agency Negotiator: John Lollis, Patrice Hildreth and Yuliana Andrade. Employee Organizations: Porterville City Firefighters Association, Porterville City Employees Association, Management and Confidential Series, and all Unrepresented Management.
- 3** - Government Code Section 54956.95 – Liability Claim: Claimant: Sandra Lopez Hernandez. Agency claimed against: City of Porterville.
- 4** - Government Code Section 54956.95 – Liability Claim: Claimant: Julie Rivera. Agency claimed against: City of Porterville.
- 5** - Government Code Section 54956.95 – Liability Claim: Claimant: Sherri Goodnight. Agency claimed against: City of Porterville.
- 6** - Government Code Section 54956.95 – Liability Claim: Claimant: Alfredo Galindo. Agency claimed against: City of Porterville.

7 - Government Code Section 54956.95 – Liability Claim: Claimant: Lisa Marquis. Agency claimed against: City of Porterville.

8 - Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: Cecilia Chavez et al. v. City of Porterville et al., U.S. District Court, Eastern District, Case No. 22-cv-00794-ADA-SKO.

9 - 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 plaintiffs.

10 - Government Code Section 54956.9(d)(4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation: Three (3) cases.

11 - Government Code Section 54957 – Threat to Public Services or Facilities: Consultation with Jake Castellow, Porterville EOC Incident Commander.

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

Pledge of Allegiance Led by Mayor Flores

Invocation

**PRESENTATIONS**

Employee Service Awards

Taskforce on Homelessness Presentation - Claudia Calderon

**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.

**REPORTS**

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

I. Staff Informational Reports

1. Water Conservation Phase IV Status Update - February 2023
2. Vacation of Seat on Arts Commission

**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 13, 2023, March 17, 2023, and March 21, 2023**

Re: Considering approval of the City Council Meeting draft Minutes of December 13, 2022, March 17, 2023, and March 21, 2023.



2. **Authorization to Purchase Unmanned Aerial System (UAS)**  
Re: Consideration to authorize the Police Department to purchase one Matrice 30T; and authorize the purchase of the UAS from Drones Made Easy in the amount of \$18,705.78.
3. **Authorization to Purchase Solar Lights for Murry Park Through Community Development Block Grant Park Improvement Funds**  
Re: Consideration to authorize the purchase of solar lights for Murry Park through Community Development Block Grant Park Improvement Funds from Gama Sonic not to exceed \$61,768.99; and authorize the Parks and Leisure Services Director to negotiate for the installation of the solar light poles.
4. **Authorization to Apply for Clean California Local Grant Program (CCLGP) Funds**  
Re: Considering approval to submit applications for grant funds to reduce waste, enhance public spaces for walking and recreation and to improve public health in the community.
5. **Status and Review of Local Drought 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**

6. **Consideration of Conditional Use Permit (PRC 2023-003-C) to Allow for the Sale of Alcohol at "Tio Chema" located at 377 E. Orange Avenue**  
Re: Consideration to find the proposed project exempt from CEQA under CEQA Guidelines Section 15301.; and approve the draft Resolution approving the Conditional Use Permit 2023-003 for Tio Chema, located at 377 E. Orange Avenue.
7. **Intent to Abandon and Close to Public Use an Unimproved Alley Bounded by Morton Avenue and the East 7.5 Feet of the William Duncan Subdivision**  
Re: Consideration to adopt the draft Resolution ordering the vacation of an unimproved alley bounded by Morton Avenue and the east 7.5 feet of the William Duncan Subdivision.

#### **SCHEDULED MATTERS**

8. **Review of City Participation in the Tulare County Regional Transit Agency**  
Re: Review and consideration of the City's continued participation in the Tulare County Regional Transportation Agency.
9. **Consider Authorization to Distribute a Request for Qualifications to Add to the List of Qualified Material Testing Firms and Annual Review by City Council**  
Re: Consider authorization to distribute a Request for Qualifications to add to the list of qualified material testing firms and annual review by Council.
10. **Status and Review of Declaration of Local Flood Emergency**  
Re: Review of the Declaration of Local Emergency made on March 13, 2023, concerning the significant weather event and impacts or likely impacts relative to increased flow of the Tule River.

#### **AB 1234 REPORTS**

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

1. Tulare County Economic Development Corp. (TCEDC) -March 22, 2023 - Canceled
2. Tulare County Regional Transit Authority (TCRTA) - March 22, 2023
3. Tulare County Association of Governments (TCAG) Board Retreat - March 23, 2023 Canceled
4. Joint City/School Committee - March 27, 2023
5. City/Tribe Casino MOU Meeting - March 28, 2023
6. Internal City Audit Committee - March 29, 2023
7. Tulare County Regional Transit Authority (TCRTA) - March 29, 2023
8. Hispanic Chamber Foundation Women's History Month Event - March 30, 2023
9. TCAG/TCRTA Transit Coordination Meeting - March 31, 2023

**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 April 18, 2023, at 5:30 P.M.

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

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



## CITY COUNCIL AGENDA – APRIL 4, 2023

SUBJECT: 1. Water Conservation Phase IV Status Update - February 2023

SOURCE: Public Works

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

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

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

Violations of prohibited activities are considered infractions and are punishable by fines of up to \$500 for each day the violation occurs. Any peace officer or employee of a public agency charged with enforcing laws and authorized to do so by ordinance may issue a citation to the violator. The City will respond to enforcement by issuing a Notice of Violation for all witnessed occurrences, and staff will process all reported issues. Enforcement statistics for February 2023 show that three notices of violation were issued for water wasting, and no administrative citations were issued.

Water production for February 2023 reflects a nine percent (9%) decrease from the 5-year average. The monthly production for February was 179 million gallons, which is a nine percent (9%) decrease compared to February 2013 at 197 million gallons. Residential consumption for February 2023 was seventy-four (74) gallons per capita per day (GPCD).

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

of water used during the same months in 2013. City Staff will evaluate conservation totals in two formats: 1) Calculate the cumulative conservation totals for production as compared to production in 2013, and 2) Calculate cumulative conservation totals in relation to GPCD in efforts to evaluate population growth impacts on production as compared to 2013. The cumulative total production for the City of Porterville's conservation efforts will be reflected from June 2015 through February 2023. Porterville's cumulative total production conservation through February 2023 is nineteen (19%). The cumulative total of GPCD for the City of Porterville's conservation efforts will be reflected from June 2015 through February 2023. Porterville's cumulative total GPCD conservation through February 2023 is twenty-four percent (24%).

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

The State Water Board requires monthly reporting to track what agencies are doing and how they perform throughout the year. Proposed permanent regulations will require agency reporting to continue monitoring the performance of urban water conservation with a preparedness to implement conservation standards as necessary. California Governor Gavin Newsom signed Executive Order N-10-21 on July 8, 2021, urging all Californians to voluntarily reduce their water use by fifteen percent (15%) compared to their prior-year levels due to excessive drought conditions. Water production for the City system shows an eighteen percent (18%) decrease from February 2022 to February 2023. California Governor Gavin Newsom issued another Executive Order N-7-22 on March 28, 2022, to address drought conditions after the driest first three months of a year in recorded history. EO N-7-22 requires that each water supplier implements, at a minimum, the shortage response actions adopted under section 10632 of the Water Code for a shortage level of up to twenty percent (Level 2). The City of Porterville's Water Conservation Plan Phase IV meets the requirements for this shortage (Level 2).

RECOMMENDATION: Information Only

ATTACHMENTS:

1. Monthly Production Status February 2023
2. Monthly Production Status GPCD February 2023
3. Drought Response Phase IV Flyer

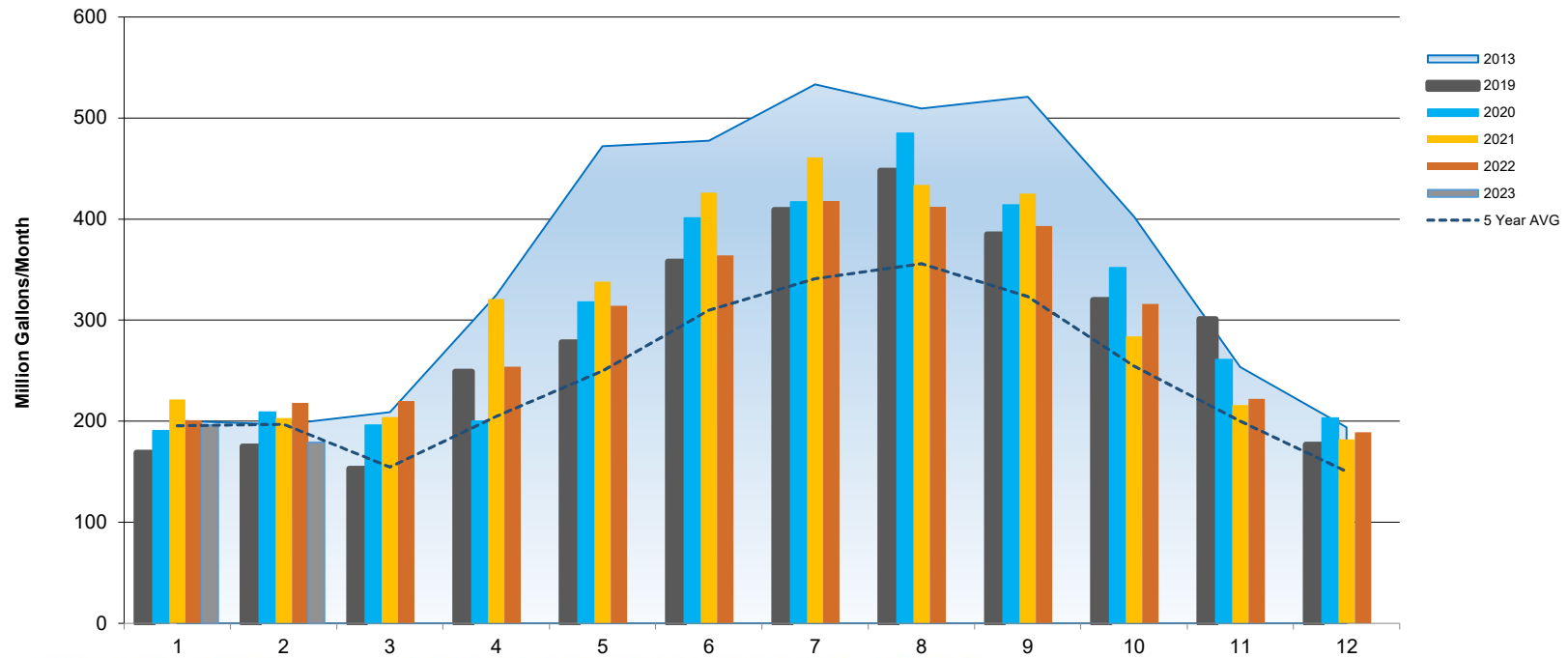
Appropriated/Funded:

Review By:

Department Director:  
Michael Knight, Public Works Director

Final Approver: John Lollis, City Manager

**Monthly Production Status & Cumulative Total June 2015 Through  
February 2023 Production Comparison to 2013 & 5 Year Average**

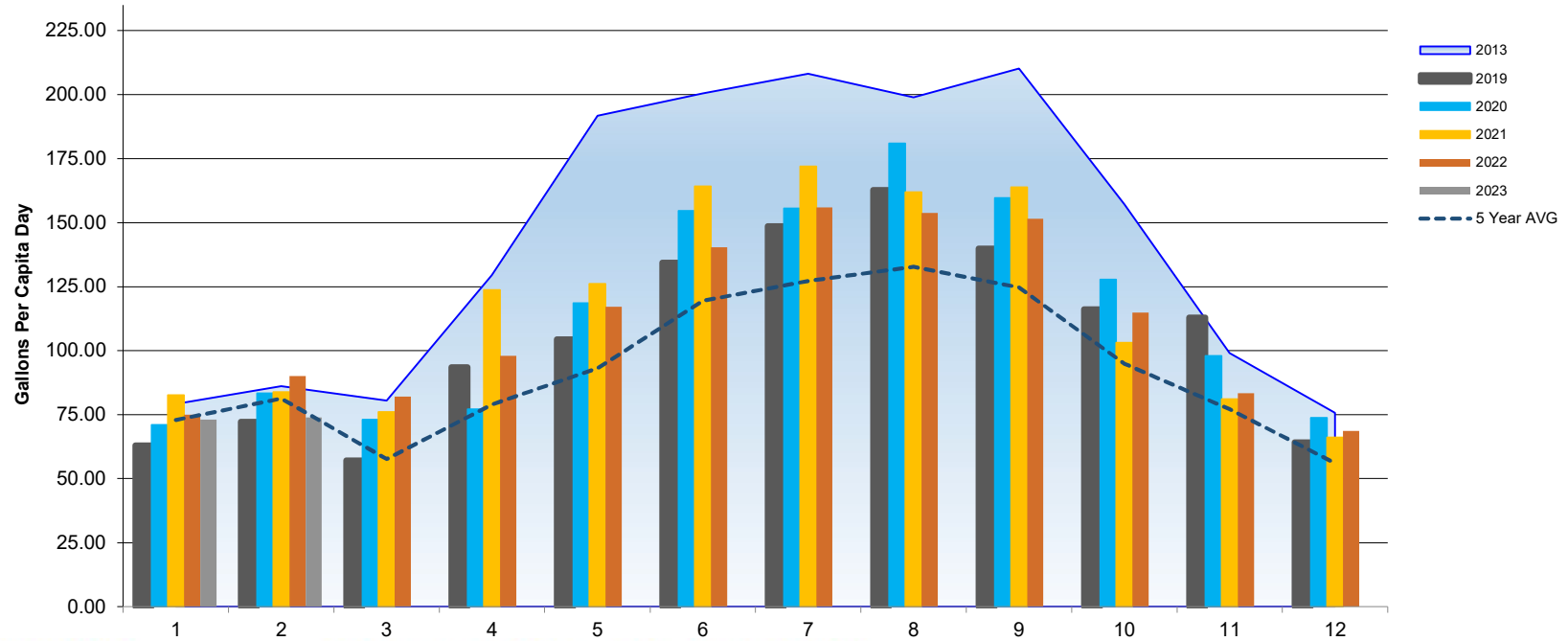


**Production Cumulative Total 19%**

|      | 1   | 2    | 3    | 4    | 5    | 6    | 7    | 8    | 9    | 10   | 11   | 12  |
|------|-----|------|------|------|------|------|------|------|------|------|------|-----|
| 2019 | 16% | -11% | -27% | -23% | -41% | -25% | -23% | -12% | -26% | -20% | 19%  | -9% |
| 2020 | -5% | 6%   | -6%  | -38% | -33% | -16% | -22% | -5%  | -21% | -13% | 3%   | 5%  |
| 2021 | 11% | 3%   | -2%  | -1%  | -28% | -11% | -14% | -15% | -18% | -29% | -15% | -6% |
| 2022 | 0%  | 11%  | 5%   | -22% | -33% | -24% | -22% | -19% | -25% | -21% | -13% | -3% |
| 2023 | -2% | -18% |      |      |      |      |      |      |      |      |      |     |

*Percent Comparison to 2013 Production*

**Monthly Production Status & Cumulative Total June 2015 Through  
February 2023 Gallon Per Capita Day Comparison to 2013 & 5 Year Average**



**GPCD**

**Cumulative Total 24%**

|  |      |      |      |      |        |      |      |      |       |      |      |      |      |
|--|------|------|------|------|--------|------|------|------|-------|------|------|------|------|
|  | 2019 | -20% | -16% | -29% | -28%   | -46% | -33% | -29% | -18%  | -33% | -26% | 14%  | -15% |
|  | 2020 | -10% | -3%  | -9%  | -40%   | -38% | -23% | -25% | -9%   | -24% | -19% | -1%  | -3%  |
|  | 2021 | 4%   | -3%  | -5%  | -4.4%  | -34% | -18% | -17% | -19%  | -22% | -34% | -18% | -13% |
|  | 2022 | -5%  | 4%   | 2%   | -24.3% | -39% | -30% | -25% | -100% | -28% | -27% | -16% | -9%  |
|  | 2023 | -19% | -29% |      |        |      |      |      |       |      |      |      |      |

*Percent Comparison to 2013 Production*



**DROUGHT RESPONSE Phase IV**

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

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

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

**Excessive water runoff is prohibited.**

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

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

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

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

# DROUGHT RESPONSE PHASE IV

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

## Mandatory Odd/Even Watering Schedule

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

- Odd Address
- Even Address
- Outdoor Watering is Prohibited

### ODD NUMBER ADDRESSES

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

OR

### EVEN NUMBER ADDRESSES

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

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

**Mandatory  
Odd/Even Watering  
Schedule**

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**Excessive water  
runoff prohibited**

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

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

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

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

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**NO WATERING  
MONDAY THROUGH  
FRIDAY.**





## CITY COUNCIL AGENDA – APRIL 4, 2023

SUBJECT: 2. Vacation of Seat on Arts Commission

SOURCE: Community Development

COMMENT: The Arts Commission was established with the adoption of Ordinance 1767 on October 19, 2010. The duties of the Arts Commission outlined in Ordinance 1767 include: making recommendations to the City Council regarding the development and promotion of practices and policies pertaining to the arts, fostering the development and enjoyment of visual, cultural, performing, and other arts in the City of Porterville, to work cooperatively with City entities and other advisory commissions to include an arts element in as many areas of city planning and development as possible, and to develop a workplan with the goals and objectives of the Arts Commission. On May 2, 2017, Ordinance 1841 was adopted, amending Chapter 5A of the Porterville Municipal Code, which governs the Arts Commission.

Porterville Municipal Code Section 5A-6 Meetings and Records states: *Members are expected to have seventy-five percent (75%) attendance based on the Commission's regular meeting schedule (e.g. 9 out of 12 meetings if held monthly, and 3 out of 4 if held quarterly). Members who fail to meet the attendance requirement automatically vacate their seat and the vacancies shall be filled per Section 5A-5.*

Arts Commissioner Diego Monterubbio was appointed to the Commission in 2018. Commissioner Monterubbio has not attended a regularly scheduled Arts Commission meeting since 2019 and, therefore, according to Ordinance 1841, his seat is automatically vacated.

Pursuant to Ordinance No.1841, the Arts Commission is comprised of five (5) members, plus one (1) student/youth member, and represents four (4) areas of arts: theatrical/performing arts, visual/graphic, music, and youth. Staff will advertise to fill the vacant seat.

RECOMMENDATION: Informational Item

ATTACHMENTS: 1. Ordinance No. 1767  
2. Ordinance No. 1841

Appropriated/Funded:

Review By:

Department Director:  
Jason Ridenour, Assistant City Manager

Final Approver: John Lollis, City Manager

**ORDINANCE NO. 1767**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
ADDING CHAPTER 5A, ARTICLE I, SECTIONS 5A-1 THROUGH 5A-8 TO  
THE PORTERVILLE MUNICIPAL CODE REGARDING  
THE FORMATION OF AN ARTS COMMISSION**

**THE CITY COUNCIL OF THE CITY OF PORTERVILLE DOES ORDAIN AS  
FOLLOWS:**

**Section 1. Code Amendment.** Chapter 5A, Article I, Sections 5A-1 through 5A-8 is hereby added to the Porterville Municipal Code, to read as follows:

**CHAPTER 5A  
ARTICLE I**

**Section 5A-1 Established.**

An Arts Commission is established in and for the City of Porterville. The Arts Commission shall serve in an advisory capacity to the City Council.

**Section 5A-2 Composition.**

The Arts Commission shall consist of up to 11 members. No less than three (3) and no more than (7) seats shall be considered "open" seats to be appointed by the City Council at its complete discretion. The appointees for the remaining four (4) seats shall be recommended by the initially appointed members of the "open" seats, via subcommittees representing four areas of arts: 1) theatrical/ performing arts; 2) visual/graphic; 3) music; and 4) youth, with final approval by the City Council.

**Section 5A-3 Compensation.**

Members of the Arts Commission shall serve without compensation.

**Section 5A-4 Term of Office/Removal.**

The term of the "open" seats shall be three (3) years with terms staggered to prevent concurrent expiration of terms. No member appointed to an "open" seat may serve more than two (2) consecutive terms.

The term of the seats appointed via subcommittee recommendation shall be one (1) year. Those appointed via the subcommittees shall have no term limits.

All Commission members shall serve at the pleasure of the City Council and may be removed by a majority vote of the City Council at any time and for any reason.

### **Section 5A-5 Vacancies.**

Vacancies, occurring otherwise than by expiration of the terms, shall be filled by appointment as in the first instance (by either direct appointment by the City Council or appointment by the Council via Subcommittee/Commission recommendation) as soon as possible; such appointee to serve for the unexpired term of the vacant office.

### **Section 5A-6 Meetings and Records.**

The Arts Commission shall hold meetings regularly as determined by the Commission and shall designate the time and place thereof. The Meetings shall be held in compliance with the Brown Act and all applicable laws, and the meetings and records shall be public. The Commission shall keep a record of its proceedings. A record of attendance shall be kept regularly and reported to the City Council at least one time per year. Members are expected to have 75% attendance based on the Commission's regular meeting schedule (e.g. 9 out of 12 meetings if held monthly, 3 out of 4 if held quarterly). Members who fail to meet the attendance requirement automatically vacate their seat and the vacancies shall be filled per Section 5A-5.

### **Section 5A-7 Quorum.**

A presence of a majority of the members of the established number of commissioners, as set via Resolution of the City Council, shall constitute a quorum for the transaction of business (i.e. at least 4, as many as 6).

### **Section 5A-8 General Powers and Duties of Commission.**

The Arts Commission shall:

- A. Make recommendations to the City Council regarding development and promotion of practices and policies pertaining to the Arts, keeping in mind the adoption of policy is the prerogative of the City Council.
- B. Foster the development and enjoyment of visual, cultural, performing, and other arts in the City of Porterville.
- C. To work cooperatively with city entities and other advisory commissions to include an Arts element in as many areas of city planning and development as possible.
- D. Develop and submit a Workplan to the Council on an annual basis detailing the goals and objectives of the Arts Commission over the next year, five years and/or twenty years.

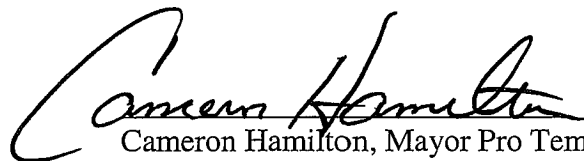
**Section 2. Severability.** Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall

have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**Section 3. *Effective Date.*** This Ordinance shall take effect thirty days after adoption as provided by Porterville Charter Section 12.

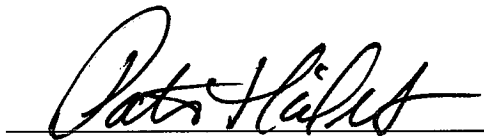
**Section 4. *Certification.*** The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published according to law.

**PASSED, APPROVED AND ADOPTED**, this 19<sup>th</sup> day of October, 2010.

  
Cameron Hamilton, Mayor Pro Tem

ATTEST:

John D. Lollis, City Clerk

  
By: Patrice Hildreth, Chief Deputy City Clerk

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

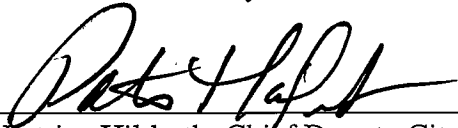
I, JOHN D. LOLLIS, the duly qualified City Clerk of the City of Porterville do hereby certify:

THAT the foregoing ordinance is a true and correct copy of Ordinance No. 1767, passed and adopted by the Council of the City of Porterville at a regular meeting held on the 19<sup>th</sup> day of October, 2010, that said ordinance has been duly published pursuant to law, and that by the terms and provisions of the Charter of the City of Porterville, said ordinance to become effective November 18, 2010, at which time said ordinance is deemed to be in full force and effect.

THAT said ordinance was introduced by Council and the same was duly passed and adopted by the following vote:

| COUNCIL: | McCRACKEN | IRISH | MARTINEZ | WARD | HAMILTON |
|----------|-----------|-------|----------|------|----------|
| AYES:    | X         |       | X        | X    | X        |
| NOES:    |           |       |          |      |          |
| ABSTAIN: |           |       |          |      |          |
| ABSENT:  |           | X     |          |      |          |

JOHN D. LOLLIS, City Clerk

  
By: Patrice Hildreth, Chief Deputy City Clerk

**ORDINANCE NO. 1841**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
AMENDING CHAPTER 5A OF THE PORTERVILLE MUNICIPAL CODE  
REGARDING THE FORMATION OF AN ARTS COMMISSION**

**THE CITY COUNCIL OF THE CITY OF PORTERVILLE DOES ORDAIN AS  
FOLLOWS:**

**Section 1.** Chapter 5A, Article I, Section 5A-2 of the Porterville Municipal Code is hereby amended to read as follows:

**Section 5A-2 Composition.**

The Arts Commission shall consist of five (5) members, plus one youth member. Commissioners shall be appointed by the City Council at its complete discretion. Members of the commission shall represent four areas of arts: 1) theatrical/performing arts; 2) visual/graphic; 3) music; 4) youth.

**Section 2.** Chapter 5A, Article I, Section 5A-4 of the Porterville Municipal Code is hereby amended to read as follows:

**Section 5A-4 Term of Office/Removal.**

The term of office shall be three (3) years with terms staggered to prevent concurrent expiration of terms with the exception of the youth representative.

**Section 3.** Chapter 5A, Article I, Section 5A-5 of the Porterville Municipal Code is hereby amended to read as follows:

**Section 5A-5 Vacancies.**

Vacancies, occurring otherwise than by expiration of the terms, shall be filled by appointment as soon as possible; such appointee to serve for the unexpired term of the vacant office.

**Section 4.** Chapter 5A, Article I, Section 5A-7 of the Porterville Municipal Code is hereby amended to read as follows:

**Section 5A-7 Quorum.**

A presence of a majority of the members (not including the student/youth member) of the established number of commissioners shall constitute a quorum for the transaction of business.

**Section 5.** *Severability.* Should any provision of this Ordinance, or its application to any person or circumstance, be 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 Ordinance or the application of this Ordinance to any other person or circumstance and, or that end, the provisions hereof are severable.

**Section 6.** *Effective Date.* This Ordinance shall take effect thirty days after adoption as provided by Porterville Charter Section 12.

**Section 7.** *Certification.* The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published according to law.

PASSED, APPROVED AND ADOPTED, this 2<sup>nd</sup> day of May, 2017.

  
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     )

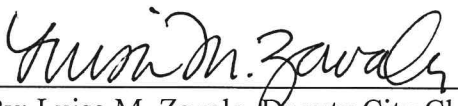
I, JOHN D. LOLLIS, the duly qualified City Clerk of the City of Porterville do hereby certify:

THAT the foregoing ordinance is a true and correct copy of Ordinance No. 1841, passed and adopted by the Council of the City of Porterville at a regular meeting held on the 2<sup>nd</sup> day of May, 2017, that said ordinance has been duly published pursuant to law, and that by the terms and provisions of the Charter of the City of Porterville, said ordinance to become effective June 1, 2017, at which time said ordinance is deemed to be in full force and effect.

THAT said ordinance was introduced by Council and the same was duly passed and adopted by the following vote:

| COUNCIL: | REYES | WARD | STOWE | HAMILTON | FLORES |
|----------|-------|------|-------|----------|--------|
| AYES:    | X     | X    |       | X        | X      |
| NOES:    |       |      |       |          |        |
| ABSTAIN: |       |      |       |          |        |
| ABSENT:  |       |      | X     |          |        |

JOHN D. LOLLIS, City Clerk

  
By: Luisa M. Zavala, Deputy City Clerk



## CITY COUNCIL AGENDA – APRIL 4, 2023

**SUBJECT:** City Council Minutes of December 13, 2023, March 17, 2023, and March 21, 2023

**SOURCE:** Administrative Services

**COMMENT:** Staff has prepared the draft minutes for December 13, 2023, March 17, 2023, and March 21, 2023.

**RECOMMENDATION:** That the Council approve the draft Minutes of December 13, 2023, March 17, 2023, and March 21, 2023.

**ATTACHMENTS:**

1. 2022\_12\_13 Draft Minutes
2. 2023\_03\_17 Draft Minutes
3. 2023\_03\_21 Draft Minutes

**Appropriated/Funded:**

**Review By:**

Department Director:  
Patrice Hildreth, Deputy City Manager

Final Approver: Patrice Hildreth, Deputy City Manager

**MINUTES  
SPECIAL CITY COUNCIL MEETING  
CITY HALL, 291 N. MAIN STREET  
PORTERVILLE, CALIFORNIA  
DECEMBER 13, 2022, 5:30 PM**

Call to Order at 5:30 p.m.

Roll Call: Council Member Donald Weyhrauch, Council Member Lawana Tate,  
Council Member Milt Stowe, Vice Mayor Kellie Carrillo, Mayor Martha A. Flores

The Pledge of Allegiance was led by Council Member Tate.

Invocation – Council Member Stowe and a member of the public came forward to give an invocation.

**ORAL COMMUNICATIONS**

None.

**SCHEDULED MATTERS**

1. ACCEPTANCE OF OFFICIAL CANVASS AND STATE OF VOTES FOR  
NOVEMBER 8, 2022 ELECTION

Recommendation: That the City Council approve the draft Resolution accepting the Certified Canvass and Statement of Votes of the November 8, 2022, Municipal General Election from the Tulare County Registrar of Voters.

City Manager Lollis introduced the item, and Deputy City Manager Patrice Hildreth presented the staff report.

**COUNCIL ACTION:** MOVED by Mayor Martha A. Flores, SECONDED by Council Member Lawana Tate that the City Council approve the draft resolution accepting the Certified Canvass and Statement of Votes of the November 8, 2022, Municipal General Election from the Tulare County Registrar of Voters. The motion carried unanimously.

Documentation: M.O. 01-121322

Disposition: Approved.

2. RECOGNITION OF COUNCIL MEMBER MILT STOWE

City Manager Lollis recognized Council Member Stowe, and Members of the Council in turn addressed Councilmember Stowe.

Mayor Flores as well as Assemblyman Devon Mathis's representative Rosalinda Alexander presented Council Member Stowe with certificates and thanked him for his leadership and long-time

service to the community.

Council Member Stowe thanked everyone including his wife Lori to whom he expressed his love and gratitude.

3. RECOGNITION OF COUNCIL MEMBER LAWANA TATE

Mayor Flores thanked Council Member Tate for her service and presented her with a certificate. Council Member Tate thanked everyone for their support and wished the newly elected council members well.

4. ADMINISTRATION OF OATH OF OFFICE, PRESENTATION OF CERTIFICATES OF ELECTION, AND SEATING OF NEW CITY COUNCIL

Tulare County Superior Court Judge Glade Roper administered the Oath of Office to Council Member Elect Raymond Beltran, District 1, and Council Member Elect Greg Meister, District 2.

5. REORGANIZATION OF CITY COUNCIL

City Manager Lollis introduced the item.

Mayor Flores opened up nominations for Mayor. Vice Mayor Carrillo nominated Mayor Flores to continue as the Mayor. Council Member Beltran Seconded the nomination. Nominations were closed.

**COUNCIL ACTION:** MOVED by Vice Mayor Carrillo, SECONDED by Council Member Beltran that the City Council appoint Mayor Martha A. Flores to continue as the Mayor. The motion carried unanimously.

Documentation: M.O. 02-121322

Disposition: Approved.

Mayor Flores opened up nominations for Vice Mayor. Mayor Flores nominated Vice Mayor Kellie Carrillo to continue as the Vice Mayor. Council Member Weyhrauch Seconded Mayor Flores's Nomination. Nominations were closed.

**COUNCIL ACTION:** MOVED by Mayor Martha A. Flores, SECONDED by Council Member Weyhrauch that the City Council appoint Vice Mayor Kellie Carrillo to continue as the Vice Mayor. The motion carried unanimously.

Documentation: M.O. 03-121322

Disposition: Approved.

6. CONSIDERATION OF CITY COUNCIL APPOINTMENTS TO BOARDS AND COMMISSIONS

City Manager Lollis introduced the item and presented the staff report.

Mayor Flores requested that Council Members communicate their interest in serving on the various boards and committees, which consisted of the following:

- TCAG Board – Mayor Flores, Member; Council Member Meister, Alternate
- Tulare County Taskforce on Homelessness – Mayor Flores, Economic Development & Housing Manager Calderon, Alternate
- Tulare County Economic Development Corporation (TCEDC) – Mayor Flores and City Manager Lollis
- Council of Cities – Mayor Flores, Member; Council Member Meister, Alternate
- Porterville Area Development Authority (PADA) – Council Members Weyhrauch and Beltran, Members
- Joint City/School District Committee – Vice Mayor Carrillo and Council Member Meister, Members
- Ad Hoc Committee – Proposition 64 Regulation of Marijuana – Council Members Weyhrauch and Beltran, Members
- Ad Hoc Committee – Provision of Local Water Services – Vice Mayor Carrillo and Council Member Beltran, Members
- Tule River Improvement JPA – Council Member Weyhrauch, Member and Public Works Director Knight, Alternate
- Tulare County City Selection Committee – Mayor; Designee
- Tulare County Regional Transit Agency – Council Member Weyhrauch, Member; Council Member Beltran, Alternate
- PDC Advisory Board – City Manager John Lollis and Vice Mayor Carrillo, Members
- Internal City Audit Committee – Mayor Flores and Vice Mayor Carrillo, Members
- San Joaquin Valley Special City Selection Committee – Council Members Weyhrauch and Meister, Members
- Eastern Tule Groundwater Sustainability Agency JPA – Council Member Weyhrauch and Public Works Director Knight, Members Works Director Michael Knight
- Ad Hoc Committee – COVID-19 – Vice Mayor Carrillo and Council Member Meister, Members
- Local Initiatives Navigation Center Committee “LINC” Committee – Council Member Beltran, Member
- Ad Hoc Military Banner Committee – Vice Mayor Carrillo, Member
- Ad Hoc Library Facility Planning Committee – Vice Mayor Carrillo, Member
- Mighty 190 Committee – Vice Mayor Carrillo and Council Member Meister, Members

**COUNCIL ACTION:** MOVED by Mayor Martha A. Flores, SECONDED by Council Member Greg Meister that the City Council approve the appointments as proposed. The motion carried unanimously.

Documentation: M.O. 04-121322

Disposition: Approved.

## **ADJOURNMENT**

The Council adjourned at 6:16 p.m. to the meeting of December 20, 2022 at 5:30 p.m.

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Fernando Gabriel-Moraga, Deputy City Clerk

SEAL

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Martha A. Flores, Mayor

**MINUTES  
SPECIAL CITY COUNCIL MEETING  
CITY HALL, 291 N. MAIN STREET  
PORTERVILLE, CALIFORNIA  
MARCH 17, 2023, 10:00 AM**

Call to Order at 10:00 a.m.

Roll Call: Councilmember Greg Meister, Councilmember Raymond Beltran,  
Councilmember Donald Weyhrauch, Vice Mayor Kellie Carrillo,  
Mayor Martha A. Flores

The Pledge of Allegiance was led by Council Member Weyhrauch

**ORAL COMMUNICATIONS**

None.

**SCHEDULED MATTERS**

1. RATIFICATION OF DECLARATION OF LOCAL EMERGENCY

Recommendation: That the City Council:

1. Does hereby find that the aforesaid conditions of extreme peril did warrant and necessitate the declaration of the existence of a local emergency; and
2. Approves the delegation of authority for the command, leadership, and management as the Incident Commander for the XTU OES Preposition/Mobilization in Tulare County.

City Manager Lollis introduced the item and presented the staff report.

**COUNCIL ACTION:** MOVED by Vice Mayor Carrillo, SECONDED by Councilmember Weyhrauch that the City Council hereby finds that the aforesaid conditions of extreme peril did warrant and necessitate the Declaration of Local Emergency; and approve the delegations of authority for the command, leadership and management as the Incident Commander for the XTU OES Preposition/Mobilization in Tulare County. The motion carried unanimously.

Documentation: Resolution No. 11-2023

Disposition: Approved.

**ORAL COMMUNICATIONS**

None.

The City Council convened into Closed Session at 10:07 a.m.

**CITY COUNCIL CLOSED SESSION:**

A. Closed Session Pursuant to:

1 - Government Code Section 54956.9(d) (3) – Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation: One (1) case in which facts are not yet known to potential plaintiff.

2- Government Code Section 54956.9(d)(4) - Conference with Legal Counsel - Anticipated Litigation - Initiation of Litigation: One (1) case.

**12: 23 P.M. RECONVENE OPEN SESSION AND REPORT ON REPORTABLE ACTION  
TAKEN IN CLOSED SESSION**

City Attorney Lew reported no reportable action had taken place during Closed Session.

**ADJOURNMENT** –

The Council adjourned at 12:23 p.m. to the meeting of March 21, 2023 at 5:30 p.m.

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Fernando Gabriel-Moraga, Deputy City Clerk

SEAL

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Martha A. Flores, Mayor



**CITY COUNCIL MINUTES  
CITY HALL, 291 N. MAIN STREET  
PORTERVILLE, CALIFORNIA  
MARCH 21, 2023, 5:30 PM**

Call to Order at 5:30 p.m.

Roll Call: Councilmember Greg Meister, Councilmember Raymond Beltran,  
Councilmember Donald Weyhrauch, Vice Mayor Kellie Carrillo,  
Mayor Martha A. Flores

**ORAL COMMUNICATIONS**

None.

**CITY COUNCIL CLOSED SESSION:**

A. Closed Session Pursuant to:

1 - Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: APN: 252-193-008. Agency Negotiator: John Lollis and Jason Ridenour. Negotiating Parties: City of Porterville and CA Medical Imaging. Under Negotiation: Terms and Price.

2 - Government Code Section 54956.95 – Liability Claim: Claimants: Bertha Ruiz, Charlie David Montoya, Karen Marlene Montoya, and Jonathan Salvador Montoya. Agency Claimed Against: City of Porterville.

3 - Government Code Section 54956.95 – Liability Claim: Claimant: Donald Sweeney. Agency claimed against: City of Porterville.

4 - Government Code Section 54956.9(d)(3) – Conference with Legal Counsel – Anticipated Litigation – Significant exposure to litigation: Three (3) cases in which facts are not yet known to potential plaintiff.

5 - Government Code Section 54956.9(d)(4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation: One (1) case.

6 - Government Code Section 54957 - Threat to public services or facilities: Consultation with Jake Castellow, Porterville EOC Incident Commander.

**6:41 P.M. RECONVENE OPEN SESSION AND REPORT ON REPORTABLE ACTION  
TAKEN IN CLOSED SESSION**

City Attorney Lew reported action pertaining to A-2 and A-3, as follows:

A-2. On a MOTION made by Mayor Martha. A. Flores, and SECONDED by Councilmember Greg Meister, the City Council unanimously rejected the claim filed by Claimants Bertha Ruiz, Charlie David Montoya, Karen Marlene Montoya, and Johnathan Salvador Montoya.

Documentation: M.O. 01-032123

Disposition: Claim rejected.

A-3. On a MOTION made by Vice Mayor Kellie Carrillo, and SECONDED by Councilmember Raymond Beltran the City Council unanimously rejected the claim filed by Donald Sweeney.

Documentation: M.O. 02-032123

Disposition: Claim rejected.

Council voted to add two emergency items to the agenda as Scheduled Matters as follows:

**COUNCIL ACTION:** MOVED by Mayor Martha A. Flores, SECONDED by Councilmember Weyhrauch that the City Council approve the addition of two emergency items. The motion carried unanimously.

Documentation: M.O. 03-032123

Disposition: Approved.

The Pledge of Allegiance was led by Vice Mayor Carrillo.

Invocation – a member of the public came forward to give an invocation.

## **PRESENTATIONS**

Legacy Award - The Press Shop

## **ORAL COMMUNICATIONS**

- Brock Neeley, Porterville, requested that Item No. 13 be pulled for further discussion.
- Cathy Capone, Porterville, thanked the council members for their time in serving on Council; invited everyone to visit the Tule River Gardens area; and encouraged everyone to help support and care for the homeless population in the city.
- Ed McKervey, Porterville, noted a contradiction of having both a drought emergency continuation item and a flood emergency item on the agenda; stated an investigation should be done on the water master and dam data; and congratulated individuals for their job addressing the flood crisis.
- Kristy Martin, Porterville Chamber of Commerce, spoke of welcoming new Ambassadors to the Porterville Chamber; of several upcoming events for April, including Ribbon Cuttings (Christens Tonsorial Parlor, ), First Friday Coffee, Spring Festival Mixer, Spring Festival Event, and Business After Hours; and a travel presentation with Hanson Travel.
- Assemblyman Devon Mathis, Porterville, thanked the City Council and staff for their efforts addressing the flooding and storm events impacting the city; stated he is happy to write letters of support for state and federal funding for equipment; stated we are not out of the woods yet

as there is still incoming atmospheric storms coming to the area; and noted that unfortunately we are still in a drought.

- (via teleconference) Josh Flowers, Strathmore, stated it was great to see the city and community come together to help one another during the flooding and storm crisis; stated the city should improve on their communication with the citizens; and suggested that the city stop the continuance of the drought local emergency and smart metering systems for water.

## **REPORTS**

### **I. City Commission and Committee Meetings**

#### **1. Parks & Leisure Services Commission - March 02, 2023**

Commissioner Arlene Pena reported on the fitness stations installed at Zalud Park, ADA-compliant wood fiber material installed at several park playgrounds in the city, a cleanup event at Hayes Field, Summer Pool Rentals, the Youth Fishing Derby, addition of wording to the memorial at the Fallen Heroes Park and stated that Parks staff have been filling sandbags and helping in other areas as needed during the storm events.

#### **2. Library & Literacy Commission - March 14, 2023**

Commissioner Edith La Vonne reported on an upcoming conference called Serving with a Purpose, that commissioners and staff will be attending; and spoke of participation statistics for various events such as Virtual Story Time, Adult Book Club, Bilingual Story Time, Family Literacy Services, Bring your own game day, and Library Book Savings Competition.

3. Arts Commission – no report was provided.

4. Animal Control Commission – no report was provided.

5. Youth Commission – no report was provided.

6. Transactions And Use Tax Oversight Committee (TUTOC) – no report was provided.

## **CONSENT CALENDAR**

There were no items pulled from the Consent Calendar for discussion. City Manager Lollis noted a change in location to Veterans Park, on Item No. 7 due to rain event and impact at Zalud Park, and noted a perceived conflict of interest on Item No. 9.

**COUNCIL ACTION:**      MOVED by Councilmember Meister, SECONDED by Councilmember Beltran that the City Council approve Items Nos. 1-14.

AYES:            Meister, Beltran, Carrillo, Flores

NOES:            Weyhrauch

ABSTAIN:        None

ABSENT:         None

1. CITY COUNCIL MINUTES OF DECEMBER 20, 2022, AND MARCH 7, 2023

Recommendation: That the Council approve the draft Minutes of December 20, 2022, and March 7, 2023.

AYES: Meister, Beltran, Carrillo, Flores  
NOES: Weyhrauch  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 04-032123

Disposition: Approved.

2. Purchase of Firefighter Ballistics Protective Equipment

Recommendation: That the City Council authorize the purchase of seven sets of Firefighter Ballistic Equipment from Bullitproof IT, LLC at a cost of \$16,578.68 plus a ten percent (10%) contingency for a total of \$18,236.55.

AYES: Meister, Beltran, Carrillo, Flores  
NOES: Weyhrauch  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 05-032123

Disposition: Approved.

3. AUTHORIZATION TO PURCHASE SPECIALIZED REPAIR EQUIPMENT - SCREW PRESS

Recommendation: That City Council:

1. Award the purchase of specialized equipment to HUBER Technology, Inc. for a not-to-exceed amount of \$30,045 which includes freight, taxes and a ten percent (10%) contingency;
2. Direct the Finance Director to initiate a Purchase Order to HUBER Technology, Inc. for a not-to-exceed amount of \$30,045 which includes freight, taxes and a ten percent (10%) contingency; and
3. Direct the Finance Director to make payment to HUBER Technology, Inc. upon receipt of invoice approved by the Public Works Director.

AYES: Meister, Beltran, Carrillo, Flores  
NOES: Weyhrauch  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 06-032123

Disposition:     Approved.

4.           AUTHORIZATION TO DISTRIBUTE REQUEST FOR PROPOSALS FOR THE  
THIRD YEAR OF THE FIVE-YEAR PERMANENT LOCAL HOUSING  
ALLOCATION (PLHA) PLAN

Recommendation:       That City Council authorize staff to distribute a Request for Proposals for  
\$586,270 for the third year of the five-year Permanent Local Housing  
Allocation (PLHA) Plan

AYES:       Meister, Beltran, Carrillo, Flores  
NOES:       Weyhrauch  
ABSTAIN: None  
ABSENT:   None

Documentation:         M.O. 07-032123

Disposition:    Approved.

5.           AUTHORIZATION TO DISTRIBUTE A REQUEST FOR QUALIFICATIONS  
FOR CONSULTANT SERVICES - ADA SELF-EVALUATION AND  
TRANSITION PLAN

Recommendation:       That the City Council authorize staff to distribute a Request for  
Qualifications for the ADA Self-Evaluation and Transition Plan

AYES:       Meister, Beltran, Carrillo, Flores  
NOES:       Weyhrauch  
ABSTAIN: None  
ABSENT:   None

Documentation:         M.O. 08-032123

Disposition:    Approved.

6.           COMMUNITY CIVIC EVENT - SEQUOIA FAMILY MEDICAL CENTER -  
SEQUOIA ARBOR DAY 5K RUN/WALK AND HEALTH FAIR - APRIL 29,  
2023

Recommendation:       That the City Council approve the Community Civic Event application  
from Sequoia Family Medical Center to hold the Sequoia Arbor Day 5k  
Run/Walk and Health Fair on April 29, 2023, subject to the requirements  
and restrictions contained in the Application and Agreement, Exhibit A,  
Exhibit B, and Exhibit C.

AYES:       Meister, Beltran, Carrillo, Flores  
NOES:       Weyhrauch

ABSTAIN: None  
ABSENT: None

Documentation: M.O. 09-032123

Disposition: Approved.

7. COMMUNITY CIVIC EVENT - PARENTING NETWORK - CALLING ALL SUPERHEROES - APRIL 5, 2023

Recommendation: That the City Council approve the Community Civic Event application from the Parenting Network to hold the "Calling All Superheroes" event on April 5, 2023, subject to the requirements and restrictions contained in the Application and Agreement, Exhibit A, Exhibit B, and Exhibit C.

AYES: Meister, Beltran, Carrillo, Flores  
NOES: Weyhrauch  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 10-032123

Disposition: Approved.

8. COMMUNITY CIVIC EVENT - TULE RIVER ECONOMIC DEVELOPMENT CORPORATION - AUTISM AWARENESS CAR SHOW - APRIL 1, 2023

Recommendation: That the City Council approve the Community Civic Event application from the Tule River Economic Development Corporation to hold the Autism Awareness Car Show on April 1, 2023, subject to the requirements and restrictions contained in the Application and Agreement, Exhibit A, Exhibit B, and Exhibit C.

AYES: Meister, Beltran, Carrillo, Flores  
NOES: Weyhrauch  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 11-032123

Disposition: Approved.

9. COMMUNITY CIVIC EVENT - SUMMIT CHARTER ACADEMY - FUN RUN - MARCH 24, 2023

Recommendation: That the City Council approve the Community Civic Event application from Summit Charter Academy to hold the "Fun Run" event on March 24,

2023, subject to the requirements and restrictions contained in the Application and Agreement, Exhibit A and Exhibit B.

AYES: Meister, Beltran, Carrillo, Flores  
NOES: Weyhrauch  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 12-032123

Disposition: Approved.

10. COMMUNITY CIVIC EVENT - COMISION HONORIFICA MEXICANA AMERICANA INC - ANNUAL CINCO DE MAYO CELEBRATION PARADE AND FIESTA - MAY 6-7, 2023

Recommendation: That the City Council approve the Community Civic Event application from the Comision Honorifica Mexicana Americana, Inc. to hold the Annual Cinco de Mayo Celebration Parade and Fiesta on May 6 and 7, 2023, subject to the requirements and restrictions contained in the Application and Agreement, Exhibit A, Exhibit B, and Exhibit C.

AYES: Meister, Beltran, Carrillo, Flores  
NOES: Weyhrauch  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 13-032123

Disposition: Approved.

11. REVIEW OF CITY PARTICIPATION IN THE TULARE COUNTY REGIONAL TRANSIT AGENCY

Recommendation: That the City Council schedule the review and consideration of the City's continued participation in the Tulare County Regional Transportation Agency at its meeting on April 4, 2023.

AYES: Meister, Beltran, Carrillo, Flores  
NOES: Weyhrauch  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 14-032123

Disposition: Approved.

12. AUTHORIZATION OF OUT-OF-STATE TRAVEL

Recommendation: That the City Council authorize out-of-state travel and per diem expenses for three Fire Department personnel to the Pierce Manufacturing Facility, located in Wisconsin, for the evaluation and planning of Ladder Truck and Fire Engine design.

AYES: Meister, Beltran, Carrillo, Flores  
NOES: Weyhrauch  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 15-032123

Disposition: Approved.

13. CITY COUNCIL MEMBER REQUESTED AGENDA ITEM - CONSIDER AUTHORIZATION TO DISTRIBUTE A REQUEST FOR QUALIFICATIONS TO ADD TO THE LIST OF QUALIFIED MATERIAL TESTING FIRMS AND ANNUAL REVIEW BY CITY COUNCIL

Recommendation: That the City Council approve Council Member Meister's request to consider authorization to distribute a Request for Qualifications to add to the list of qualified material testing firms and for Council to annually review.

AYES: Meister, Beltran, Carrillo, Flores  
NOES: Weyhrauch  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 16-032123

Disposition: Approved.

14. STATUS AND REVIEW OF LOCAL DROUGHT EMERGENCY

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.

AYES: Meister, Beltran, Carrillo, Flores  
NOES: Weyhrauch  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 17-032123

Disposition: Approved.



## **PUBLIC HEARINGS**

15. MODIFICATION TO CONDITIONAL USE PERMIT 10-88 AND CLASSIFICATION OF NONCONFORMING USE FOR KRAYOLA KORNER

Recommendation: That the City Council:

1. Finds the proposed project exempt from CEQA under CEQA Guidelines Section 15301;
2. Classify the existing Daycare as a Class I Nonconforming Use; and
3. Adopt the draft Resolution approving the modification to Conditional Use Permit 10-88 for Krayola Korner, subject to conditions of approval.

City Manager Lollis introduced the item and Associate Planner Oscar Zepeda presented the staff report.

Mayor Flores opened the Public Hearing at 7:29 p.m. and closed it at 7:30 p.m. when no one came forward to speak.

**COUNCIL ACTION:** MOVED by Council Member Donald Weyhrauch, SECONDED by Council Member Greg Meister that the City Council finds the proposed project exempt from CEQA under CEQA Guidelines Section 15301; classify the existing Daycare as a Class I Nonconforming Use; and adopt the draft resolution approving the modification to Conditional Use Permit 10-88 for Krayola Korner. The motion carried unanimously.

Documentation: Resolution No. 12-2023

Disposition: Approved.

## **SCHEDULED MATTERS**

16. 2022 HOUSING ELEMENT ANNUAL PERFORMANCE REPORT

Recommendation: That the City Council review the 2022 Annual Housing Element Progress Report and direct the Community Development Department to submit the report to the California Department of Housing and Community Development (HCD) and the Governor's Office of Planning and Research (OPR).

City Manager Lollis introduced the item and Assistant City Manager Jason Ridenour presented the staff report.

**COUNCIL ACTION:** MOVED by Mayor Martha A. Flores, SECONDED by Vice Mayor Kellie Carrillo that the City Council approve the submission of the report to the California Department of Housing and Community Development (HCD) and the Governor's Office of Planning and Research. The motion carried unanimously.

Documentation: M.O. 18-032123

Disposition: Approved.

17. PORTERVILLE DEVELOPMENT ORDINANCE COMPREHENSIVE UPDATE

Recommendation: That the City Council provide direction on the development of the update to the City's Development Ordinance.

City Manager Lollis introduced the item and Assistant City Manager Jason Ridenour presented the staff report.

Council received a presentation by Provost and Pritchard on the Porterville Development Ordinance Comprehensive Update.

City Staff stated they will continue to work with the consultants and will bring back an update at a future meeting and potentially an ordinance for adoption.

Documentation: None

Disposition: Direction given.

**EMERGENCY ITEMS – SCHEDULED MATTERS**

18. AUTHORIZATION TO PURCHASE EQUIPMENT

Recommendation: That the City Council:

1. Authorize the purchase of a Caterpillar Inc. Excavator and Rockland Kryto Klaw 48” Bucket; and
2. Authorize payment of said equipment upon satisfactory delivery.

City Manager Lollis introduced the item and presented the staff report.

**COUNCIL ACTION:** MOVED by Vice Mayor Kellie Carrillo, SECONDED by Council Member Meister that the City Council approve the purchase of a Caterpillar Inc Excavator and Rockland Kryto Klaw 48” Bucket from Quinn Company for a cost of \$390,176, including sales tax; and authorize payment of said equipment upon satisfactory delivery. The motion carried unanimously.

Documentation: M.O. 19-032123

Disposition: Approved.

19. AUTHORIZATION TO PURCHASE EQUIPMENT

Recommendation: That the City Council:

1. Authorize the purchase of a Caterpillar Inc. D2 Track Type Tractor; and
2. Authorize payment of said equipment upon satisfactory delivery.

City Manager Lollis introduced the item and presented the staff report.

**COUNCIL ACTION:** MOVED by Council Member Raymond Beltran, SECONDED by Vice Mayor Kellie Carrillo that the City Council approve the purchase of a Caterpillar Inc. D2 Track Type Tractor from Quinn Company for a cost of \$193,644.74, including sales tax; and authorize payment of said equipment upon satisfactory delivery. The motion carried unanimously.

Documentation: M.O. 20-032123

Disposition: Approved.

### **AB 1234 REPORTS**

1. Ribbon Cutting Ceremony: EECU - March 8, 2023

Mayor Flores reported on those in attendance, and attending the event was warm felt as they were in a renovated historic building.

2. CalVans Board - March 9, 2023 - Canceled

3. Wall of Fame Ceremony - March 10, 2023

Council Member Beltran stated he attended the ceremonies in the past as his mother was inducted to the Wall of Fame years ago and said it was an honor to be a part of the ceremony this year, with his recommendation of an honoree.

Council Member Weyhrauch stated this was his first time at the ceremony and said it was a pleasure to nominate Milt Stowe for all his contribution for the community.

Council Member Meister stated the ceremony was a lot of fun and said it was neat to view all those nominated to the wall of fame. Meister said it was an honor to be a part of the ceremony.

Vice Mayor Carrillo acknowledged all five honorees nominated to the Wall of Fame and thanked to city staff for quickly adapting to the location change due to rain.

Mayor Flores congratulated all the honorees and stated it was an honor and privilege to stand with many of the honorees in the years that passed. Flores thanked city staff for being able to change the location due to rain.

4. Tulare County Water Commission - March 13, 2023

Mayor Flores stated the Minutes were carried over due to problem with timestamping, the presentation was carried over, and stated the rest of the meeting was informational.

5. Tulare County Regional Transit Authority (TCRTA) Study Session - March 14, 2023  
Council Member Weyhrauch stated he was unable to attend the meeting.

6. Tulare County Task Force on Homelessness - March 15, 2023 - Canceled

7. City Selection Committee - March 15, 2023 - Canceled

8. Council of Cities - March 15, 2023 - Canceled

9. Police Officer Swearing-In Ceremony - March 16, 2023 - Canceled

10. TCAG Board Retreat - March 16, 2023 - Canceled

11. City/Tribe Casino MOU Meeting - March 16, 2023 - Canceled

12. Porterville Area Development Authority Board Meeting - March 17, 2023 - Canceled

13. Tulare County Association of Governments (TCAG) - March 20, 2023  
Mayor Flores stated she would carry this report over to the next meeting.

14. Tulare County Regional Transit Authority (TCRTA) - March 20, 2023  
Council Member Weyhrauch stated this meeting was scheduled for March 21, 2023.

### **ORAL COMMUNICATIONS**

- Cathy Capone, Porterville, thanked the staff for all of their efforts addressing the flooding and storm impact to the community, and stated she would like the community to consider using the recent events to educate themselves on development near the river or areas nearby the river.

### **OTHER MATTERS**

- Councilmember Beltran said he loved the library reports; he thanked staff for their report on the Krayola Korner Preschool Item; and thanked city staff for doing an outstanding job in their efforts addressing the flooding situation.
- Councilmember Weyhrauch said one word to describe public safety and staff is relentless in their efforts in emergency response in dealing with the flooding and storm and recognized Public Works Director Michael Knight for working around the clock in getting everything taken care of; thanked Assemblyman Devon Mathis for being in attendance and offering his support; stated a business on main street inquired about possible grant funding; and stated we should get more pools in the city for the community.
- Councilmember Meister spoke of his attendance on a tour with other city staff to see the efforts made in addressing the flooding in the river and commended Public Works Director Michael Knight and Mitch Brown for diverting the water to save life and property. Meister also spoke

of the many hours that staff has been working and stated they should be acknowledged for that.

- Vice Mayor Carrillo thanked the Porterville Chamber for sharing their updates with the council; thanked Cathy Capone for her updates on Tule River Garden; thanked Assemblyman Devon Mathis for being in attendance and for his comments regarding the flood crisis; spoke of the need for equipment for the Public Works Department to address the flooding in the river; spoke of the many resources available to the community and surrounding communities during this ongoing crisis; and stated some training on the EOS structure would be beneficial.
- Mayor Flores thanked Assemblyman Devon Mathis for a phone call and his boots on the ground; thanked ETSGA General Manager Rogelio Caudillo for his efforts in helping with the flooding around the area; stated we have all witnessed the beauty of mother nature in and around our surrounding communities, but have also seen the destruction, danger and the disaster; thanked those who have participated on the community forums; and gave kudos and thanks to all departments in addressing and assisting during the recent storm events.
- City Manager Lollis spoke of Galaxy 9s Recognition of Associate Planner Oscar Zepeda as a Hometown Hero and appreciated the great comments on the flood fight; he addressed comments received by city staff regarding other staff members and their appreciation towards them for their efforts in the flood fight; gave kudos to Administrative Analyst Yuriko Velarde for her recent interview with Telemundo and mentioned his live interview with Fox Weather; and spoke of a police-involved incident that occurred earlier in the morning. Lollis also mentioned the Mayor's participation in speaking at the Women in History event held by the Hispanic Chamber of Commerce of Tulare & Kings Counties.

### **CLOSED SESSION**

None.

### **ADJOURNMENT**

The Council adjourned at 8:40 p.m. to the meeting of April 4, 2023, at 5:30 p.m.

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Fernando Gabriel-Moraga, Deputy City Clerk

SEAL

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Martha A. Flores, Mayor



## CITY COUNCIL AGENDA – APRIL 4, 2023

SUBJECT: Authorization to Purchase Unmanned Aerial System (UAS)

SOURCE: Police

COMMENT: At this meeting on March 2, 2021, the City Council authorized the implementation of an Unmanned Aerial System (UAS) Program for the Police Department. Following authorization of the program, the Department purchased five UAS's to include two DJI Mavic Zooms, two DJI Mavic Duals and one DJI Mavic Mini. Since implementation of the Program, the utilization and versatility of the UAS's has proven to be highly beneficial in enhancing public safety and Officer safety. In addition, the UAS's have been utilized to augment a variety of activities for Fire and Public Works Department personnel, to include, but not limited to, the following:

- Surveying scenes during natural and man-made disasters
- Monitoring large crowds, events and illegal activity
- Searching large areas for missing children/dangerous persons, etc.
- Mapping/site surveys/periodic assessment of critical infrastructure
- Site assessment and intelligence gathering to assist in deployment decisions during large structure/open land fire incidents
- Checking structural integrity of buildings/other infrastructure after significant events such as earthquakes
- Support of tactical operations

In further research and development of the Department's UAS program, the Department has identified additional needs to increase its UAS fleet, primarily due to recent atmospheric events. The Department has identified the DJI Matrice 30T (M30T) as the UAS of choice, which has additional features and capabilities that further enhance the ability to provide public safety, including increased efficiency for other City departments. The M30T model contains a variety of adaptability features which best fit into the operational environment best suited for the continued development of the UAS Program. These features include optical enhancement, thermal imagery, longer flight times, and efficient and sustainable operation during inclement weather, including elevated winds and rain, such as that which the City and County have recently experienced.

The Department currently has, through its policy provider, a legally compliant policy on UAS Operations. This policy is provided as an attachment to this report and is also accessible on the Police Department's webpage.

Based on the above, it is requested that the Council authorize the purchase of one Matrice 30T UAS, which will continue to be available for all City departments during miscellaneous activities.

The Department sought out quotes for the M30T, and obtained the following:

- Drones Made Easy: \$18,705.78
- DSLR Pros: \$19,424.65
- All Drone Solutions: \$19,668.69

Funds for this purchase are available in the current Police Department budget.

RECOMMENDATION: That the City Council:

1. Authorize the Police Department to purchase one Matrice 30T; and
2. Authorize the purchase of the UAS from Drones Made Easy in the amount of \$18,705.78.

ATTACHMENTS:

1. Drones Made Easy Quote
2. DSLR Pros Quote
3. All Drone Solutions Quote
4. Police Department Policy 604: Unmanned Aerial System (UAS) Operations

Appropriated/Funded:

Review By:

Department Director:  
Jake Castellow, Chief of Police

Final Approver: John Lollis, City Manager



# Drones Made Easy sent you an estimate

Estimate expires on April 6, 2023

I think I have captured everything we spoke about. Please let me know if you have any questions or need any changes made. We look forward to working with you.

## Customer

Jay Starling

jstarling@ci.porterville.ca.us

+1 (760) 417-9754

## Additional Recipients

jskiles@ci.porterville.ca.us

Estimate #004192

March 23, 2023

Hide full details ^

## Matrice 30T Kit

### Matrice 30T Combo

\$13,341.00

1x Aircraft Body 1x DJI RC Plus Remote Controller 4x 1671 Propeller 1x USB-C to USB-A Cable 1x USB-C to USB-C Cable 1x Carrying Case 1x Screws and Tools 1x BS30 Battery station 2x TB30 Battery -----  
----- 1 Year DJI Care Enterprise based on your quote  
With CARE Basic

### GPC M30 Case

\$499.00



|                                                                                                                                                                                                                                                                                                                                                          |                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| <b>Matrice 30 Pt8 TB30 Intelligent Flight Battery</b><br>(\$329.00 ea.) × 4                                                                                                                                                                                                                                                                              | <b>\$1,316.00</b>  |
| <b>WB37 Intelligent Battery</b><br>(\$59.00 ea.) × 2                                                                                                                                                                                                                                                                                                     | <b>\$118.00</b>    |
| <b>Matrice 30 Pt9 1671 Propeller</b><br>(\$49.00 ea.) × 2                                                                                                                                                                                                                                                                                                | <b>\$98.00</b>     |
| <b>CZI LP12 Speaker &amp; Spotlight System for Matrice 30</b>                                                                                                                                                                                                                                                                                            | <b>\$1,750.00</b>  |
| <b>Activate and Upgrade Service</b><br>Drones Made Easy offers a full service activation and update of your drone so it is ready to fly out of the box without any need for downtime.<br><i>This service will include post-sale phone, chat, video, and email support during business hours and if outside hours, we will respond next business day.</i> | <b>\$0.00</b>      |
| <b>Shipping</b><br><i>Free ground shipping or available for pickup same/next day.</i>                                                                                                                                                                                                                                                                    | <b>\$0.00</b>      |
| <b>Subtotal</b>                                                                                                                                                                                                                                                                                                                                          | <b>\$17,122.00</b> |
| <b>City of Porterville</b>                                                                                                                                                                                                                                                                                                                               | <b>\$1,583.78</b>  |
| <b>Total</b>                                                                                                                                                                                                                                                                                                                                             | <b>\$18,705.78</b> |

**Drones Made Easy**  
5390 Napa St  
STE B  
San Diego, CA 92110  
sales@dronesmadeeasy.com  
+1 (844) 312-8444

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**Square Privacy Policy | Security**





# **DSLR** *Pros*™

## **Intelligent Drone Solutions**

**Prepared by:**

Derek Wheeler

**DSLRPros.com**

**sales@dslrpros.com**

**Prepared for:**

Jarid Skiles

Porterville Police Department

**Date Created:** 03/22/2023 23:18

**Quote ID:** 4ZPGF-NXGDK-IXEX3-ANCBV



## DJI Matrice 30T

| Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Price       | QTY | SKU           | Tax        | Subtotal    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----|---------------|------------|-------------|
| <b>ESSENTIAL KIT</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |             |     |               |            |             |
| <input checked="" type="checkbox"/> DJI Matrice 30T with TB30 & DJI Care Basic <ul style="list-style-type: none"> <li>1x DJI Matrice 30T</li> <li>2x TB30 Intelligent Flight Battery</li> <li>1x BS30 Intelligent Battery Station</li> <li>1x DJI RC Plus</li> <li>1x DJI Pilot 2</li> <li>1x Aircraft storage case</li> <li>1x DJI FlightHub 2 (3 month subscription)</li> <li>1x DJI Care Enterprise Basic (1 Year)</li> </ul> <p>S-DJI-M30T-CB</p>  | \$13,999.00 | 1   | B-DJI-M30T-CB | \$1,294.91 | \$15,293.91 |

| Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Price      | QTY | SKU                   | Tax      | Subtotal   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----|-----------------------|----------|------------|
| <input checked="" type="checkbox"/> <b>DJI CrystalSky/Cendence - WB37 Intelligent Battery</b> <ul style="list-style-type: none"> <li>Power Supply Intelligent Battery (Type: WB37-4920mAh-7.6V)</li> <li>Intelligent Battery 4923 mAh LiPo</li> <li>Charging DJI charger</li> <li>Output Power 20 W (supplying power to DJI CS550 monitor), 12 W (without supplying power to monitor)</li> <li>Charging Time About 2 hours and 24 minutes (using a 180 W charger)</li> <li>Supply Power Time About 4 hours (only Master remote controller function enabled and without supplying power to monitor)</li> </ul> <p>S-DJI-CS-CEN-INT-BATT</p>  | \$59.00    | 2   | S-DJI-CS-CEN-INT-BATT | \$10.92  | \$128.92   |
| <input checked="" type="checkbox"/> <b>Matrice 30 Series Part 09 1671 Propeller</b><br>S-DJI-PRP-M30                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | \$49.00    | 2   | S-DJI-PRP-M30         | \$9.07   | \$107.07   |
| <input type="checkbox"/> <b>DJI RC Plus - Second Operator Remote</b><br>- The 7-inch widescreen DJI RC Plus with dual control mode is tailor-made for Enterprise users. IP 54 weather rated.<br><br>S-DJI-RC-PLUS                                                                                                                                                                                                                                                                                                                                                                                                                          | \$1,600.00 | 1   | S-DJI-RC-PLUS         | \$148.00 | \$1,748.00 |

| Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Price      | QTY | SKU              | Tax      | Subtotal   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----|------------------|----------|------------|
| <input type="checkbox"/> DJI RC Plus Strap Bracket Kit<br>S-DJI-RC-PLUS-BK<br><br>                                                                                                                                                                                                                                                                                                                                                        | \$39.00    | 1   | S-DJI-RC-PLUS-BK | \$3.61   | \$42.61    |
| <input checked="" type="checkbox"/> Loudspeaker Spotlight 2-in-1 Payload for DJI Matrice 30 drone<br><p>The DJI M30 drone loudspeaker and spotlight all in one payload is powered by DJI Onboard SDK. It features a fluid design to reduce wind resistance. It packs in high performance in its small size (only 270g) with lighting distance up to 100 meters and effective sound distance up to 200 meters.</p> <p>S-NB-LS-SL-M30</p>  | \$1,750.00 | 1   | S-NB-LS-SL-M30   | \$161.88 | \$1,911.88 |
| OPTIONAL SERVICES<br>(Optional items will not reflect in total unless selected)                                                                                                                                                                                                                                                                                                                                                                                                                                            |            |     |                  |          |            |
| <input checked="" type="checkbox"/> Firmware Upgrade Service<br><p>- Activation of the product(s), upgrading to the latest available firmware, and delivered ready to fly.</p> <p>V-NB-FIRM-UPG</p>                                                                                                                                                                                                                                     | \$0.00     | 1   | V-NB-FIRM-UPG    | \$0.00   | \$0.00     |
| <input checked="" type="checkbox"/> FREE Lifetime Customer Care & Technical Support Via Phone, Email & Chat                                                                                                                                                                                                                                                                                                                                                                                                                | \$0.00     | 1   | B-LC-TS          | \$0.00   | \$0.00     |

| Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Price    | QTY | SKU                | Tax    | Subtotal |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----|--------------------|--------|----------|
| <input checked="" type="checkbox"/> <b>Enterprise Concierge Assist</b><br>Our customer care team is here to make sure that your aftersales experience is as seamless as the original transaction. We will assist our clients through the Enterprise Care deductible process ( if applicable ) as well as any warranty or not warranty related issues. We're here to help facilitate your success!<br><br>*** Normally a \$500 Service ***<br><br>S-ECA-EUAS                                                                                | \$0.00   | 1   | S-ECA-EUAS         | \$0.00 | \$0.00   |
| <input checked="" type="checkbox"/> <b>Airdata Fleet Management + Streaming Bundle - 1 Drone (Free Trial)</b><br>AirData is a fleet management and drone data platform that provides flight intelligence, advanced analytics, and maintenance recommendations to commercial pilots and drone program managers. This Airdata + Streaming bundle covers up to 1 drone and includes 20 hours of streaming capabilities. This service is only for 1 month, but can be renewed for an additional fee.<br><br>\$84.00 Value<br><br>V-AD-EELS-120 | \$0.00   | 1   | V-AD-EELS-120-FREE | \$0.00 | \$0.00   |
| <input type="checkbox"/> <b>Airdata Fleet Management + Streaming Bundle - 1 Drone / 20 Hours</b><br>AirData Enterprise (1 year)<br>- Simple and intuitive fleet management<br>- Get insights into your overall flight data<br>- Remote live streaming available<br>- Set alerts for maintenance services & safety concerns<br>- Dashboard includes local weather & satellite info<br>AirData Live Streaming Service (1 Year)<br>- 1 user, 20 hrs/month                                                                                     | \$999.00 | 1   | V-AD-EELS-120      | \$0.00 | \$999.00 |

| Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Price    | Q<br>TY | SKU              | Tax      | Subtotal   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------|------------------|----------|------------|
| <input checked="" type="checkbox"/> Enterprise Virtual Assist (Promo)<br>To ensure that you are familiar with everything the M30T and M30 can do, we are now including a <b>FREE</b> 3 hour virtual training session with every M30 series drone that is purchased. Our experienced and knowledgeable instructor will walk you through the setup process and first flight to ensure that you can fly safely and confidently. (A \$399.00 Value)                                                      | \$0.00   | 1       | S-EVA-EUAS-PROMO | \$0.00   | \$0.00     |
| <b>OPTIONAL ACCESSORIES</b><br>(Optional items will not reflect in total unless selected)                                                                                                                                                                                                                                                                                                                                                                                                            |          |         |                  |          |            |
| <input checked="" type="checkbox"/> GPC DJI Matrice 30 Series Case<br>When you need your entire M30 mission kit, payloads and all, the GPC case for the Matrice 30 / M30T + packs it all in to one system. You have room for six TB30 batteries, compartments for the M30 upper payload, *GPC Micro SD Card Holder, *GPC LensPen MicroPro and other accessories. The case is wheeled and is carry-on size on most airlines. Proudly made in the USA.<br>*Accessories Not Included*<br>S-GPC-M30-CASE | \$499.00 | 1       | S-GPC-M30-CASE   | \$46.16  | \$545.16   |
| <input checked="" type="checkbox"/> Matrice 30 Series Part 08 TB30 Intelligent Flight Battery<br>S-DJI-TB30-BATT<br>                                                                                                                                                                                                                                                                                              | \$329.00 | 4       | S-DJI-TB30-BATT  | \$121.73 | \$1,437.73 |



| Name                                                                                                                                                                                                                                                                                                                                                                                                                           | Price      | Q<br>TY | SKU       | Tax    | Subtotal   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|---------|-----------|--------|------------|
| <input type="checkbox"/> Pix4DReact - Perpetual Floating License <ul style="list-style-type: none"> <li>Desktop application with floating license (1 device) Unlimited desktop processing. Personal support and upgrades included in the first 12 months (yearly extension 20% of licence price) One time payment.</li> </ul> <p>V-PXR-P</p>  | \$1,999.00 | 1       | V-PXR-P   | \$0.00 | \$1,999.00 |
| <b>SHIPPING &amp; HANDLING</b>                                                                                                                                                                                                                                                                                                                                                                                                 |            |         |           |        |            |
| Ground Shipping                                                                                                                                                                                                                                                                                                                                                                                                                | \$0.00     | 1       | V-NB-SHIP | \$0.00 | \$0.00     |
| <b>*** Sales Tax applicable if shipping inside CA, TX or WA ***</b>                                                                                                                                                                                                                                                                                                                                                            |            |         |           |        |            |

Subtotal \$19,424.65

**Total \$19,424.65**

## Signatures

Again, we want to thank you for purchasing your equipment or services with DSLRPros.com. By signing below you agree to our terms and conditions and have read and understand the pricing provided. You also agree not to share the information & pricing provided in this document to anyone outside of your organization. <https://www.dslrpros.com/terms-of-use>

|           |       |
|-----------|-------|
|           |       |
| <hr/>     | <hr/> |
| Signature | Date  |
| <hr/>     | <hr/> |
| Name      | Title |

All Drone Solutions  
130 East Maple Street  
Exeter, CA 93221 US  
mark@alldronesolutions.com



**ADDRESS**

Porterville Police

**ESTIMATE # 1175**

**DATE 03/23/2023**

|                                                             |   |           |            |
|-------------------------------------------------------------|---|-----------|------------|
| DJI Matrice M30T   Enterprise Drone - Enterprise Care Basic | 1 | 13,999.00 | 13,999.00T |
| DJI Matrice 30 Series TB30 Intelligent Flight Battery       | 4 | 329.00    | 1,316.00T  |
| CrystalSky & Cendence - WB37 Intelligent Battery            | 2 | 59.00     | 118.00T    |
| DJI Matrice 30 Series 1671 Propeller                        | 2 | 49.00     | 98.00T     |
| Drone Setup, Activation, Firmware Updates, Test Flight      | 1 | 60.00     | 60.00      |
|                                                             |   |           |            |
| DJI MATRICE 30 CASE - GPC-DJI-M30                           | 1 | 499.99    | 499.99T    |
| CZI LP12 Speaker & Spotlight System for Matrice 30          | 1 | 1,999.99  | 1,999.99T  |

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|              |                    |
|--------------|--------------------|
| SUBTOTAL     | 18,090.98          |
| TAX          | 1,577.71           |
| <b>TOTAL</b> | <b>\$19,668.69</b> |

Accepted By

Accepted Date

# Unmanned Aerial System (UAS) Operations

## 604.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of an unmanned aerial system (UAS) and for the storage, retrieval and dissemination of images and data captured by the UAS.

### 604.1.1 DEFINITIONS

Definitions related to this policy include:

**Unmanned Aerial System (UAS)** - An unmanned aircraft of any type that is capable of sustaining directed flight, whether preprogrammed or remotely controlled (commonly referred to as an unmanned aerial vehicle (UAV)), and all of the supporting or attached systems designed for gathering information through imaging, recording or any other means.

## 604.2 POLICY

Unmanned aerial systems may be utilized to enhance the department's mission of protecting lives and property when other means and resources are not available or are less effective. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations.

## 604.3 PRIVACY

The use of the UAS potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall adhere to FAA altitude regulations and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure). Operators and observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy. Reasonable precautions can include, for example, deactivating or turning imaging devices away from such areas or persons during UAS operations.

## 604.4 PROGRAM COORDINATOR

The Chief of Police will appoint a program coordinator who will be responsible for the management of the UAS program. The program coordinator will ensure that policies and procedures conform to current laws, regulations and best practices and will have the following additional responsibilities:

- Coordinating the FAA Certificate of Waiver or Authorization (COA) application process and ensuring that the COA is current.
- Ensuring that all authorized operators and required observers have completed all required FAA and department-approved training in the operation, applicable laws, policies and procedures regarding use of the UAS.
- Developing uniform protocol for submission and evaluation of requests to deploy a UAS, including urgent requests made during ongoing or emerging incidents. Deployment of a UAS shall require written authorization of the Chief of Police or the authorized designee, depending on the type of mission.

# Porterville Police Department

## Porterville PD Policy Manual

### *Unmanned Aerial System (UAS) Operations*

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- Developing protocol for conducting criminal investigations involving a UAS, including documentation of time spent monitoring a subject.
- Implementing a system for public notification of UAS deployment.
- Developing an operational protocol governing the deployment and operation of a UAS including, but not limited to, safety oversight, use of visual observers, establishment of lost link procedures and secure communication with air traffic control facilities.
- Developing a protocol for fully documenting all missions.
- Developing a UAS inspection, maintenance and record-keeping protocol to ensure continuing airworthiness of a UAS, up to and including its overhaul or life limits.
- Developing protocols to ensure that all data intended to be used as evidence are accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements. Electronic trails, including encryption, authenticity certificates and date and time stamping, shall be used as appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.
- Developing protocols that ensure retention and purge periods are maintained in accordance with established records retention schedules.
- Facilitating law enforcement access to images and data captured by the UAS.
- Recommending program enhancements, particularly regarding safety and information security.
- Ensuring that established protocols are followed by monitoring and providing periodic reports on the program to the Chief of Police.

#### **604.5 USE OF UAS**

Only authorized operators who have completed the required training shall be permitted to operate the UAS.

Use of vision enhancement technology (e.g., thermal and other imaging equipment not generally available to the public) is permissible in viewing areas only where there is no protectable privacy interest or when in compliance with a search warrant or court order. In all other instances, legal counsel should be consulted.

UAS operations should only be conducted during daylight hours and a UAS should not be flown over populated areas without FAA approval.

#### **604.6 PROHIBITED USE**

The UAS video surveillance equipment shall not be used:

- To conduct random surveillance activities.
- To target a person based solely on actual or perceived characteristics, such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability.

# Porterville Police Department

## Porterville PD Policy Manual

### *Unmanned Aerial System (UAS) Operations*

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- To harass, intimidate, or discriminate against any individual or group.
- To conduct personal business of any type.

The UAS shall not be weaponized.

#### **604.7 RETENTION OF UAS DATA**

Data collected by the UAS shall be retained as provided in the established records retention schedule.



## CITY COUNCIL AGENDA – APRIL 4, 2023

**SUBJECT:** Authorization to Purchase Solar Lights for Murry Park Through Community Development Block Grant Park Improvement Funds

**SOURCE:** Parks and Leisure Services

**COMMENT:** The Parks and Leisure Services Department purchases park amenities through Community Development Block Grant (CDBG) Park Improvement Funds on an annual basis as funding permits. A stipulation of the funding source is that the project must take place within an eligible census tract. Eligible City parks include Murry Park, Zalud Park and Fallen Heroes Park. Murry Park has a severe shortage of lighting within the park and will be the project site. Safety, beautification, increased park usage and crime reduction are a few benefits of a well-lit park. With its pond, four picnic gazebos, three playgrounds, picnic tables throughout the park, proximity to the pool in the summer, and disc golf course, Murry Park has always been a popular destination of the community. Solar lights will provide a missing vital amenity.

Solar light technology has improved significantly in recent years. A few features of the solar lights include its motion sensing mode, automatic dusk to dawn operation, and a high/low switch which controls brightness and duration. The lights will provide up to 3,700 lumens, allowing for the light poles to be set sixty (60) feet apart. At its meeting on February 3, 2022, the Parks and Leisure Services Commission discussed using FY 2022/23 CDBG Park Improvement Funds for the solar lighting project and the Commission was in unanimous favor.

**RECOMMENDATION:** That the City Council:

1. Authorize the purchase of solar lights for Murry Park through Community Development Block Grant Park Improvement Funds from Gama Sonic not to exceed \$61,768.99, which includes ten percent (10%) contingency should any unforeseen circumstances arise; and
2. Authorize the Parks and Leisure Services Director to negotiate for the installation of the solar light poles.

**ATTACHMENTS:**

1. Solar Lighting Quotes
2. Locator Map

**Appropriated/Funded:**

**Review By:**

Department Director:  
Donnie Moore, Parks and Leisure Services Director

Final Approver: John Lollis, City Manager



Email: [DBennett@gamasonic.com](mailto:DBennett@gamasonic.com)

◦ All quotes are valid for 30 days from date of issue.

9.3%

# MODERN COMMERCIAL GRADE SOLAR POST LIGHT

with motion sensor and timer



## TIMER



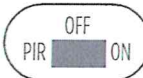
4,5,6,7,8 hours or  
0 for dusk-to-dawn  
operation

## MOTION SENSOR

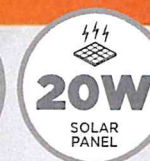


140° detection zone  
up to 40' away

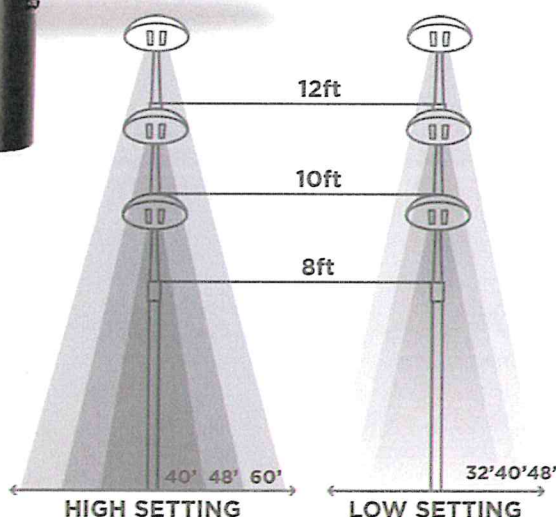
## PIR/OFF/ON SWITCH



PIR: 3700 Lumens  
On: 900 Lumens



- Commercial Grade - Maintenance-free solar light
- Smart Switch - Automatic Dusk to Dawn operation
- 6000K (Bright White)
- High/Low switch controls brightness and duration
- Corrosion resistant powder-coated cast aluminum
- Powered by efficient 20W Mono-crystalline solar panel
- 24 SMD LEDs
- (2) Rechargeable Li-ion batteries: LIFEPO4-12.8V/6AH
- The Modern solar light duration will last 96 hours on the LOW setting and 48 hours on the HIGH setting once all batteries have been fully charged in direct sunlight
- Constant (ON) Mode with Dusk to Dawn (Up to 14 hours duration)
- Motion Sensing (PIR) Mode (up to 150 cycles per night)



Part #

Dimensions (in)

UPC

LED Color

102iST60012

19.5W x 19.5D x 28H

859641008261

Bright White (6000K)

**GAMA SONIC®**  
SOLAR LIGHTING

GAMA SONIC USA, INC  
PHONE 1-800 835 4113 info@gamasonic.com  
FAX 1-800 835 4173 www.gamasonic.com





Date: Mar 1, 2023

Quote: GBL23-4047-3

# Quote

Page 1/1



GBL Infrastructure Solutions, Inc.  
P.O. Box 1360  
Brentwood CA 94513  
Phone: (925) 240-1566  
Fax: (925) 240-9686  
**From: Ana Murillo**  
**Quoter Ph:**  
Email: ana.murillo@gblsolutionsinc.com

**Project** PORTERVILLE  
**Location** PORTERVILLE CA  
**Quote** GBL23-4047-3

**To:**  
ESTIMATING

**For**  
**Bid Date** Mar 1, 2023  
**Expires** Mar 31, 2023

**Remarks:**

\*\*INCLUDES DISTRIBUTOR MARK UP\*\*

| QTY           | Type | MFG        | Part                                                                                             | Price      | UQ | ExtPrice            |
|---------------|------|------------|--------------------------------------------------------------------------------------------------|------------|----|---------------------|
| 15            |      | VALMONT/CW | RS320 BRAZO 14' ALUMINUM POLE W/ 30" BASE<br>320W (11'4" IN LENGTH) W/ ADJUSTABLE ALUMINUM ARRAY | \$8,210.00 |    | \$123,150.00        |
| <b>Total:</b> |      |            |                                                                                                  |            |    | <b>\$123,150.00</b> |

**Notes:**

GBL #19056-2

FREIGHT INCLUDED.

LEAD TIME: 10-12 WEEKS, ARO & APPROVED DRAWINGS.

CATALOG NUMBER PROVIDED BY CUSTOMER.

PRICE IS GOOD FOR 30 DAYS, SUBJECT TO GRIDSHIFT'S TERMS AND CONDITIONS.

**Terms and conditions of sale:**

NO TAXES ARE INCLUDED UNLESS OTHERWISE NOTED

**Mfg Terms:**

VALMO VALMONT/CW

Freight  
Allowance  
Plus Freight

Minimum  
Order

Date: Mar 1, 2023

Quote: GBL23-4045-1

# Quote

Page 1/1



GBL Infrastructure Solutions, Inc.  
P.O. Box 1360  
Brentwood CA 94513  
Phone: (925) 240-1566  
Fax: (925) 240-9686  
**From: Ana Murillo**  
**Quoter Ph:**  
Email: ana.murillo@gblsolutionsinc.com

**Project** PORTERVILLE  
**Location** PORTERVILLE CA  
**Quote** GBL23-4045-1

**To:**  
ESTIMATING

**For**  
**Bid Date** Mar 1, 2023  
**Expires** Mar 31, 2023

**Remarks:**

\*\*INCLUDES DISTRIBUTOR MARK UP\*\*

| QTY           | Type | MFG       | Part                                                                      | Price UQ   | ExtPrice           |
|---------------|------|-----------|---------------------------------------------------------------------------|------------|--------------------|
| 15            |      | GRIDSHIFT | ALL IN ONE SOLAR FIXTURE<br>18' ROUND STRAIGHT ALUMINUM POLE, 12" SPK ARM | \$6,299.00 | \$94,485.00        |
| <b>Total:</b> |      |           |                                                                           |            | <b>\$94,485.00</b> |

**Notes:**

GBL #19056

FREIGHT INCLUDED.

LEAD TIME: 8-12 WEEKS, ARO & APPROVED DRAWINGS.

CATALOG NUMBER PROVIDED BY CUSTOMER.

PRICE IS GOOD FOR 30 DAYS, SUBJECT TO GRIDSHIFT'S TERMS AND CONDITIONS.

**Terms and conditions of sale:**

NO TAXES ARE INCLUDED UNLESS OTHERWISE NOTED

|                   |              |         |
|-------------------|--------------|---------|
| <b>Mfg Terms:</b> | Freight      | Minimum |
| GRIDS GridShift   | Allowance    | Order   |
|                   | Plus Freight |         |

Date: Mar 1, 2023

Quote: GBL23-4046-3

# Quote

Page 1/1



GBL Infrastructure Solutions, Inc.

P.O. Box 1360

Brentwood CA 94513

Phone: (925) 240-1566

Fax: (925) 240-9686

From: Ana Murillo

Quoter Ph:

Email: ana.murillo@gblsolutionsinc.com

Project **PORTERVILLE**  
Location **PORTERVILLE CA**  
Quote **GBL23-4046-3**

To: ESTIMATING

For  
Bid Date Mar 1, 2023  
Expires Mar 31, 2023

## Remarks:

\*\*INCLUDES DISTRIBUTOR MARK UP\*\*

| QTY    | Type | MFG       | Part                                                                                                                                                                 | Price      | UQ | ExtPrice     |
|--------|------|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----|--------------|
| 15     |      | GRIDSHIFT | SPARROW SOLAR STREET LIGHT (6,680 LM<br>DIMMABLE) (4500 LUMENS)<br>18' ROUND STRAIGHT ALUMINUM POLE W/ TENON. 6"<br>DIAMETER, .188" WALL-SHEPHERDS HOOK ARM OFF SIDE | \$7,399.00 |    | \$110,985.00 |
| Total: |      |           |                                                                                                                                                                      |            |    | \$110,985.00 |

## Notes:

GBL #19056-1

FREIGHT INCLUDED.

LEAD TIME: 10-12 WEEKS, ARO & APPROVED DRAWINGS.

CATALOG NUMBER PROVIDED BY CUSTOMER.

PRICE IS GOOD FOR 30 DAYS, SUBJECT TO GRIDSHIFT'S TERMS AND CONDITIONS.

## Terms and conditions of sale:

NO TAXES ARE INCLUDED UNLESS OTHERWISE NOTED

## Mfg Terms:

GRIDS GridShift

Freight  
Allowance  
Plus Freight

Minimum  
Order

Date: Mar 6, 2023

Quote: GBL23-4046-6

# Quote

Page 1/1



GBL Infrastructure Solutions, Inc.

P.O. Box 1360

Brentwood CA 94513

Phone: (925) 240-1566

Fax: (925) 240-9686

**From: Ana Murillo**

**Quoter Ph:**

Email: ana.murillo@gblsolutionsinc.com

**Project** PORTERVILLE  
**Location** PORTERVILLE CA  
**Quote** GBL23-4046-6

**To:**  
ESTIMATING

**For**  
**Bid Date** Mar 1, 2023  
**Expires** Mar 31, 2023

**Remarks:**

\*\*INCLUDES DISTRIBUTOR MARK UP\*\*

| QTY           | Type | MFG     | Part                                                                                                 | Price       | UQ | ExtPrice            |
|---------------|------|---------|------------------------------------------------------------------------------------------------------|-------------|----|---------------------|
| 15            |      | LUMECON | MIDTOWN SERIES TEAR DROP SOLAR POLE AND<br>FIXTURE<br>16' ALUMINUM POLE, 35W, 2 SECTION SOLAR PANELS | \$15,425.00 |    | \$231,375.00        |
| <b>Total:</b> |      |         |                                                                                                      |             |    | <b>\$231,375.00</b> |

**Notes:**

GBL #19056-3

FREIGHT INCLUDED.

LEAD TIME: 24-26 WEEKS, ARO & APPROVED DRAWINGS.

FINISH: STANDARD POWDER COAT FINISH

CATALOG NUMBER PROVIDED BY CUSTOMER.

PRICE IS GOOD FOR 30 DAYS, SUBJECT TO GRIDSHIFT'S TERMS AND CONDITIONS.

**Terms and conditions of sale:**

NO TAXES ARE INCLUDED UNLESS OTHERWISE NOTED

**Mfg Terms:**

LUMEC Lumecon

Freight  
Allowance  
Plus Freight

Minimum  
Order



Quote to: Porterville Parks & Rec

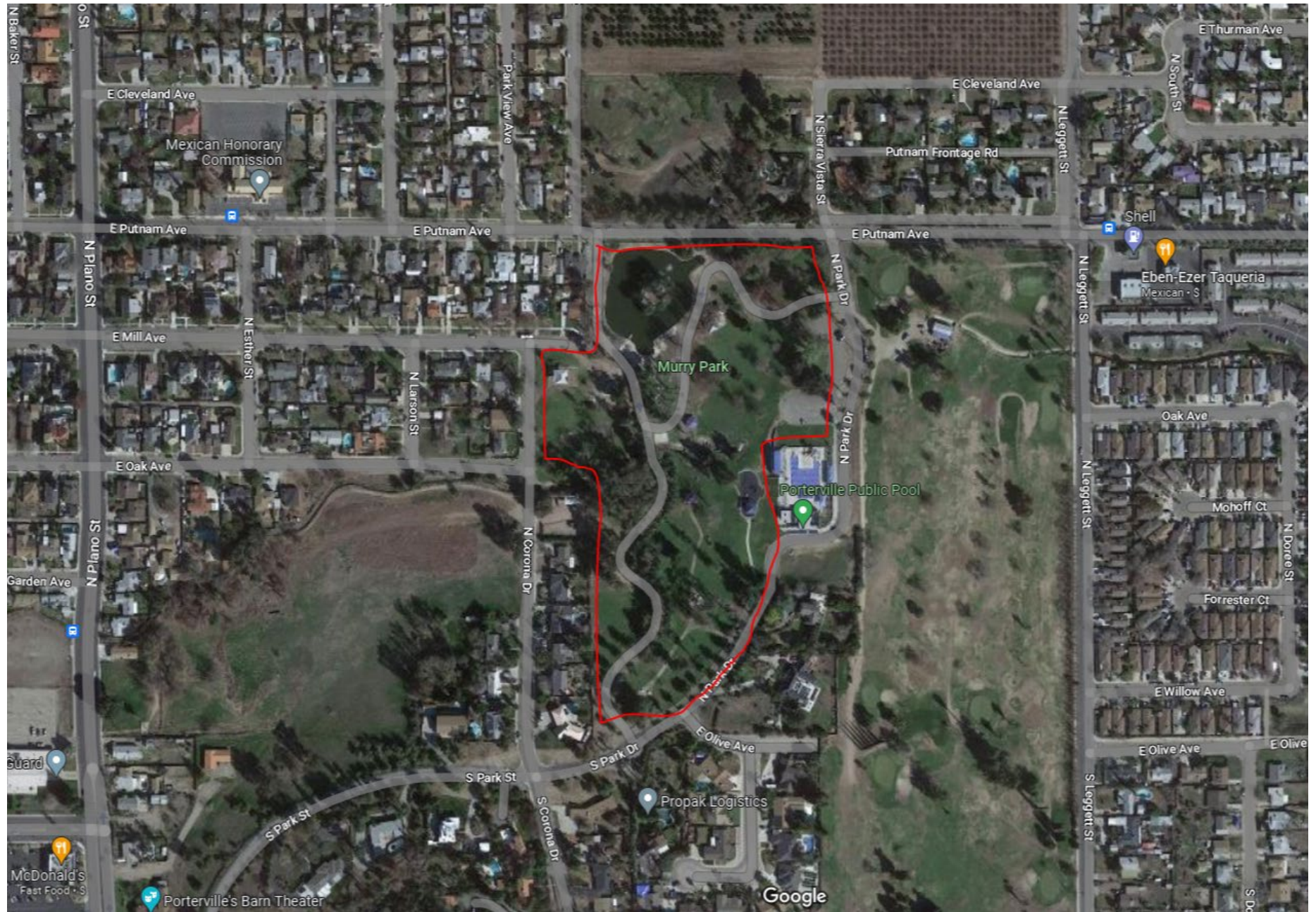
**Project:** Porterville – Park Solar Lighting

**Date:** 2/9/23

| <u>Quantity</u> | <u>Description</u>                                                                                                                                                                                                                                                        | <u>Price Extended</u> |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 40              | iSSL Maxi Solar Lights to include:<br>iSSL Maxi ROAD Detect Co-AWR 4000K RAL8019 0C<br>Solar street light - with motion sensor<br>Integrated LED Co-AWR 4000K<br>Casing color: Dark Bronze RAL8019<br>Lighting Profile: C -X<br>Pole: Steel Galvanized, Bolt Down, Bronze | \$ 118,000.00         |
| 1               | Tax 9.25%                                                                                                                                                                                                                                                                 | \$ 10,915.00          |
| 1               | Freight                                                                                                                                                                                                                                                                   | \$ 4,250.00           |
| <b>Total:</b>   |                                                                                                                                                                                                                                                                           | <b>\$ 133,165.00</b>  |

Notes: -Estimated Freight Included  
-Lead Time is 12-14 Weeks (subject to change)  
-Sales Tax Included  
-Pricing good for 30 Days  
-PO to be made out to:  
SCLNorth









## CITY COUNCIL AGENDA – APRIL 4, 2023

**SUBJECT:** Authorization to Apply for Clean California Local Grant Program (CCLGP) Funds

**SOURCE:** Community Development

**COMMENT:** The Clean California Local Grant Program (CCLGP) is a competitive statewide program, administered by the California Department of Transportation (Caltrans) that will provide approximately \$100 million in Cycle 2 to beautify and clean up local streets and roads, tribal lands, parks, pathways, transit centers, and other public spaces. Applicants must be local or regional public agencies, transit agencies, or tribal governments.

Pursuant to statute, the intent of the CCLGP is to achieve the following goals: (1) Reduce the amount of waste and debris within public rights-of-way, pathways, parks, transit centers, and other public spaces. (2) Enhance, rehabilitate, restore, or install measures to beautify and improve public spaces and mitigate the urban heat island effect. (3) Enhance public health, cultural connections, and community placemaking by improving public spaces for walking and recreation. (4) Advance equity for underserved communities.

Staff is interested in submitting applications for the following:

1. Tule River Parkway Improvement Project – Scope includes but is not limited to: installation of solar lighting, wayfinding signage, seating, refuse receptacles, and improvements to existing trail surface. The application for the Tule River Parkway Improvement Project would take into consideration the damage received from the impact of the recent storms and high flows in the Tule River, due to the strict delivery timeframe of the grant.

2. Porterville Litter Abatement Project - The project will provide increased litter abatement on key transportation public rights of way, including State Route 65 and State Route 190 (within the city limits of Porterville) as well as on off ramps near the State Routes where litter accumulates.

Applications are due to Caltrans on April 28, 2023, and award of funds is scheduled to take place in August/September of 2023. Projects must be completed and all funds must be expended by June 30, 2026.

In applying for these Clean CA grant funds, the City is taking measures to reduce waste, enhance public spaces for walking and recreation and to improve public health in the community.

RECOMMENDATION:

That the City Council:

1. Approve the submittal of Clean California Local Grant Program funding applications to the California Department of Transportation; and
2. Authorize the Mayor, City Manager or designee to execute all documents pertaining to the CCLGP and to make any augmentation, modification, addition or revision as may be necessary to conform to requirements imposed by the California Department of Transportation.

ATTACHMENTS:

1. Locator Map: Tule River Parkway Project
2. Locator Map: Litter Abatement Project

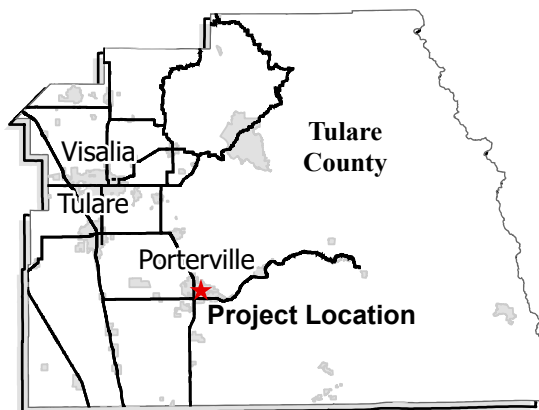
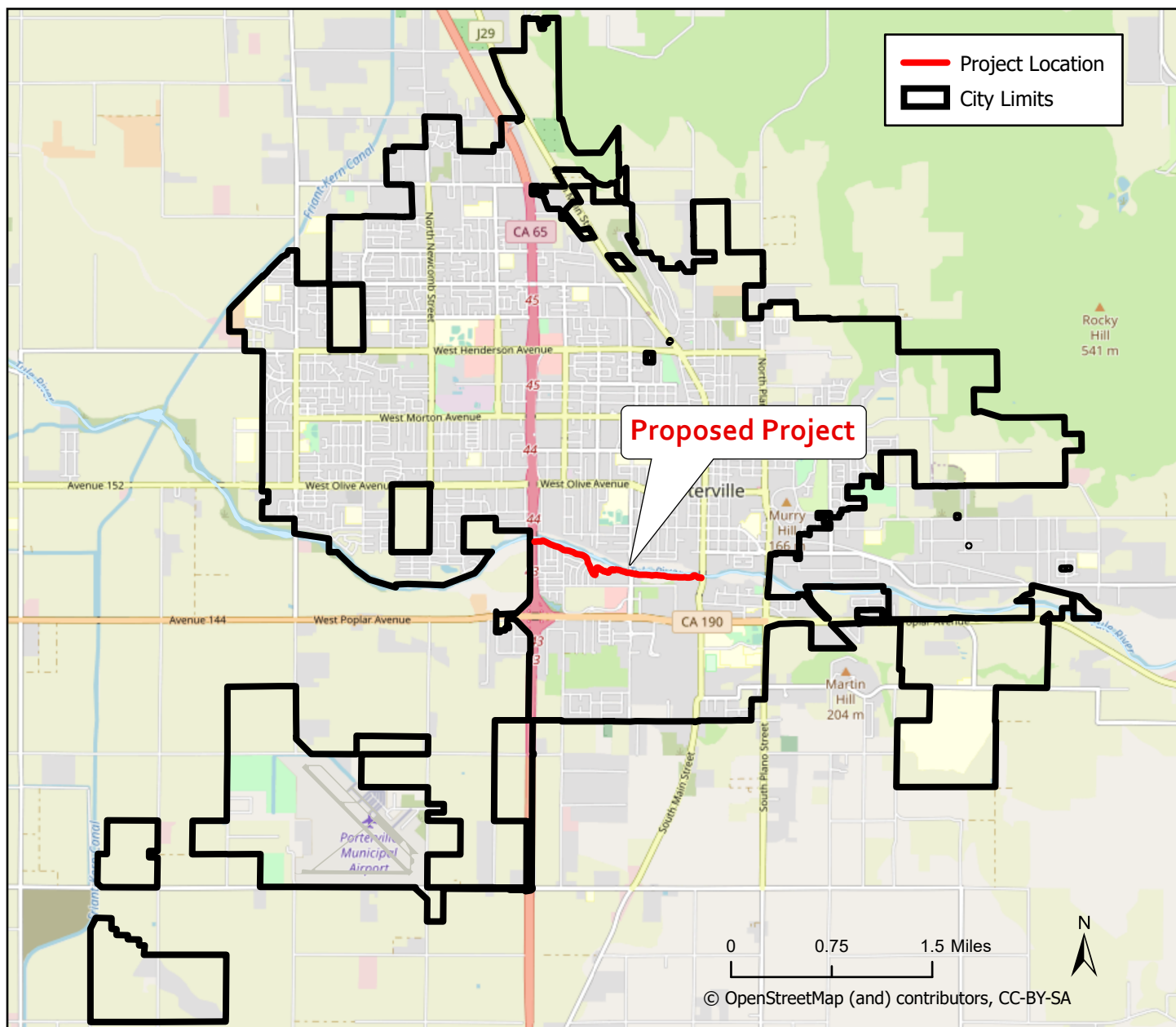
Appropriated/Funded:

Review By:

Department Director:  
Jason Ridenour, Assistant City Manager

Final Approver: John Lollis, City Manager

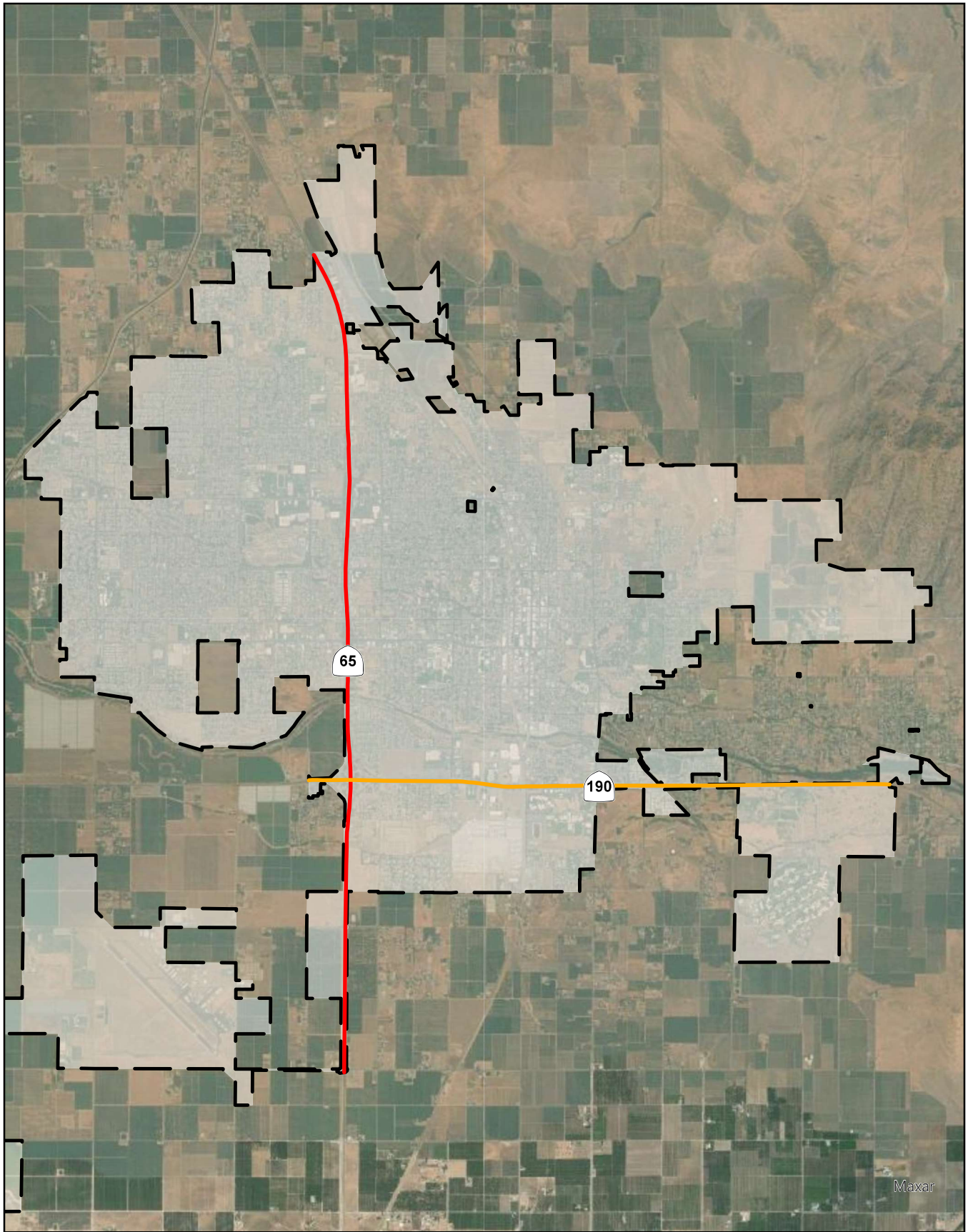
# Tule River Parkway Solar Lighting Project (SR 65 to Main Street)



CITY OF PORTERVILLE  
Community Development Department  
291 N. Main St.  
Porterville, CA 93257  
(559) 782-7460  
Date Printed: 5/13/2022



# State Roads Length Within City Limits



— SR 65 - 5.8 Miles

— SR 190 - 4.1 Miles

— City Limits

0 0.5 1 Miles



Date Printed: 5/26/2021 by the Community Development Department





## CITY COUNCIL AGENDA – APRIL 4, 2023

SUBJECT: Status and Review of Local Drought Emergency

SOURCE: City Manager's Office

COMMENT:

At its meeting of May 5, 2015, the City Council took action to approve a Resolution Declaring a Drought Emergency in the City of Porterville. At its meeting of March 21, 2023, the Council reviewed the status of existence of local emergency, and acted to continue its Resolution of local emergency.

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

On November 13, 2015, Governor Brown issued Executive Order B-36-15, which extends emergency conservation regulations through October 2016, if drought conditions persist through January 2016. On February 2, 2016, the State Water Resources Control Board adopted extended emergency water conservation regulations, to be in effect March 1 through October 31, 2016.

The City of Porterville benefited somewhat from the extended regulations as the City's water conservation rate has been reduced from thirty-two percent (32%) to twenty-six percent (26%), due to new water connections that have been made and population served (4%), as well as a new climate adjustment factor that was considered (2%).

On May 9, 2016, Governor Brown issued Executive Order B-37-16 ("Making Water Conservation a California Way of Life"), which directs the State Water Resources Control Board to establish new regulations making permanent the emergency conservation regulations. On May 18, 2016, the State Water Resources Control Board adopted a statewide water conservation approach that replaces the percentage reduction-based water conservation standard with a

localized "stress test" approach that mandates urban water suppliers act immediately to ensure at least a three-year supply of water to their customers under continued drought conditions.

On April 7, 2017, Governor Brown issued Executive Order B-40-17, which ended the drought state of emergency in most of California, with the exception of Fresno, Kings, Tulare and Tuolumne counties where emergency water supply and reliability projects are continuing toward addressing diminishing groundwater supplies. The Order maintains monthly reporting requirements and prohibitions on wasteful practices.

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

On March 5, 2021, Secretary Vilsack of the United States Department of Agriculture federally-designated Tulare County as a primary natural disaster area due to ongoing drought conditions. On April 21, 2021, Governor Newsom issued a State of Emergency Proclamation due to drought conditions, including Tulare County. On April 27, 2021, the Tulare County Board of Supervisors adopted a Resolution Proclaiming a Local Emergency due to severe drought conditions. On January 4, 2022, the State Water Resources Control Board adopted emergency regulations to supplement voluntary water conservation.

On March 28, 2022, Governor Newsom issued Executive Order N-7-22, that requires the state's largest water providers (including the City of Porterville) to put in place "Level 2" of water shortage contingency plans, which the City is currently in "Level 4." On June 10, 2022, the State Water Resources Control Board adopted emergency regulations to prohibit the watering of nonfunctional or purely decorative grass in commercial, industrial or institutional properties with potable water. On March 24, 2023, due to atmospheric river storms during the month of March 2023, Governor Newsom issued Executive Order N-5-23 that ended the requirement that the state's largest water providers (including the City of Porterville) put in place "Level 2" of water storage contingency plans (the City of Porterville is currently in "Level 4"), as well as ended the voluntary fifteen percent (15%) water conservation target.

At its meeting on January 17, 2023, the Council considered an emergency request from the County of Tulare for assistance to Self-Help Enterprises, Inc. (SHE) in the provision of source water for the Emergency Tank Program that serves 389 residences across Tulare County where domestic wells have run dry due to continued drought. The County had been providing source water from its well at the Bob Wiley Detention Facility, north of Visalia, but the recent

rainfall had caused damage and the temporary closure of the access road to the well. The Council acted to grant the County's request for emergency assistance and provide source water to SHE to continue the Emergency Tank Program, to be reviewed at its next regular meeting on February 7, 2023. On January 20, 2023, SHE began taking City water for delivery. The County later reported that the access road had been repaired and that the County source well was accessible again to SHE beginning on February 1, 2023. According to the City water meter report, approximately 111,500 gallons of water was accessed by SHE, with a corresponding cost of \$350. At Council's direction, City staff has also been in contact and coordinating with the Eastern Tule Groundwater Sustainability Agency (ETGSA) in regard to source water from the ETGSA crossing over into other GSA territories and other Sub-basins (e.g. Kaweah) and addressing any potential impacts, although it is important to note that the same has been happening from the County well that is located in the Kaweah Sub-basin.

Initially within the city of Porterville, twenty-six (26) residences within the city were determined to have dry wells, for which City staff submitted a Mutual Aid Request to Tulare County OES to initiate the household tank program for identified properties within the city where wells are dry and challenged for permanent connection. The State has committed funding for non-profit agencies to continue drought-related activities, which Self-Help Enterprises has continued the household tank program locally, through State Cleanup and Abatement Account (CAA) emergency funds.

Representatives for the City, County, State (CalOES, DDW, DWR, and SWB) and non-profit partners continued to meet in support of the long-term permanent water connection project for the entire East Porterville area and the estimated 1,800 expected future connections. DWR identified 423 residential units in the East Porterville area (381 of which are in the City's Urban Development Boundary), that were served by the County's Household Tank Program and desired by the State to be connected to the City's water distribution system as soon as possible. DWR has completed a significant City waterline extension project to permanently connect those 423 residential units to the City's water system (considered Phase I of the project). To provide initial source water for the DWR extension project, CalOES desired to expeditiously connect the new well on Olive Avenue to the City's water system instead of being first equipped as a filling station. Given the new well has an estimated water production value of 800 gallons per minute, as well as a SWB assumed 1.5 gallons per minute per residence, the new well could effectively serve up to five hundred (500) single-family residential units. The City indicated its significant interest that the E. Vandalia Avenue area and its eighty (80) residential units be included in the water connection project, to which the State was agreeable.

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

purposes. On May 7, 2022, Tulare County OES notified the City that due to deteriorating conditions across the county involving small water systems dependent upon the Friant-Kern Canal that may result in the complete lack of water or "Do Not Drink" orders, the State and County may have to invoke the provision of water from the well.

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

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

In regards to the new well's development and connection to the City's water distribution system, the Board of Supervisors awarded the contract for equipping and connecting the new well at its meeting on Tuesday, August 16, 2016, and construction activities commenced the week of October 10, 2016.

County staff had previously indicated that the well would be in service and connected to the City's system no later than December 2016, however, the well was operational and connected to the City's water distribution as of Friday, February 17, 2017. Given the delay in the well's completion and connection, DWR requested that the Council consider allowing the connection of residences as they become prepared for connection, to which the Council was receptive, and a Draft MOU Amendment was approved by the Council at its meeting on December 6, 2016, and subsequently approved by the Board of Supervisors at its meeting on December 20, 2016. City staff continued to work with County staff toward the transfer of the well's ownership from the County to the City, which at its meeting on April 20, 2021, the Council approved the draft Transfer Agreement subject to the City Attorney's final form.

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



City staff continues to coordinate with Self-Help Enterprises and State representatives toward the extension of water mains to serve all residential properties within City limits and the city's periphery that are currently participating in the County's Household Tank Program. The two main areas of focus are N. Cobb Street (northwest of State Route 65 and Pioneer Avenue), and S. Cloverleaf Street (southeast of State Route 65 and Olive Avenue). The State has maintained its commitment to grant-fund the necessary infrastructure and connection fees, providing an official funding letter to the City on January 18, 2018, which commits up to \$2.81 million in funding until December 31, 2019. The authorization to advertise for bids for the water connection project was approved by the Council at its July 17th meeting, after which DWR reviewed the bid package for compliance and approved in December the package for advertisement. Council authorized award of the construction contract for approximately \$1.82 million at its meeting on January 15, 2019.

City staff conducted a pre-construction public outreach meeting with the affected residents on the status of the project on Thursday, April 4, 2019.

Council authorized the agreement with Self-Help Enterprises Inc. to provide the private residential connections at its meeting on July 2, 2019, and construction work began on the project. At its meeting on October 1, 2019, the Council accepted the public works segment of the project in the installation of water mains as complete, with Self-Help and CSET continuing to collaborate on the completion of the individual private connections and abandonment of private wells. City staff has recently been made aware that there may be a couple of additional residences whose wells are dry that are located along existing City water mains or may require further extension of water mains.

Staff is coordinating with State staff on addressing these new isolated needs.

County OES and the State Division of Drinking Water (DDW) have reported to the City that the Central Mutual Water Company, located south of the city and south of Gibbons Avenue, has had its well run dry and desires an immediate emergency connection to the City's water system to serve the forty-one (41) connections currently without water. DDW is wishing to support a financial application to upgrade the small water system to City standards (new water lines, meters ,etc.), and to sponsor an Urban Development Boundary (UDB) Amendment application to Tulare County Local Agency Formation Commission (LAFCO), given this area is currently outside the City's UDB but within the City's Urban Area Boundary (UAB). Given several private wells have run dry in this area, DDW is also attempting to sponsor their connection to the City's water system. For source water capacity for the connections, DWR will include these new connections within the East Porterville water connection capacity development projects. At its Special meeting on August 30, 2019, the City Council directed staff to proceed with the immediate emergency connection of the Central water system, with the permanent connection of the system contingent upon an Agreement with DDW to the sponsorship conditions they have offered. At its meeting on October 1, 2019, the Council directed staff to proceed with the amendment of the UDB to facilitate annexation, which a public meeting with the affected residents was conducted on Wednesday, October 9, 2019. At its meeting on April 21, 2020, the Council conducted a

Public Hearing and approved Resolutions of approval of the environmental determination and amendment to the UDB to facilitate annexation. At its meeting on June 1, 2021, the Council approved the State Water Board funding agreement for the development of a City-owned production well, distribution mains and water meters to serve each customer, as well as fire hydrants. On July 20, 2021, the City received notification from the State Water Board that the Akin/Central Water Consolidation Project funding agreement had been formally approved and executed.

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

DDW has further reported to the City that the Beverly Grand Mutual Water Company water system, located north of West North Grand Avenue, is experiencing problems with its existing well and water quality issues, and desires its connection to the City's system to serve the thirty-one (31) residences the system serves. DDW is wishing to provide financial support to upgrade the small water system to City standards (new water lines, meters ,etc.), and for source water capacity for the connections, DDW has agreed to pay appropriate fees toward developing a capacity development project, which at its meeting of October 3, 2017, the Council approved a purchase agreement with Smee Homes, Inc. for the acquisition of property along the Tule River for the development of a new municipal well. At its meeting of October 1, 2019, the Council approved proceeding with the consolidation of the Beverly Grand water system.

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

ATTACHMENTS:

1. City of Porterville Resolution Declaring Local Drought Emergency: May 5, 2015
2. United States Department of Agriculture Drought Natural Disaster Area Designation: March 5, 2021
3. State of California State of Emergency Proclamation: April 21, 2021
4. County of Tulare Drought Local Emergency Resolution:

- April 27, 2021
5. State Water Resources Control Board: Emergency Regulation - Water Conservation; January 4, 2022
  6. Governor Newsom Executive Order N-7-22: March 28, 2022
  7. State Water Resources Control Board: Emergency Regulation - Water Conservation; June 10, 2022
  8. Governor Newsom Executive Order N-5-23: March 24, 2023
  9. State Water Resources Control Board Funding Agreement: Akin/Central Water Consolidation Project

Appropriated/Funded:

Review By:

Department Director:  
John Lollis, City Manager

Final Approver: John Lollis, City Manager

RESOLUTION NO. 49-2015

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

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

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

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

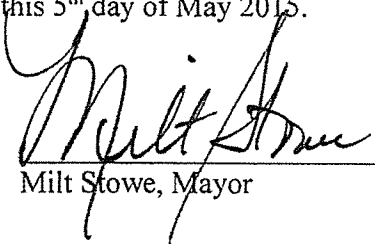
WHEREAS: the long-term ramifications of the current drought will have a significant impact on the city of Porterville and potentially pose a danger to the health and welfare of its residents; and

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

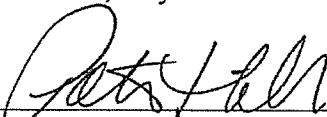
BE IT FURTHER RESOLVED: that the City Council of the City of Porterville requests the Governor and California Department of Water Resources make available California Disaster Assistance Act funding for the State of Local Emergency proclaimed on May 5, 2015, and seek all available forms of Federal assistance,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

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May 2015.

  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

  
By: Patrice Hildreth, Chief Deputy City Clerk



United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

March 5, 2021

The Honorable Gavin Newsom  
Governor  
State of California  
Sacramento, California 95814

Dear Governor Newsom:

In accordance with 7 CFR 759.5(a), I am designating 50 California counties as primary natural disaster areas due to a recent drought.

According to the U.S. Drought Monitor (see <http://droughtmonitor.unl.edu/>), these counties suffered from a drought intensity value during the growing season of 1) D2 Drought-Severe for 8 or more consecutive weeks or 2) D3 Drought-Extreme or D4 Drought-Exceptional.

In accordance with section 321(a) of the Consolidated Farm and Rural Development Act, additional areas of your state and adjacent states are named as contiguous disaster counties. Enclosed you will find documentation that provides a detailed list of all primary and contiguous counties impacted by this disaster.

A Secretarial disaster designation makes farm operators in primary counties and those counties contiguous to such primary counties eligible to be considered for certain assistance from the Farm Service Agency (FSA), provided eligibility requirements are met. This assistance includes FSA emergency loans. Farmers in eligible counties have 8 months from the date of a Secretarial disaster declaration to apply for emergency loans. FSA considers each emergency loan application on its own merits, taking into account the extent of production losses on the farm and the security and repayment ability of the operator.

Local FSA offices can provide affected farmers with further information.

Sincerely,

A handwritten signature in blue ink, reading "Tom J. Vilsack", is positioned above the printed name of the Secretary.

Thomas J. Vilsack  
Secretary

Enclosure

## Disaster Designation Areas for California and Contiguous States

### Primary Counties:

|                   |             |           |                |            |
|-------------------|-------------|-----------|----------------|------------|
| <b>California</b> | <b>(50)</b> |           |                |            |
| Alameda           | Glenn       | Marin     | Riverside      | Solano     |
| Alpine            | Humboldt    | Mariposa  | Sacramento     | Sonoma     |
| Amador            | Imperial    | Mendocino | San Bernardino | Stanislaus |
| Butte             | Inyo        | Merced    | San Francisco  | Sutter     |
| Calaveras         | Kern        | Modoc     | San Joaquin    | Tehama     |
| Colusa            | Kings       | Mono      | San Mateo      | Trinity    |
| Contra Costa      | Lake        | Napa      | Santa Clara    | Tulare     |
| Del Norte         | Lassen      | Nevada    | Shasta         | Tuolumne   |
| El Dorado         | Los Angeles | Placer    | Sierra         | Yolo       |
| Fresno            | Madera      | Plumas    | Siskiyou       | Yuba       |

### Contiguous Counties:

|                   |            |                 |            |
|-------------------|------------|-----------------|------------|
| <b>California</b> | <b>(8)</b> |                 |            |
| Monterey          | San Benito | San Luis Obispo | Santa Cruz |
| Orange            | San Diego  | Santa Barbara   | Ventura    |

In addition, in accordance with section 321(a) of the Consolidated Farm and Rural Development Act, counties in adjacent states are named as contiguous disaster areas. Those states, counties, and numbers are:

### Contiguous Counties in Adjacent States:

|                |            |         |             |
|----------------|------------|---------|-------------|
| <b>Arizona</b> | <b>(3)</b> |         |             |
| La Paz         | Mohave     | Yuma    |             |
| <b>Nevada</b>  | <b>(8)</b> |         |             |
| Clark          | Esmeralda  | Mineral | Washoe      |
| Douglas        | Lyon       | Nye     | Carson City |
| <b>Oregon</b>  | <b>(5)</b> |         |             |
| Curry          | Josephine  | Lake    |             |
| Jackson        | Klamath    |         |             |



EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

**State of Emergency Proclamation**

**WHEREAS** climate change is intensifying the impacts of droughts on our communities, environment and economy, and California must therefore improve drought resiliency and prepare to respond to more frequent, prolonged, and intense dry periods; and

**WHEREAS** much of the West is experiencing severe to exceptional drought and California is in a second consecutive year of dry conditions, resulting in drought or near-drought throughout many portions of the State; and

**WHEREAS** these drought conditions can result in degraded water quality, fallowing of productive farmland, setbacks to vulnerable and rural communities through job losses and longer-lasting recoveries, significant impacts to tribal, commercial, and recreational salmon fisheries, constraints on access to traditional lifeways, loss of aquatic and terrestrial biodiversity, and ecosystem impacts; and

**WHEREAS** drought conditions vary across the State and some watersheds, including the Russian River and Klamath Basin, are extremely dry and are facing substantial water supply and ecosystem challenges; and

**WHEREAS** it is necessary to expeditiously mitigate the effects of the drought conditions within the Russian River Watershed, located within Mendocino and Sonoma counties, to ensure the protection of health, safety, and the environment; and

**WHEREAS** experience in the last drought has demonstrated the value of preparing earlier for potential sustained dry conditions, the need to improve our monitoring and forecasting capabilities, and many other lessons that are captured in the Administration's *Report to the Legislature on the 2012-2016 Drought*; and

**WHEREAS** the State and its many partners have strengthened drought resilience since the last drought including state investments in water management systems, implementation of the Sustainable Groundwater Management Act, establishment of the Safe and Affordable Fund for Equity and Resilience Program, development of the Administration's *Water Resilience Portfolio*, and continued water conservation by Californians whose current statewide urban water use is 16% lower than at the beginning of the last drought; and

**WHEREAS** state agencies have been actively responding to current drought conditions and preparing for the possibility of a third dry year including through convenings of the interagency drought team, which was established at my direction, to organize, focus, and track changing conditions, coordinate state agency responses, and work closely with partners across the State; and

**WHEREAS** under the provisions of Government Code section 8558(b), I find that the conditions caused by the drought conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to appropriately respond; and

**WHEREAS** under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the drought conditions; and

**WHEREAS** to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of, the drought conditions within the Russian River Watershed, and under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Proclamation would prevent, hinder, or delay the mitigation of the effects of the drought conditions of the Russian River Watershed, located within Mendocino and Sonoma counties.

**NOW THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in Mendocino and Sonoma counties due to drought conditions in the Russian River Watershed.

**IT IS HEREBY ORDERED THAT:**

1. To further the success of California's water conservation efforts and increase our drought preparedness, state agencies shall partner with local water districts and utilities to make all Californians aware of drought, and encourage actions to reduce water usage by promoting the Department of Water Resources' Save Our Water campaign (<https://saveourwater.com>) and other water conservation programs.
2. To continue coordination with partners across the State for the potential of prolonged drought impacts, the Department of Water Resources, the State Water Resources Control Board (Water Board), the Department of Fish and Wildlife, and the Department of Food and Agriculture shall work with regional and local governments, including groundwater sustainability agencies, to identify watersheds, communities, public water systems, and ecosystems that may require coordinated state and local actions to address issues stemming from continued dry conditions, to ensure that we can respond to water shortages and protect people, natural resources and economic activity.
3. To continue partnership and coordination with Californian Native American tribes, state agencies shall engage in consultation, collaboration, and communication with California Native American tribes to assist them in necessary preparation and response to drought conditions on tribal lands and potential impacts to cultural and traditional resources within ancestral lands.
4. To prioritize drought response and preparedness resources, the Department of Water Resources, the Water Board, the Department of Fish and Wildlife and the Department of Food and Agriculture, in consultation with the Department of Finance, shall:
  - a. Accelerate funding for water supply enhancement, water conservation, or species conservation projects.
  - b. Identify unspent funds that can be repurposed to enable projects to address drought impacts to people, ecosystems, and economic activities.
  - c. Recommend additional financial support for water resilience infrastructure projects and actions for potential inclusion in the upcoming May Revision.



5. To increase resilience of our water supplies during drought conditions, the Department of Water Resources shall:
  - a. Work with counties to encourage reporting of household water shortages, such as dry residential wells, on the website the Department maintains for that purpose, to enable tracking of drought impacts.
  - b. Work with counties, and groundwater sustainability agencies as appropriate, to help ensure that well drillers submit required groundwater well logs for newly constructed and deepened wells in a timely manner.
  - c. Work with agricultural water suppliers and agricultural water users to provide technical assistance, including implementation of efficient water management practices and use of technology such as the California Irrigation Management Information System.
  - d. Work with urban and agricultural water suppliers to encourage timely submittal by water districts and public posting of urban water management and water shortage contingency plans and agricultural water management and drought plans.
  - e. Accelerate updating the land subsidence data it is providing to support implementation of the Sustainable Groundwater Management Act.
6. To increase resilience of our water systems during drought conditions, the Water Board shall:
  - a. Use its authority, provide technical assistance, and where feasible provide financial assistance, to support regular reporting of drinking water supply well levels and reservoir water levels where the Water Board determines that there is risk of supply failure because of lowering groundwater levels or reservoir levels that may fall below public water system intakes.
  - b. Prioritize the permitting of public water systems that anticipate the need to activate additional supply wells where water quality is a concern and treatment installation needs to proceed to relieve a system's potential supply concerns.
  - c. Provide annual water demand data, information on water right priority, and other communications on water availability on its website.
  - d. Identify watersheds where current diversion data is insufficient to evaluate supply impacts caused by dry conditions, and take actions to ensure prompt submittal of missing data in those watersheds.
7. To address the acutely dry conditions in the Russian River Watershed, the Water Board shall consider:
  - a. Modifying requirements for reservoir releases or diversion limitations in that watershed to ensure adequate, minimal water supplies for critical purposes.
  - b. Adopting emergency regulations to curtail water diversions when water is not available at water rights holders' priority of right or to protect releases of stored water.

For purposes of carrying out this directive, Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are suspended in the counties of Mendocino and Sonoma to the extent necessary to address the impacts of the drought in the Russian River Watershed. The Water Board shall identify the projects

eligible for the suspensions pursuant to this paragraph and maintain on its websites a list of the activities or approvals for which these provisions are suspended.

8. To ensure that equipment and services necessary for drought response in the Russian River Watershed can be procured quickly, the provisions of the Government Code and the Public Contract Code applicable to procurement, state contracts, and fleet assets, including, but not limited to, advertising and competitive bidding requirements, are hereby suspended to the extent necessary to address the effects of the drought in the Russian River Watershed, located within Mendocino and Sonoma counties. Approval of the Department of Finance is required prior to the execution of any contract entered into pursuant to this provision.
9. To increase the resilience of our natural habitats to protect vulnerable species during drought conditions, the Department of Fish and Wildlife shall:
  - a. Evaluate and take actions to protect terrestrial and aquatic species and, wherever possible, work with water users and other parties on voluntary measures to protect species.
  - b. Work to improve State hatcheries and increase water use efficiency on State wildlife areas and ecological reserves to maintain habitat for vulnerable species.
  - c. Respond to human-wildlife interactions related to ongoing dry conditions and increase public messaging and awareness.
  - d. Work with commercial and recreational salmon fishing and tribal representatives to anticipate and develop strategies to mitigate and respond to salmon fishery impacts, with particular emphasis on addressing impacts to salmon fisheries in the Klamath Basin.
10. To support our agricultural economy and food security during drought conditions, the Department of Food and Agriculture shall:
  - a. Provide technical assistance to support conservation planning, on-farm water and energy conservation practices and technologies, including augmenting the State Water Efficiency and Enhancement Program.
  - b. Conduct an economic analysis of drought impacts to agriculture, including land use, jobs, and rural food economies, expanding on existing research done in the last drought to include thorough regional analysis especially in the Central Valley, and in the implementation of the Sustainable Groundwater Management Act and alternative land uses for fallowed land.
  - c. Maintain a web page with drought resources for farmers and ranchers, including the United States Department of Agriculture and other federal and state resources.
  - d. Work with federal agencies to assist Klamath Basin farmers and ranchers contending with reduced water supplies.
11. To ensure the potential impacts of drought on communities are anticipated and proactively addressed, the Department of Water Resources, in coordination with the Water Board, shall develop groundwater management principles and strategies to monitor, analyze, and minimize impacts to drinking water wells.
12. To provide critical information on the different drought conditions across the State, the Department of Water Resources, in consultation with the Department of Fish and Wildlife, the Department of Food and Agriculture,



and the Water Board, shall develop a California Drought Monitor by December 31, 2021, as recommended in the Administration's Report to the Legislature on the 2012-2016 Drought.

13. To prepare for potential salinity issues in the Delta, the Department of Water Resources, in consultation with the Water Board, the Department of Fish and Wildlife, the Delta Stewardship Council, and the Central Valley Flood Protection Board, shall initiate actions necessary to prepare for and address potential Delta salinity issues during prolonged drought conditions.

14. To prepare for potential impacts of drought conditions on species, the Water Board and the Department of Fish and Wildlife shall work with federal agency partners to manage temperature conditions for the preservation of fish in the Sacramento River downstream of Shasta Dam while balancing water supply needs.

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

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

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 21st day of April 2021



GAVIN NEWSOM  
Governor of California

**ATTEST:**

DR. SHIRLEY WEBER  
Secretary of State

# RESOLUTION PROCLAIMING A LOCAL EMERGENCY BY THE BOARD OF SUPERVISORS COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF A )  
LOCAL EMERGENCY DUE TO )  
SEVERE DROUGHT CONDITIONS )

RESOLUTION NO. 2021-0290

**WHEREAS**, California's most recent drought spanning from approximately 2012 to 2018 required the proclamation of a Local Emergency by the County of Tulare from February 2014 to November 2019, as well as a Governor's State of Emergency and the combined resources of multiple local, state, and federal agencies, commercial entities, and non-profit organizations to mitigate; and

**WHEREAS**, over 3,000 failed or dry wells – including private domestic, community, and agricultural wells – were reported to Tulare County from 2014 to 2017 as a result of the prior drought, causing significant health, safety, and economic issues for Tulare County residents and businesses; and

**WHEREAS**, well over \$100 million in emergency relief and permanent infrastructure projects were expended to mitigate the effects of the prior drought; and

**WHEREAS**, a hydrological year ("water year") runs from October 1 to September 30 of the following year; and

**WHEREAS**, the current water year beginning October 1, 2020 is, to date, the third-driest on record, with potential to become the driest on record without significant additional precipitation which is unlikely to occur during the traditionally dry months; and

**WHEREAS**, the United States Drought Monitor shows that 94.51% of Tulare County is currently experiencing "Extreme Drought" (D3) conditions and the remaining 5.49% is in "Severe Drought" (D2) conditions, and the County of Tulare anticipates that these conditions will progress to "Exceptional Drought" (D4) conditions as occurred in the prior drought based on the current Southern Sierra snowpack measured at only 15% of historical average for April 1<sup>st</sup>, drastically reduced surface water allocations on the State Water Project and Central Valley Project, and correspondingly low water levels in local reservoirs; and

**WHEREAS**, surface water supply constraints create a demonstrable and unsustainable increase in demand for groundwater which is likely to cause additional dry wells for community water systems, private domestic wells, and agricultural wells, creating economic hardships and conditions of extreme peril to the health and safety of individuals within Tulare County requiring the combined forces of all levels of government to mitigate; and

**WHEREAS**, California Government Code section 8630 empowers the Board of Supervisors to proclaim the existence or threatened existence of a local emergency; and

**WHEREAS**, Section 1-15-1005 of the Tulare County Ordinance Code defines "emergency" to include "the actual or threatened existence of conditions of disaster or of

extreme peril to the safety of persons and property within [Tulare] County caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, earthquake, or other conditions, ... which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of [Tulare] County, requiring the combined forces of other political subdivisions to combat"; and

**NOW, THEREFORE, IT IS HEREBY PROCLAIMED** that a local emergency now exists throughout said Tulare County due to drought which has created conditions of disaster and extreme peril to the safety of persons and property within the County, and that such conditions are or are likely to be beyond the control of the services, personnel, equipment, and/or facilities of this County, thus requiring the combined forces of other political subdivisions to combat; and

**IT IS FURTHER PROCLAIMED** that this local emergency is proclaimed pursuant to the California Emergency Services Act, California Government Code §8550 et seq.; and

**IT IS REQUESTED** that the Governor of the State of California find and proclaim Tulare County to be in a State of Emergency, and make available any and all material and financial support and resources necessary to combat the conditions of disaster, including but not limited to California Disaster Assistance Act funding for emergency protective measures and increased funding to relevant programs of the State Water Resources Control Board and Department of Water Resources; and

**IT IS FURTHER REQUESTED** that the Governor waive and all regulations and statutes that may hinder response to this emergency; and

**IT IS PROCLAIMED AND ORDERED** that during the existence of said local emergency, the powers, functions, and duties of the emergency organization of Tulare County shall be those prescribed by State law, by ordinances and resolutions of Tulare County, and by the Tulare County Operational Area Emergency Operations Plan, as approved by the Board of Supervisors.

UPON MOTION OF SUPERVISOR MICARI, SECONDED BY SUPERVISOR TOWNSEND, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD APRIL 27, 2021, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS MICARI, VANDER POEL, SHUKLIAN, VALERO AND TOWNSEND

NOES: NONE

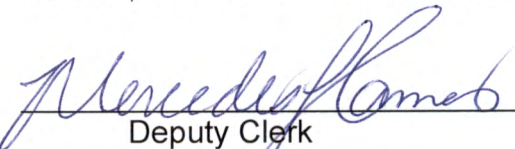
ABSTAIN: NONE

ABSENT: NONE

ATTEST: JASON T. BRITT  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS



BY:

  
Deputy Clerk

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2022-0002**

**TO ADOPT AN EMERGENCY REGULATION  
TO SUPPLEMENT VOLUNTARY WATER CONSERVATION**

**WHEREAS:**

1. On April 21, May 10, and July 8, 2021, Governor Newsom issued proclamations that a state of emergency exists in a total of 50 counties due to severe drought conditions and directed state agencies to take immediate action to preserve critical water supplies and mitigate the effects of drought and ensure the protection of health, safety, and the environment.
2. On October 19, 2021, Governor Newsom signed a proclamation extending the drought emergency statewide and further urging Californians to reduce their water use.
3. There is no guarantee that winter precipitation will alleviate the current drought conditions.
4. Many Californians have taken bold steps over the years to reduce water use; nevertheless, the severity of the current drought and uncertainty about Water Year 2022 require additional conservation actions from residents and businesses.
5. Water conservation is the easiest, most efficient, and most cost-effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances or that water rationing will be required.
6. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water.

7. Public information and awareness are critical to achieving conservation goals, and the Save Our Water campaign ([SaveOurWater.com](https://www.saveourwater.com)), run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response.
8. [SaveWater.CA.Gov](https://www.savewater.ca.gov) is an online tool designed to help save water in communities. This website lets anyone easily report water waste from their phone, tablet, or computer by simply selecting the type of water waste they see, typing in the address where the waste is occurring, and clicking send. These reports are filed directly with the State Water Resources Control Board (State Water Board or Board) and relevant local water supplier.
9. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated.
10. On October 19, 2021, the Governor suspended the environmental review required by the California Environmental Quality Act to allow State Water Board-adopted drought conservation emergency regulations and other actions to take place quickly to respond to emergency conditions.
11. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”
12. On November 30, 2021, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board’s regularly scheduled January 4, 2022 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations.
13. The emergency regulation sets a minimum standard that many communities are already doing more but not everyone is taking these low-cost, easy to implement actions that can save significant amounts of water during a drought emergency.



14. Disadvantaged communities may require assistance in increasing water conservation, and state and local agencies should look for opportunities to provide assistance in promoting water conservation, including but not limited to translation of regulation text and dissemination of water conservation announcements into languages spoken by at least 10 percent of the people who reside in a water supplier's service area, such as in newspaper advertisements, bill inserts, website homepage, social media, and notices in public libraries.
15. The Board directs staff to consider the following in pursuing any enforcement of section 995, subdivision (b)(1)(A)-(F): before imposing monetary penalties, staff shall provide one or more warnings; monetary penalties must be based on an ability to pay determination, consider allowing a payment plan of at least 12 months, and shall not result in a tax lien; and Board enforcement shall not result in shutoff.
16. The Board encourages entities other than Board staff that consider any enforcement of this regulation to apply these same factors identified in resolved paragraph 15. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulation adopted by this resolution, and local agencies retain their enforcement discretion in enforcing the regulation, to the extent authorized, and may develop their own progressive enforcement practices to encourage conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 995, as appended to this resolution as an emergency regulation.
2. State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval.
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or designee may make such changes.



4. This regulation shall remain in effect for one year after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions or unless the State Water Board renews the regulation due to continued drought conditions, as described in Water Code section 1058.5.
5. The State Water Board directs State Water Board staff to work with the Department of Water Resources and the Save Our Water campaign to disseminate information regarding the emergency regulations.
6. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation.

### **CERTIFICATION**

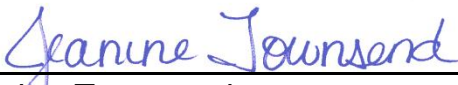
The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 4, 2022.

AYE: Vice Chair Dorene D'Adamo  
Board Member Sean Maguire  
Board Member Laurel Firestone  
Board Member Nichole Morgan

NAY: None

ABSENT: Chair E. Joaquin Esquivel

ABSTAIN: None

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board

## ADOPTED TEXT OF EMERGENCY REGULATION

### Title 23. Waters

#### Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

#### Chapter 3.5. Urban Water Use Efficiency and Conservation

#### Article 2. Prevention of Drought Wasteful Water Uses

#### § 995. Wasteful and Unreasonable Water Uses.

(a) As used in this section:

(1) "Turf" has the same meaning as in section 491.

(2) "Incidental runoff" means unintended amounts (volume) of runoff, such as unintended, minimal overspray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility or system design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.

(b)(1) To prevent the unreasonable use of water and to promote water conservation, the use of water is prohibited as identified in this subdivision for the following actions:

(A) The application of potable water to outdoor landscapes in a manner that causes more than incidental runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(B) The use of a hose that dispenses water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(C) The use of potable water for washing sidewalks, driveways, buildings, structures, patios, parking lots, or other hard surfaced areas, except in cases where health and safety are at risk;

(D) The use of potable water for street cleaning or construction site preparation purposes, unless no other method can be used or as needed to protect the health and safety of the public;

(E) The use of potable water for decorative fountains or the filling or topping-off of decorative lakes or ponds, with exceptions for those decorative fountains, lakes, or ponds that use pumps to recirculate water and only require refilling to replace evaporative losses;

(F) The application of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall of at least one fourth of one inch of rain. In determining whether measurable rainfall of at least fourth of one inch of rain occurred in a given area, enforcement may be based on records of the National Weather Service, the closest CIMIS station to the parcel, or any other reliable source of rainfall data available to the entity undertaking enforcement of this subdivision; and

(G) The use of potable water for irrigation of ornamental turf on public street medians.

(2) Notwithstanding subdivision (b)(1), the use of water is not prohibited by this section to the extent necessary to address an immediate health and safety need. This may include, but is not limited to, the use of potable water in a fountain or water feature when required to be potable because human contact is expected to occur.

(c)(1) To prevent the unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

(A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivisions (a) and (b) of the Civil Code;

(B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code; or

(C) Requiring an owner of a separate interest upon which water-efficient landscaping measures have been installed in response to a declared drought emergency, as described in section 4735, subdivisions (c) and (d) of the Civil Code, to reverse or remove the water-efficient landscaping measures upon the conclusion of the state of emergency.

(2) As used in this subdivision:

(A) "Architectural or landscaping guidelines or policies" includes any formal or informal rules other than the governing documents of a common interest development.

(B) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.

(C) "Common interest development" has the same meaning as in section 4100 of the Civil Code.

(D) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.

(E) "Governing documents" has the same meaning as in section 4150 of the Civil Code.

(F) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (c)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

(d) To prevent the unreasonable use of water and to promote water conservation, any city, county, or city and county is prohibited from imposing a fine under any local maintenance ordinance or other relevant ordinance as prohibited by section 8627.7 of the Government Code.

(e) The taking of any action prohibited in subdivision (b), (c) or (d) is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) A decision or order issued under this section by the Board or an officer or employee of the Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, 4150, 4185, and 4735, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 491, and 1122, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

EXECUTIVE ORDER N-7-22

**WHEREAS** on April 12, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, I proclaimed states of emergency that continue today and exist across all the counties of California, due to extreme and expanding drought conditions; and

**WHEREAS** climate change continues to intensify the impacts of droughts on our communities, environment, and economy, and California is in a third consecutive year of dry conditions, resulting in continuing drought in all parts of the State; and

**WHEREAS** the 21st century to date has been characterized by record warmth and predominantly dry conditions, and the 2021 meteorological summer in California and the rest of the western United States was the hottest on record; and

**WHEREAS** since my October 19, 2021 Proclamation, early rains in October and December 2021 gave way to the driest January and February in recorded history for the watersheds that provide much of California's water supply; and

**WHEREAS** the ongoing drought will have significant, immediate impacts on communities with vulnerable water supplies, farms that rely on irrigation to grow food and fiber, and fish and wildlife that rely on stream flows and cool water; and

**WHEREAS** the two largest reservoirs of the Central Valley Project, which supplies water to farms and communities in the Central Valley and the Santa Clara Valley and provides critical cold-water habitat for salmon and other anadromous fish, have water storage levels that are approximately 1.1 million acre-feet below last year's low levels on this date; and

**WHEREAS** the record-breaking dry period in January and February and the absence of significant rains in March have required the Department of Water Resources to reduce anticipated deliveries from the State Water Project to 5 percent of requested supplies; and

**WHEREAS** delivery of water by bottle or truck is necessary to protect human safety and public health in those places where water supplies are disrupted; and

**WHEREAS** groundwater use accounts for 41 percent of the State's total water supply on an average annual basis but as much as 58 percent in a critically dry year, and approximately 85 percent of public water systems rely on groundwater as their primary supply; and

**WHEREAS** coordination between local entities that approve permits for new groundwater wells and local groundwater sustainability agencies is important to achieving sustainable levels of groundwater in critically overdrafted basins; and



**WHEREAS** the duration of the drought, especially following a multiyear drought that abated only five years ago, underscores the need for California to redouble near-, medium-, and long-term efforts to adapt its water management and delivery systems to a changing climate, shifting precipitation patterns, and water scarcity; and

**WHEREAS** the most consequential, immediate action Californians can take to extend available supplies is to voluntarily reduce their water use by 15 percent from their 2020 levels by implementing the commonsense measures identified in operative paragraph 1 of Executive Order N-10-21 (July 8, 2021); and

**WHEREAS** to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of the drought conditions, and under Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Proclamation would prevent, hinder, or delay the mitigation of the effects of the drought conditions.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

1. The orders and provisions contained in my April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021 Proclamations remain in full force and effect, except as modified by those Proclamations and herein. State agencies shall continue to implement all directions from those Proclamations and accelerate implementation where feasible.
2. To help the State achieve its conservation goals and ensure sufficient water for essential indoor and outdoor use, I call on all Californians to strive to limit summertime water use and to use water more efficiently indoors and out. The statewide Save Our Water conservation campaign at [SaveOurWater.com](https://www.SaveOurWater.com) provides simple ways for Californians to reduce water use in their everyday lives. Furthermore, I encourage Californians to understand and track the amount of water they use and measure their progress toward their conservation goals.
3. By May 25, 2022, the State Water Resources Control Board (Water Board) shall consider adopting emergency regulations that include all of the following:
  - a. A requirement that each urban water supplier, as defined in section 10617 of the Water Code, shall submit to the Department of Water Resources a preliminary annual water supply and demand assessment consistent with section 10632.1 of the Water Code no later than June 1, 2022, and submit a final annual water

supply and demand assessment to the Department of Water Resources no later than the deadline set by section 10632.1 of the Water Code;

- b. A requirement that each urban water supplier that has submitted a water shortage contingency plan to the Department of Water Resources implement, at a minimum, the shortage response actions adopted under section 10632 of the Water Code for a shortage level of up to twenty percent (Level 2), by a date to be set by the Water Board; and
- c. A requirement that each urban water supplier that has not submitted a water shortage contingency plan to the Department of Water Resources implement, at a minimum, shortage response actions established by the Water Board, which shall take into consideration model actions that the Department of Water Resources shall develop for urban water supplier water shortage contingency planning for Level 2, by a date to be set by the Water Board.

To further conserve water and improve drought resiliency if the drought lasts beyond this year, I encourage urban water suppliers to conserve more than required by the emergency regulations described in this paragraph and to voluntarily activate more stringent local requirements based on a shortage level of up to thirty percent (Level 3).

- 4. To promote water conservation, the Department of Water Resources shall consult with leaders in the commercial, industrial, and institutional sectors to develop strategies for improving water conservation, including direct technical assistance, financial assistance, and other approaches. By May 25, 2022, the Water Board shall consider adopting emergency regulations defining “non-functional turf” (that is, a definition of turf that is ornamental and not otherwise used for human recreation purposes such as school fields, sports fields, and parks) and banning irrigation of non-functional turf in the commercial, industrial, and institutional sectors except as it may be required to ensure the health of trees and other perennial non-turf plantings.
- 5. In order to maximize the efficient use of water and to preserve water supplies critical to human health and safety and the environment, Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are hereby suspended, with respect to the directives in paragraphs 3 and 4 of this Order and any other projects and activities for the purpose of water conservation to the extent necessary to address the impacts of the drought, and any permits necessary to carry out such projects or activities. Entities that desire to conduct activities under this suspension, other than the directives in paragraphs 3 and 4 of this Order, shall first request that the Secretary of the Natural Resources Agency make a determination that the proposed activities are eligible to be conducted under this suspension. The Secretary shall use sound discretion in applying this Executive Order to ensure that the suspension serves the purpose of accelerating conservation projects that are necessary to address impacts of the drought, while at the same time



protecting public health and the environment. The entities implementing these directives or conducting activities under this suspension shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.

6. To support voluntary approaches to improve fish habitat that would require change petitions under Water Code section 1707 and either Water Code sections 1425 through 1432 or Water Code sections 1725 through 1732, and where the primary purpose is to improve conditions for fish, the Water Board shall expeditiously consider petitions that add a fish and wildlife beneficial use or point of diversion and place of storage to improve conditions for anadromous fish. California Code of Regulations, title 23, section 1064, subdivisions (a)(1)(A)(i)-(ii) are suspended with respect to any petition that is subject to this paragraph.
7. To facilitate the hauling of water for domestic use by local communities and domestic water users threatened with the loss of water supply or degraded water quality resulting from drought, any ordinance, regulation, prohibition, policy, or requirement of any kind adopted by a public agency that prohibits the hauling of water out of the water's basin of origin or a public agency's jurisdiction is hereby suspended. The suspension authorized pursuant to this paragraph shall be limited to the hauling of water by truck or bottle to be used for human consumption, cooking, or sanitation in communities or residences threatened with the loss of affordable safe drinking water. Nothing in this paragraph limits any public health or safety requirement to ensure the safety of hauled water.
8. The Water Board shall expand inspections to determine whether illegal diversions or wasteful or unreasonable use of water are occurring and bring enforcement actions against illegal diverters and those engaging in the wasteful and unreasonable use of water. When access is not granted by a property owner, the Water Board may obtain an inspection warrant pursuant to the procedures set forth in Title 13 (commencing with section 1822.50) of Part 3 of the Code of Civil Procedure for the purposes of conducting an inspection pursuant to this directive.
9. To protect health, safety, and the environment during this drought emergency, a county, city, or other public agency shall not:
  - a. Approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act and classified as medium- or high-priority without first obtaining written verification from a Groundwater Sustainability Agency managing the basin or area of the basin where the well is proposed to be located that groundwater extraction by the proposed well would not be inconsistent with any sustainable groundwater management program established in any applicable Groundwater Sustainability Plan adopted by that Groundwater Sustainability



Agency and would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan; or

- b. Issue a permit for a new groundwater well or for alteration of an existing well without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure.

This paragraph shall not apply to permits for wells that will provide less than two acre-feet per year of groundwater for individual domestic users, or that will exclusively provide groundwater to public water supply systems as defined in section 116275 of the Health and Safety Code.

10. To address household or small community drinking water shortages dependent upon groundwater wells that have failed due to drought conditions, the Department of Water Resources shall work with other state agencies to investigate expedited regulatory pathways to modify, repair, or reconstruct failed household or small community or public supply wells, while recognizing the need to ensure the sustainability of such wells as provided for in paragraph 9.
11. State agencies shall collaborate with tribes and federal, regional, and local agencies on actions related to promoting groundwater recharge and increasing storage.
12. To help advance groundwater recharge projects, and to demonstrate the feasibility of projects that can use available high water flows to recharge local groundwater while minimizing flood risks, the Water Board and Regional Water Quality Control Boards shall prioritize water right permits, water quality certifications, waste discharge requirements, and conditional waivers of waste discharge requirements to accelerate approvals for projects that enhance the ability of a local or state agency to capture high precipitation events for local storage or recharge, consistent with water right priorities and protections for fish and wildlife. For the purposes of carrying out this paragraph, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division, and Chapter 3 (commencing with section 85225) of Part 3 of Division 35 of the Water Code and regulations adopted pursuant thereto are hereby suspended to the extent necessary to address the impacts of the drought. This suspension applies to (a) any actions taken by state agencies, (b) any actions taken by local agencies where the state agency with primary responsibility for the implementation of the directives concurs that local action is required, and (c) permits necessary to carry out actions under (a) or (b). The entities implementing these directives shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.
13. With respect to recharge projects under either Flood-Managed Aquifer Recharge or the Department of Water Resources Sustainable

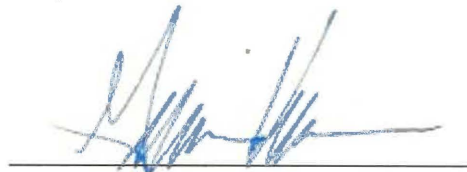
Groundwater Management Grant Program occurring on open and working lands to replenish and store water in groundwater basins that will help mitigate groundwater conditions impacted by drought, for any (a) actions taken by state agencies, (b) actions taken by a local agency where the Department of Water Resources concurs that local action is required, and (c) permits necessary to carry out actions under (a) or (b), Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are hereby suspended to the extent necessary to address the impacts of the drought. The entities implementing these directives shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.

14. To increase resilience of state water supplies during prolonged drought conditions, the Department of Water Resources shall prepare for the potential creation and implementation of a multi-year transfer program pilot project for the purpose of acquiring water from willing partners and storing and conveying water to areas of need.
15. By April 15, 2022, state agencies shall submit to the Department of Finance for my consideration proposals to mitigate the worsening effects of severe drought, including emergency assistance to communities and households and others facing water shortages as a result of the drought, facilitation of groundwater recharge and wastewater recycling, improvements in water use efficiency, protection of fish and wildlife, mitigation of drought-related economic or water-supply disruption, and other potential investments to support short- and long-term drought response.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

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

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 28th day of March 2022.



GAVIN NEWSOM  
Governor of California

**ATTEST:**

---

SHIRLEY N. WEBER, PH.D.  
Secretary of State

**State of California  
Office of Administrative Law**

In re:  
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 996

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

Government Code Sections 11346.1 and  
11349.6

OAL Matter Number: 2022-0606-03

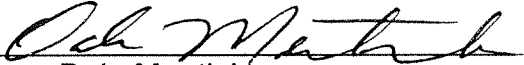
OAL Matter Type: Emergency (E)

This emergency action by the State Water Resources Control Board adopts a new regulation which requires urban water suppliers to submit preliminary supply and demand assessments to the Department of Water Resources and to implement Level 2 demand reduction actions (actions intended to result in a 10 to 20 percent savings). The regulation bans the irrigation of non-functional turf with potable water in commercial, industrial, and institutional sectors and establishes that such irrigation is an infraction punishable by a fine of up to five hundred dollars for each day in which the violation occurs pursuant to Water Code section 1058.5(d).

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code. Pursuant to Water Code section 1058.5(b), the Finding of Emergency in this matter was exempt from Office of Administrative Law Review.

This emergency regulatory action is effective on 6/10/2022 and, pursuant to Water Code section 1058.5(c), will expire on 6/10/2023. The Certificate of Compliance for this action is due no later than 6/9/2023.

Date: June 10, 2022

  
Dale Mentink  
Assistant Chief Counsel

For: Kenneth J. Pogue  
Director

Original: Eileen Sobeck, Executive  
Director

Copy: Garrett Lenahan

## EMERGENCY

For use by Secretary of State only

|                  |                                 |                                         |                                      |
|------------------|---------------------------------|-----------------------------------------|--------------------------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER<br><b>Z-</b> | REGULATORY ACTION NUMBER<br><b>2022</b> | EMERGENCY NUMBER<br><b>-0606-03E</b> |
|------------------|---------------------------------|-----------------------------------------|--------------------------------------|

For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW  
2022 JUN 6 PM 3:18

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

State Water Resources Control Board

AGENCY FILE NUMBER (If any)

ENDORSED - FILED  
in the office of the Secretary of State  
of the State of California

JUN 10 2022

2:06 PM

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

|                                                                                                                                                                                                                   |  |                          |                        |                               |                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------|------------------------|-------------------------------|-----------------------|
| 1. SUBJECT OF NOTICE                                                                                                                                                                                              |  | TITLE(S)                 | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |                       |
| 3. NOTICE TYPE<br><input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other                                                                                                    |  | 4. AGENCY CONTACT PERSON |                        | TELEPHONE NUMBER              | FAX NUMBER (Optional) |
| OAL USE ONLY<br><input type="checkbox"/> ACTION ON PROPOSED NOTICE<br><input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn |  | NOTICE REGISTER NUMBER   |                        | PUBLICATION DATE              |                       |

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

|                                                                             |                                                          |
|-----------------------------------------------------------------------------|----------------------------------------------------------|
| 1a. SUBJECT OF REGULATION(S)<br>Water Demand Reduction Emergency Regulation | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
|-----------------------------------------------------------------------------|----------------------------------------------------------|

## 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

|                                                                                                      |              |
|------------------------------------------------------------------------------------------------------|--------------|
| SECTION(S) AFFECTED<br>(List all section number(s) individually. Attach additional sheet if needed.) | ADOPT<br>996 |
|                                                                                                      | AMEND        |
| TITLE(S)<br>23                                                                                       | REPEAL       |

## 3. TYPE OF FILING

|                                                                                                                     |                                                                                                                                                                                                                                                                             |                                                                                      |                                                                                             |
|---------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)                                                      | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))                  | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)                                                                                                                                                                     | <input type="checkbox"/> File & Print                                                | <input type="checkbox"/> Print Only                                                         |
| <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))                                              |                                                                                                                                                                                                                                                                             | <input checked="" type="checkbox"/> Other (Specify) <u>Water Code Section 1058.5</u> |                                                                                             |

## 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

## 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

|                                                                                                     |                                                                                 |                                                                 |                                                    |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input checked="" type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> §100 Changes Without Regulatory Effect | <input type="checkbox"/> Effective other (Specify) |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------------|

## 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

|                                                                            |                                                              |                                             |
|----------------------------------------------------------------------------|--------------------------------------------------------------|---------------------------------------------|
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify)                                   |                                                              |                                             |

|                                      |                                    |                       |                           |
|--------------------------------------|------------------------------------|-----------------------|---------------------------|
| 7. CONTACT PERSON<br>Garrett Lenahan | TELEPHONE NUMBER<br>(916) 341-5179 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) |
|--------------------------------------|------------------------------------|-----------------------|---------------------------|

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Eric Oppenheimer

Digitally signed by Eric Oppenheimer  
Date: 2022.06.06 14:24:44 -0700

DATE

6/6/2022

TYPED NAME AND TITLE OF SIGNATORY

Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board

For use by Office of Administrative Law (OAL) only

AUTHORIZED FOR FILING AND PRINTING

JUN 10 2022

Office of Administrative Law



## ADOPTED EMERGENCY REGULATION TEXT

### Title 23. Waters

#### Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

#### Chapter 3.5. Urban Water Use Efficiency and Conservation

#### Article 2. Prevention of Drought Wasteful Water Uses

### § 996. Urban Drought Response Actions

#### (a) As used in this section:

(1) "Commercial, industrial and institutional" refers to commercial water users, industrial water users, and institutional water users as respectively defined in Water Code, section 10608.12, subdivisions (e), (i), and (j), and includes homeowners' associations, common interest developments, community service organizations, and other similar entities but does not include the residences of these entities' members or separate interests.

(2) "Common interest development" has the same meaning as in section 4100 of the Civil Code.

(3) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.

(4) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.

(5) "Non-functional turf" means turf that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. Non-functional turf does not include sports fields and turf that is regularly used for human recreational purposes or for civic or community events.

(6) "Plant factor" has the same meaning as in section 491.

(7) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(8) "Turf" has the same meaning as in section 491.

(9) "Urban water supplier" has the same meaning as Water Code section 10617.

(10) "Water shortage contingency plan" means the plan required by Water Code section 10632.

(b) Each urban water supplier shall submit to the Department of Water Resources a preliminary annual water supply and demand assessment consistent with section 10632.1

of the Water Code no later than June 1, 2022 or the effective date of this section, whichever comes later, and submit a final annual water supply and demand assessment to the Department of Water Resources no later than the deadline set by section 10632.1 of the Water Code.

(c) (1) Each urban water supplier that has submitted a water shortage contingency plan to the Department of Water Resources shall implement by June 10, 2022, at a minimum, all demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2).

(2) Notwithstanding subdivision (c)(1), urban water suppliers shall not be required to implement new residential connection moratoria pursuant to this section.

(3) Notwithstanding subdivision (c)(1), an urban water supplier may implement the actions identified in subdivision (d) in lieu of implementing the demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code section 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2), provided the supplier meets all of the following:

(i) The supplier's annual water supply and demand assessment submitted to the Department of Water Resources demonstrates an ability to maintain reliable supply until September 30, 2023.

(ii) The supplier does not rely on, for any part of its supply, the Colorado River, State Water Project, or Central Valley Project, and no more than ten (10) percent of its supply comes from critically overdrafted groundwater basins as designated by the Department of Water Resources.

(iii) The supplier's average number of gallons of water used per person per day by residential customers for the year 2020 is below 55 gallons, as reported to the Board in the Electronic Annual Report.

(d) Each urban water supplier that has not submitted a water shortage contingency plan to the Department of Water Resources shall, by June 10, 2022, and continuing until the supplier has implemented all demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2), implement at a minimum the following actions:

(1) Initiate a public information and outreach campaign for water conservation and promptly and effectively reach the supplier's customers, using efforts such as email, paper mail, bill inserts, customer app notifications, news articles, websites, community events, radio and television, billboards, and social media.

(2) Implement and enforce a rule or ordinance limiting landscape irrigation with potable water to no more than two (2) days per week and prohibiting landscape irrigation with potable water between the hours of 10:00 a.m. and 6:00 p.m.

(3) Implement and enforce a rule or ordinance banning, at a minimum, the water uses prohibited by section 995. Adoption of a rule or ordinance is not required if the supplier has authority to enforce, as infractions, the prohibitions in section 995 and takes enforcement against violations.

(e) (1) To prevent the unreasonable use of water and to promote water conservation, the use of potable water is prohibited for the irrigation of non-functional turf at commercial, industrial, and institutional sites.

(2) Notwithstanding subdivision (e)(1), the use of water is not prohibited by this section to the extent necessary to ensure the health of trees and other perennial non-turf plantings or to the extent necessary to address an immediate health and safety need.

(3) Notwithstanding subdivision (e)(1), an urban water supplier may approve a request for continued irrigation of non-functional turf where the user certifies that the turf is a low water use plant with a plant factor of 0.3 or less, and demonstrates the actual use is less than 40% of reference evapotranspiration.

(f) The taking of any action prohibited in subdivision (e) is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(g) A decision or order issued under this section by the Board, or an officer or employee of the Board, is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, and 4185, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 377, 491, 1058.5, 1122, 10608.12, 10617, 10632, and 10632.1, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976



**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-5-23**

**WHEREAS** on April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, I proclaimed States of Emergency to exist due to drought conditions; and

**WHEREAS** the multi-year nature of the current drought, which began three years after the record-setting drought of 2012-2016, continues to have significant, immediate impacts on communities across California with vulnerable water supplies, farms that rely on irrigation to grow food and fiber, and fish and wildlife that rely on stream flows and cool water; and

**WHEREAS** the March 3, 2023, snow survey conducted by the Department of Water Resources and partner agencies found that most regions of the Sierra Nevada are above average for snow water content, and some regions are nearing record amounts of snow, and snow and rain has fallen across many regions of the state since then, with more precipitation forecasted; and

**WHEREAS** improved conditions have helped rehabilitate surface water supplies, but have not abated the severe drought conditions that remain in some parts of the State, including the Klamath River basin and the Colorado River basin, and many groundwater basins throughout the State remain depleted from overreliance and successive multi-year droughts; and

**WHEREAS** continued action by the State is needed to address ongoing consequences of the drought emergency, including groundwater supply shortages, domestic well failures, and drought-related harm to native fishes in the Klamath River and Clear Lake watersheds; and

**WHEREAS** the drought emergency has required a dynamic and flexible response from the State, and several provisions in my prior Proclamations and Orders have been terminated or superseded already, specifically Paragraphs 4 and 8 of my State of Emergency Proclamation dated April 21, 2021, Paragraphs 2, 4, and 7 of my State of Emergency Proclamation dated May 10, 2021, Paragraphs 3, 4, 5, 6, and 10 of my State of Emergency Proclamation dated July 8, 2021, and Paragraph 9 of Executive Order N-7-22; and

**WHEREAS** improved conditions warrant an even more targeted State response to the ongoing drought emergency and certain provisions in my State of Emergency Proclamations dated April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, and in Executive Orders N-10-21, N-7-22, and N-3-23 provide authority that is no longer needed to mitigate the effects of the drought conditions or direct actions by state agencies, departments, and boards that have already been completed; and

**WHEREAS** notwithstanding the rescission of certain emergency authorities for emergency drinking water action, state agencies have existing legal authority and funding to continue expedited work to advance the human right to water, and state agencies will continue all ongoing drought resilience planning work, including through coordination with local agencies and tribes; and

**WHEREAS** next winter's hydrology is uncertain and the most efficient way to preserve the State's improved surface water supplies is for Californians to continue their ongoing efforts to make conservation a way of life; and

**WHEREAS** to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of the drought conditions, and under Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay the mitigation of the effects of the drought conditions.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

1. The orders and provisions contained in my State of Emergency Proclamations dated April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, and Executive Orders N-7-22 (March 28, 2022), N-3-23 (February 13, 2023), and N-4-23 (March 10, 2023), remain in full force and effect, except as modified by those Proclamations and Orders and herein. State agencies shall continue to implement all directions from those Proclamations and Orders and accelerate implementation where feasible.
2. The following provisions of my State of Emergency Proclamation dated April 21, 2021, are terminated:
  - a. Paragraph 2;
  - b. Paragraphs 5-7; and
  - c. Paragraphs 9-14.
3. The following provisions of my State of Emergency Proclamation dated May 10, 2021, are terminated:
  - a. Paragraph 1;
  - b. Paragraph 3;
  - c. Paragraph 5; and
  - d. Paragraphs 9-10.
4. The following provisions of my State of Emergency Proclamation dated July 8, 2021, are terminated:
  - a. Paragraph 2;
  - b. Paragraphs 7-8, except those portions of paragraph 7 withdrawing provisions of prior orders;
  - c. Paragraphs 11-12.



5. The following provisions of my State of Emergency Proclamation dated October 19, 2021, are terminated:

- a. Paragraph 2;
- b. Paragraphs 4-5;
- c. Paragraph 8; and
- d. Paragraph 10.

6. The following provisions of Executive Order N-10-21 are terminated:

- a. Paragraph 1; and
- b. Paragraph 3

7. The following provisions of Executive Order N-7-22 are terminated:

- a. Paragraphs 1-3;
- b. Paragraph 6; and
- c. Paragraphs 14-15.

8. The following provisions of Executive Order N-3-23 are terminated:

- a. Paragraph 1; and
- b. Paragraph 3, except those portions of the paragraph withdrawing provisions of prior orders.

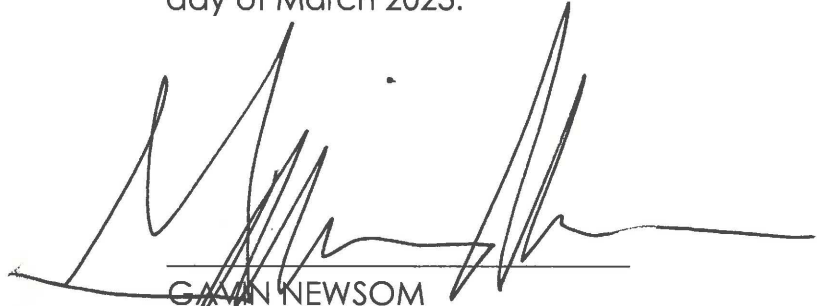
9. Paragraph 6 of my State of Emergency Proclamation dated May 10, 2021, and Paragraph 9 of my State of Emergency Proclamation dated July 8, 2021, are withdrawn and replaced with the following text:

To ensure critical instream flows for species protection in the Klamath River and Clear Lake watersheds, the State Water Resources Control Board (Water Board) and Department of Fish and Wildlife shall evaluate the minimum instream flows and other actions needed to protect salmon, steelhead, the Clear Lake Hitch, and other native fishes in critical streams systems in these watersheds and work with water users, tribes, and other parties on voluntary measures to implement those actions. To the extent voluntary actions are not sufficient, the Water Board, in coordination with the Department of Fish and Wildlife, shall consider emergency regulations to establish minimum instream flows to mitigate the effects of the drought conditions. For purposes of state agencies carrying out or approving any actions contemplated by this paragraph, Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division are suspended. Nothing in this Paragraph affects or limits the validity of actions already taken in the Klamath and Clear Lake watersheds or ongoing under Paragraph 6 of my State of Emergency Proclamation dated May 10, 2021, or Paragraph 9 of my State of Emergency Proclamation dated July 8, 2021.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

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

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 24th day of March 2023.

  
\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
SHIRLEY N. WEBER, PH.D.  
Secretary of State



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## DRINKING WATER CONSTRUCTION LOAN

AGREEMENT NO. SWRCB0000000000D2002017

by and between

CITY OF PORTERVILLE ("Recipient")

and

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD ("State Water Board")



AKIN/CENTRAL WATER CONSOLIDATION PROJECT  
5410010-018C AND 5400655-001C ("Project")

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- Section 116760 et seq. of the Health and Safety Code and Resolution Nos. 2019-0065 and 2020-0022.

PROJECT FUNDING AMOUNT: \$4,787,664  
PRINCIPAL FORGIVENESS COMPONENT: \$4,787,664

ESTIMATED REASONABLE PROJECT COST: \$4,787,664  
ELIGIBLE WORK START DATE: JULY 1, 2016  
ELIGIBLE CONSTRUCTION START DATE: SEPTEMBER 22, 2020  
CONSTRUCTION COMPLETION DATE: OCTOBER 1, 2023  
FINAL REIMBURSEMENT REQUEST DATE: APRIL 1, 2024  
RECORDS RETENTION END DATE: OCTOBER 1, 2059

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1. The State Water Board and the Recipient mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement, including the following Exhibits, which are attached hereto or are incorporated by reference:
  - Exhibit A – Scope of Work and Schedule
  - Exhibit B – Specific Funding Provisions
  - Exhibit C – GENERAL TERMS AND CONDITIONS 2019-NOV
  - Exhibit D – Special Conditions
2. The following documents are also incorporated by reference:
  - the Drinking Water System Permit No. 03-12-06P-004;
  - the Davis-Bacon requirements found at:  
[https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/docs/davisbacon/2020\\_dwsrf\\_governmental\\_entities.pdf](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/davisbacon/2020_dwsrf_governmental_entities.pdf)
3. Party Contacts during the term of this Agreement are:

| State Water Board |                                  | City of Porterville |                              |
|-------------------|----------------------------------|---------------------|------------------------------|
| Section:          | Division of Financial Assistance |                     |                              |
| Name:             | Pete Stamas, Project Manager     | Name:               | Monte Reyes, Mayor           |
| Address:          | 1001 I Street, 16th Floor        | Address:            | 291 North Main Street        |
| City, State, Zip: | Sacramento, CA 95814             | City, State, Zip:   | Porterville, CA 93257        |
| Phone:            | (916) 552-9983                   | Phone:              | (559) 782-7499               |
| Fax:              |                                  | Fax:                |                              |
| Email:            | Pete.Stamas@waterboards.ca.gov   | Email:              | montereyes@portervilleca.gov |

Each party may change its contact upon written notice to the other party. While Party Contacts are contacts for day-to-day communications regarding Project work, the Recipient must provide official communications and notices to the Division's Deputy Director.

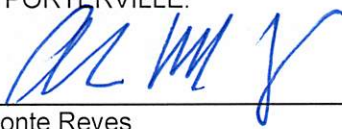
4. Conditions precedent to this Agreement are set forth as follows:
  - (a) The Recipient must deliver an opinion of general counsel satisfactory to the State Water Board's counsel dated on or after the date that the Recipient signs this Agreement.
  - (b) The Recipient must deliver to the Division a resolution authorizing this Agreement and identifying its authorized representative by title.
  - (c) The Recipient must deliver to the Division a resolution certifying that its decision-making body reviewed and considered the Mitigated Negative Declaration filed by the State Water Board for the Akin Water Company Water Supply Project together with the Mitigation Monitoring and Reporting Program and reached its own conclusions on whether and how to approve the Project, pursuant to Section 15050 (b) of the CEQA Guidelines.
5. The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement, which shall be at least until the Records Retention End Date:
  - (a) The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.
  - (b) The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

- (c) None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.
- (d) The Recipient is in compliance with all State Water Board funding agreements to which it is a party.



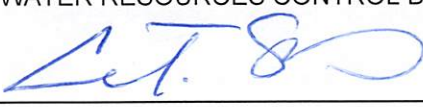
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CITY OF PORTERVILLE:

By:   
Name: Monte Reyes  
Title: Mayor

Date: 6/1/2021

STATE WATER RESOURCES CONTROL BOARD:

By:   
Name: Leslie Laudon  
Title: Deputy Director *for*  
Division of Financial Assistance

Date: 7/15/21

## EXHIBIT A – SCOPE OF WORK AND SCHEDULE

### A.1. PROJECT PURPOSE AND DESCRIPTION.

The Project is for the benefit of the Recipient and has a Useful Life of at least 40 years. The funding under this Agreement shall be used to provide the residents of two small disadvantaged communities currently served by Akin Water Company (Akin WC) and Central Mutual Water Company (Central MWC) with a sustainable source of safe drinking water.

### A.2. SCOPE OF WORK.

The Recipient agrees to do the following: consolidate with Akin WC and Central MWC. Recipient also agrees to construct a new production well, estimated to produce between 1,300 and 1,800 gallons per minute, to provide the needed source capacity for the consolidation of Akin WC, the consolidation of Central MWC, as well as satisfy the remainder of East Porterville residents' capacity needs.

The Recipient agrees to do the following for the Akin WC service area: construct approximately 1,500 feet of 8-inch waterline to provide water service to each customer currently served by Akin WC; install approximately three new fire hydrants and twenty-six new service laterals and meters; and destroy Akin WC's two existing wells.

The Recipient agrees to do the following for the Central MWC service area: construct approximately 1,400 feet of 6-inch waterline to provide water service to each customer currently served by Central MWC; install approximately four new fire hydrants and thirty-four new service laterals and meters; and destroy Central MWC's existing well.

Upon Completion of Construction, the Recipient must expeditiously initiate Project operations.

### A.3 SIGNAGE

The Recipient must place a professionally prepared sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and must maintain the sign in good condition for the duration of Project implementation. The sign may include another agency's required information and must include, prominently displayed, the following disclosure statement and color logos (available from the Division):



"Funding for this project has been provided in full or in part under the Drinking Water State Revolving Fund, which may include capitalization funding from the United States Environmental Protection Agency through an agreement with the State Water Resources Control Board."

### A.4 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Project Manager may adjust the dates in the "Estimated Due Date" column of this table, but Critical Due Date adjustments will require an amendment to this Agreement. The Recipient

must complete and submit all work in time to be approved by the Division prior to the Project Completion Date. As applicable for specific submittals, the Recipient must plan adequate time to solicit, receive, and address comments prior to submitting the final submittal. The Recipient must submit the final Reimbursement Request prior to the Final Reimbursement Request Date set forth on the Cover Page.

| ITEM                                                                       | DESCRIPTION OF SUBMITTAL            | CRITICAL DUE DATE | ESTIMATED DUE DATE |
|----------------------------------------------------------------------------|-------------------------------------|-------------------|--------------------|
| <b>EXHIBIT A – SCOPE OF WORK</b>                                           |                                     |                   |                    |
| A.                                                                         | ADDITIONAL SUBMITTAL(S) TO DIVISION |                   |                    |
| 1.                                                                         | Final Plans and Specifications      |                   | September 1, 2021  |
| 2.                                                                         | Final Budget Approval Package       |                   | February 1, 2022   |
| 3.                                                                         | Completion of Construction          | October 1, 2023   |                    |
| B.                                                                         | REPORTS                             |                   |                    |
| 1.                                                                         | Progress Reports                    |                   | Quarterly          |
| 2.                                                                         | Final Inspection and Certification  |                   | October 1, 2023    |
| 3.                                                                         | Project Completion Report           |                   | December 1, 2023   |
| 4.                                                                         | As Needed Reports                   |                   | TBD                |
| <b>EXHIBIT B – REIMBURSEMENTS, BUDGET DETAIL, AND REPORTING PROVISIONS</b> |                                     |                   |                    |
| A.                                                                         | REIMBURSEMENTS                      |                   |                    |
| 1.                                                                         | Reimbursement Requests              |                   | Quarterly          |
| 2.                                                                         | Final Reimbursement Request         | April 1, 2024     |                    |

The Recipient must award the prime construction contract and begin construction timely. The Recipient must deliver any request for extension of the Completion of Construction Date no less than 90 days prior to the Completion of Construction Date.

#### A.5 PROGRESS REPORTS.

The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement. The Recipient must provide a progress report with each Reimbursement Request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibit B. A progress report must contain the following information:

- 1) A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
- 2) A description of compliance with environmental requirements;
- 3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
- 4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

**A.6 SPECIAL REPORTS.**

(a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate District Office on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must include the following:

- i. Description of the Project,
- ii. Description of the water quality problem the Project sought to address,
- iii. Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

(b) If the Recipient fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold reimbursements under this Agreement or other agreements, and begin administrative proceedings.

(c) The Recipient must report Disadvantaged Business Enterprise (DBE) utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10) calendar days following October 1 until such time as the "Notice of Completion" is issued. The Recipient must comply with 40 CFR § 33.301 and require its contractors and subcontractors on the Project to comply.

**A.7 FINAL PROJECT INSPECTION AND CERTIFICATION.**

Upon completion of the Project, the Recipient must provide for a final inspection and must certify that the Project has been completed in accordance with this Agreement, any final plans and specifications submitted to the State Water Board, and any amendments or modifications thereto. If the Project involves the planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, or other professionals, the final inspection and certification must be conducted by a California Registered Civil Engineer or other appropriate California registered professional. The results of the final inspection and certification must be submitted to the Project Manager.

## EXHIBIT B – FUNDING AMOUNTS

### B.1 ESTIMATED REASONABLE COST AND PROJECT FUNDS.

The estimated reasonable cost of the total Project is set forth on the Cover Page of this Agreement and is greater than or equal to the funding anticipated to be provided by the State Water Board under this Agreement. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

### B.2 RECIPIENT CONTRIBUTIONS.

(a) The loan component of this Agreement is forgiven. The estimated amount of principal that will be due to the State Water Board from the Recipient under this Agreement is Zero dollars and no cents (\$0.00).

(b) The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

(c) If the Recipient recovers funds from any responsible parties, the Recipient shall immediately notify the Division. The amount of this Agreement may be reduced to reflect the recovered funds.

### B.3 VERIFIABLE DATA.

Upon request by the Division, the Recipient must submit verifiable data to support deliverables specified in the Scope of Work. The Recipient's failure to comply with this requirement may be construed as a material breach of this Agreement.

### B.4 BUDGET COSTS

Budget costs are contained in the Summary Project Cost Table below:

| LINE ITEM                        | TOTAL ESTIMATED COST | PROJECT FUNDING AMOUNT |
|----------------------------------|----------------------|------------------------|
| Construction                     | \$3,194,720          | \$3,194,720            |
| Pre-Purchased Material/Equipment | \$0                  | \$0                    |
| Purchase of Land                 | \$0                  | \$0                    |
| Contingency                      | \$638,944            | \$638,944              |
| Allowances (Soft Costs)          | \$954,000            | \$954,000              |
| TOTAL                            | \$4,787,664          | \$4,787,664            |

The Division's Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts.

The Recipient is prohibited from requesting disbursement amounts that represent Recipient's mark-ups to costs invoiced or otherwise requested by consultants or contractors.

Reasonable indirect costs may be allowable upon approval by the Division.

### B.5 LINE ITEM ADJUSTMENTS.

Upon written request by the Recipient, the Division may adjust the line items of the Summary Project Cost Table at the time of Division's Final Budget Approval. Upon written request by the Recipient, the Division may also adjust the line items of the Summary Project Cost Table as well as the detailed budget at the time of Recipient's submittal of its final claim. Any line item adjustments to the Summary Project Cost Table that are due to a change in scope of work will require an Agreement amendment. The sum of adjusted line items in both the Summary

Project Cost Table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

Under no circumstances may the sum of line items in the budget approved through the Final Budget Approval process exceed the Project Funding Amount. Any increase in the Project Funding Amount will require an Agreement amendment.

#### B.6 REIMBURSEMENT PROCEDURE.

(a) Except as may be otherwise provided in this Agreement, reimbursements will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate reimbursement of any eligible incurred costs as specified below through submission to the State Water Board of the Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed.
2. The Recipient must submit a Reimbursement Request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late Reimbursement Requests may not be honored.
3. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under Exhibit A.
4. The Recipient must not request reimbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of reimbursement. Supporting documentation (e.g., receipts) must be submitted with each Reimbursement Request. The amount requested for Recipient's administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Reimbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Reimbursement Request. Upon request by the Division, supporting documents for professional and administrative services must include the employees' names, classifications, labor rates, hours worked, and descriptions of the tasks performed. Reimbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
5. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future reimbursements.
6. The Recipient shall not request a reimbursement unless that Project Cost is allowable, reasonable, and allocable.
7. Notwithstanding any other provision of this Agreement, no reimbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.

(b) Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Project Funding Amount until Project Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.

(c) Except as follows, construction costs and disbursements are not available until after the Division has approved the final budget form submitted by the Recipient. The Deputy Director of the Division may authorize the disbursement of up to ten percent (10%) of Project Funds for the reimbursement of eligible construction costs and pre-purchased materials prior to Division approval of the final budget form submitted by the Recipient. All other construction costs are not eligible for reimbursement until after this the Division has approved the final budget form submitted by the Recipient. Construction costs incurred prior to the Eligible Construction Start Date are not eligible for reimbursement.

#### B.7 REVERTING FUNDS AND DISENCUMBRANCE.

In the event the Recipient does not submit Reimbursement Requests for all funds encumbered under this Agreement by the Final Reimbursement Request Date, any remaining funds revert to the State. The State Water Board may notify the Recipient that the project file is closed, and any remaining balance will be disencumbered and unavailable for further use under the Agreement.



EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV

GENERAL TERMS AND CONDITIONS 2019-NOV is incorporated by reference and is posted at  
[https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/general\\_terms.html](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/general_terms.html)

## EXHIBIT D – SPECIAL CONDITIONS

1. Notwithstanding Exhibit C, the following terms have no meaning for the purposes of this Agreement:
  - Work Completion
  - Work Completion Date
2. Each capitalized term used in this Agreement has the following meaning:
  - "Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.
  - "Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.
  - "Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete, and is established on the Cover Page of this Agreement.
  - "District Office" means District Office of the Division of Drinking Water of the State Water Board.
  - "Division of Drinking Water" means the Division of Drinking Water of the State Water Board.
  - "Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.
  - "Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.
  - "Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.
  - "Event of Default" means, in addition to the meanings set forth in Exhibit C, the occurrence of any of the following events:
    - a) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
    - b) Failure to operate the System or the Project without the Division's approval;
  - "Final Budget Approval" means the Division-approved final budget for the Project, as set forth in Exhibit B.
  - "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.
  - "Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.
  - "Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.
  - "Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all

reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

- "Reimbursement Request" means the Recipient's request for Project Funds from the State Water Board as set forth in Exhibit B.
- "Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.
- "System" means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the City of Porterville, or its successor agency, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.
- "Useful Life" means the economically useful life of the Project beginning at Project Completion and is set forth in Exhibit A.

3. Acknowledgements.

The Recipient must include the following acknowledgement in any document, written report, or brochure to be shared with the general public prepared in whole or in part pursuant to this Agreement:

"Funding for this project has been provided in full or in part under the Drinking Water State Revolving Fund, which may include capitalization funding from the United States Environmental Protection Agency through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

4. Rates and Charges. The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are in an amount necessary to meet its obligations under this Agreement. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.
5. [RESERVED]
6. [RESERVED].

7. Environmental/Technical Special Conditions

Technical:

1. The Recipient shall submit its professional engineering services contract to the Division prior to disbursement of funds for costs incurred under such contract.
2. The Recipient shall not solicit bids, award a contract, or commence construction activities until final plans and specifications are approved by the Division of Drinking Water Tulare District Office Engineer and the Project Manager.
3. The Recipient must submit final consolidation agreements with Akin WC and Central MWC, in a form satisfactory to the Division, and receive written approval from the Project Manager to proceed before Project Funds may be disbursed for any Project Costs under the Agreement.
4. Upon completion of the Project the Recipient shall submit a water supply permit amendment request for review to the Division of Drinking Water Tulare District Office.

Environmental:

1. The documents identified below are incorporated by reference and the Recipient shall comply with the conditions and recommendations therein:
  - a. The Mitigation Monitoring and Reporting Program adopted by the State Water Board on June 16, 2016 for the Project. The Recipient shall implement all mitigation measures therein.
  - b. The letter dated February 12, 2020, from Patricia Cole of the United States Fish and Wildlife Service, San Joaquin Valley Division to Douglas E. Eberhardt of the United States Environmental Protection Agency, including, but not limited to, the following:
    - i. Implement Avoidance and Minimization Measures and Best Management Practices prior to and during construction activities to minimize and avoid effects to the San Joaquin kit fox.
  - c. The Mitigation Monitoring and Reporting Program adopted by the City of Porterville on April 21, 2020 for the Central Mutual Water Company Consolidation Project. The Recipient shall implement all mitigation measures therein.
2. In the Recipient's Quarterly Reports submitted pursuant to this Agreement, the Recipient shall include a discussion of the status of its compliance with environmental measures identified in this Exhibit D, with separate sections clearly labeled and titled, discussing the status of Recipient's compliance.
3. In the Recipient's Project Completion Report submitted pursuant to this Agreement, the Recipient shall include a discussion of its compliance with environmental measures identified in this Exhibit D, with separate sections clearly labeled and titled, discussing the status of Recipient's compliance.
8. [RESERVED].
9. Appointment of Receiver/Custodian. Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the State Water Board under this Agreement, the State Water Board may make application for the appointment of a receiver or custodian of the Revenues, pending such proceeding, with such power as the court making such appointment may confer.
10. [RESERVED].
11. Damages for Breach of Federal Conditions. In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

12. [RESERVED].

13. Operation and Maintenance. The Recipient shall sufficiently and properly staff, operate, and maintain the facility and structures constructed or improved as part of the project throughout the term of this Agreement, consistent with the purposes of this Agreement. The Recipient assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation.

14. Insurance. The Recipient will procure and maintain or cause to be maintained insurance on the System and Project with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System or Project) as are usually covered in connection with systems similar to the System or Project. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program. In the event of any damage to or destruction of the System or Project caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System or Project. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System and Project must be free and clear of all claims and liens. Recipient agrees that for any policy of insurance concerning or covering the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional insured; and must provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

15. Notice Events. Upon the occurrence of any of the following events, the Recipient must notify the Division's Deputy Director and Party Contacts by phone and email within the time specified below:

- a. The Recipient must notify the Division within 24 hours by phone at (916) 327-9978 and by email to [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov) of any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division.
- b. The Recipient must notify the Division promptly of the occurrence of any of the following events:
  - i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
  - ii. Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
  - iii. Loss, theft, damage, or impairment to Project;
  - iv. Events of Default, except as otherwise set forth in this section;

- v. A proceeding or action by a public entity to acquire the Project by power of eminent domain.
- vi. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity or the Recipient's continued existence;
- vii. Consideration of dissolution, or disincorporation;
- viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
- ix. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this funding, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
- x. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
- xi. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more;
- xii. Any Project monitoring, demonstration, or other implementation activities required in this Agreement;
- xiii. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
- xiv. Any event requiring notice to the Division pursuant to any other provision of this Agreement.
- xv. Completion of work on the Project.
- xvi. The Recipient must promptly notify the Division and Party Contacts of cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- xvii. The Recipient must promptly notify the Division and Party Contacts of the discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during implementation of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- xviii. The Recipient must promptly notify the Division and Party Contacts of Completion of Construction, and Project Completion;
- xix. The Recipient must promptly notify the Division and Party Contacts of the award of the prime construction contract for the Project; and the Recipient must promptly notify the Division and Party Contacts of Initiation of construction of the Project.

xx. The occurrence of a material breach or event of default under any Recipient obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption.

xxi. [RESERVED].

16. Continuous Use of Project; No Lease, Sale, Transfer of Ownership, or Disposal of Project. The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the Useful Life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.
17. State Cross-Cutters. Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following for the term of the Agreement:
- a) The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
  - b) Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
  - c) Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
  - d) Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
  - e) Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
  - f) Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
  - g) Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
  - h) Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
  - i) Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
  - j) Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.
  - k) The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.
18. Financial Management Systems. The Recipient must comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been



used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act of 1984 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

19. Access and Inspection. In addition to the obligations set forth in section 2 of the General Terms and Conditions incorporated in Exhibit C of this Agreement, the Recipient must ensure that the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during the term of the Agreement.
20. Fraud, Waste, and Abuse. The Recipient shall prevent fraud, waste, and the abuse of Project Funds, and shall cooperate in any investigation of such activities that are suspected in connection with this Agreement. The Recipient understands that discovery of any evidence of misrepresentation or fraud related to reimbursement requests, invoices, proof of payment of invoices, or other supporting information, including but not limited to double or multiple billing for time, services, or any other eligible cost, may result in referral to the Attorney General's Office or the applicable District Attorney's Office for appropriate action. The Recipient further understands that any suspected occurrences of false claims, misrepresentation, fraud, forgery, theft or any other misuse of Project Funds may result in withholding of reimbursements and/or the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder.
21. Disputes. The Recipient must continue with the responsibilities under this Agreement during any dispute. The Recipient may, in writing, appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute. This provision does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law. This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.
22. Additional Representations and Warranties. The Recipient makes the following representations and warranties:
  - a. [RESERVED].
  - b. The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application, a material fact that makes the statements in its application not misleading.
  - c. The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.
  - d. The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the Cover Page.

- e. Except as set forth in this paragraph, there are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the Revenues, and/or the Project.
  - f. There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain any of the real or personal property related to or necessary for the Project.
  - g. The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.
  - h. Any financial statements or other financial documentation of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements or other financial documentation: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements or other financial documentation, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements or other financial documentation been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.
  - i. The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.
  - j. The Recipient has no conflicting or material obligations, except as set forth in this paragraph.
  - k. The Recipient legally possesses all real property rights necessary for the purposes of this Agreement, not subject to third party revocation, which rights extend at least to the Records Retention End Date of this Agreement, except as set forth in this paragraph.
  - l. The Recipient and its principals, to the best of the Recipient's knowledge and belief, are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized; nor have they engaged or permitted the performance of services covered by this Agreement from parties that are debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized.
  - m. The Recipient possesses all water rights necessary for this Project.
23. Federal SRF Requirements. The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions for the Useful Life of the Project:
- a. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the

Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

- b. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in Section 2 of this Agreement in all construction contracts and subcontracts.
- c. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- d. The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>.
- e. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
- f. [RESERVED]
- g. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- h. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- i. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- j. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://Edison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.

- k. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Disclosure statement set forth in Exhibit A.
- l. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- m. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.
- n. The Recipient certifies to the best of its knowledge and belief that:
  - i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.
  - iii. The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks disbursements under this Agreement.
- o. The Recipient must comply with the following federal non-discrimination requirements:
  - i. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
  - ii. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
  - iii. The Age Discrimination Act of 1975, which prohibits age discrimination.
  - iv. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
  - v. 40 CFR Part 7, as it relates to the foregoing.
  - vi. Executive Order 13798, including, to the greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech
  - vii. All applicable federal civil rights regulations, including statutory and national policy requirements (2 CFR section 200.300).

- p. Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

*"During the performance of this contract, the contractor agrees as follows:"(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.*

*"(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.*

*"(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*

*"(d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.*

*"(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*

*"(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.*

*"(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."*

- q. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises as set forth in this Agreement.
- r. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/>.
- s. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- t. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- u. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).
- v. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- w. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- x. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- y. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, EPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.
- z. The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the EPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and

disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.

- aa. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.
- bb. The Recipient certifies that no Project Funds will be used on:
  - i. Video surveillance or telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
  - ii. Telecommunications or video surveillance services produced by such entities;
  - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
  - iv. Other telecommunications or video surveillance services or equipment in violation of [2 CFR 200.216](#).





## CITY COUNCIL AGENDA – APRIL 4, 2023

**SUBJECT:** Consideration of Conditional Use Permit (PRC 2023-003-C) to Allow for the Sale of Alcohol at "Tio Chema" located at 377 E. Orange Avenue

**SOURCE:** Community Development

**BACKGROUND:** At its meeting on March 3, 2015, the City Council adopted Resolution 25-2015 approving Conditional Use Permit (CUP) 2014-033-C to allow for the sale of beer and wine under a Type 41 On-Sale Beer & Wine license for Los Portales restaurant at 377 E. Orange Avenue. Since then, several restaurant tenants have occupied the facility, with Taqueria Chihuahua operating from 2016 through 2021 and, most recently, Birria y Pupusas Las Favoritas from 2021 through 2022. CUP 2014-033-C has expired due to the CUP not being active or actively pursued by the new establishments within the two-year timeframe as condition #7 of the CUP 2014-033-C.

**COMMENT:** In order to sell beer and/or wine at the facility, the new applicant, Tio Chema, is required to obtain a new CUP for a Type 41 On-Sale Beer & Wine license. The Project Review Committee (PRC) met with the applicant on January 18, 2023 to discuss this request. The project is not proposing any structural changes to the existing building.

The CUP, if approved, would require a modification to allow for any future changes, such as outdoor activities, including outdoor entertainment. In the event that any conditions of approval are violated, as outlined in Section 601.10 (Revocation of Approvals) of the Porterville Development Ordinance, the Council may modify or revoke this CUP at its discretion.

**ANALYSIS:** The subject site is designated CR (Retail Centers) by the General Plan Land Use Element and is zoned CR (Retail Centers). This designation and zone are intended to provide for a wide variety of commercial uses. The restaurant with proposed alcohol sales would suit the purpose of the zone designation. The restaurant is a permitted use in the CR Zone, and alcohol sales may be permitted in that zone with the requested CUP. It is not anticipated that this use would have a negative impact on the surrounding properties. Conditions of approval are in place to protect the public's safety and interest. Due to the proximity (276 feet from property line to property line) of the Santa Fe Elementary School, one condition of approval outlines that alcohol advertisements which are visible from the outside of the proposed building shall not be allowed. In addition, the existing exterior lighting and fencing shall be maintained in good condition at all times to

prevent entry from the alleyway and the adjacent residential uses.

The applicant is conditioned to operate the establishment in such a manner as to preserve public safety, health and welfare, to prevent the use from becoming a nuisance and to operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. Furthermore, at all times the facility shall be operated and maintained to comply with State laws, the City of Porterville Development Ordinance, adopted Building Codes and all other applicable laws and ordinances.

Porterville Development Ordinance Section 604.04 requires that the Council makes the following findings prior to approving a CUP:

A. Approval of the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable plan that the City has adopted. The project will further the following General Plan policies:

- LU-G-1: Promote a sustainable balanced land use pattern that responds to existing needs and future needs of the city.
- LU-G-3: Promote sustainability in the design and development of public and private development projects.
- LU-G-5: Ensure that new development pays for the public facilities and infrastructure improvements required to meet the demands resulting from that growth.
- ED-G-2: Retain, improve, and promote existing businesses in Porterville.
- ED-G-5: Retain existing local businesses and foster local start-ups.
- ED-G-7: Create an image for Porterville that will attract and retain economic activity.

B. The location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the district where it is located and conform in all significant respects with the general plan, this Development Ordinance and with any other applicable plan adopted by the Council. The existing/proposed use of a restaurant with alcohol sales is a permitted use with approval of a CUP and is allowed within the CR zone district and is consistent with the General Plan.

The California Department of Alcoholic Beverage Control allows a specific number of licenses per census tract population. Census Tract 41.04 allows three on-sale and four off-sale alcohol licenses. Currently, this Census Tract contains two on-sale and eleven off-sale. At the time of the application, there was no over concentration of alcohol licenses, in which a letter of public convenience or necessity will not be required.

ENVIRONMENTAL REVIEW: The proposed project is exempt from the California Environmental Quality Act per CEQA Guidelines Section 15301 (Existing Facilities), as the project does not involve any expansion of the former use or expansion of existing structures. A Notice of Exemption will be filed with the Tulare

County Clerk and the State Clearinghouse if the Council approves the project.

RECOMMENDATION: That the City Council:

1. Find the proposed project exempt from CEQA under CEQA Guidelines Section 15301; and
2. Adopt the draft Resolution approving the Conditional Use Permit 2023-003 for Tio Chema, subject to conditions of approval.

ATTACHMENTS:

1. Draft Resolution
2. Locator Map
3. Zoning Map
4. Project Site Plan
5. Project Floor Plan
6. ABC Map

Appropriated/Funded:

Review By:

Department Director:  
Jason Ridenour, Assistant City Manager

Final Approver: John Lollis, City Manager

RESOLUTION NO. \_\_\_\_-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF CONDITIONAL USE  
PERMIT (PRC 2023-003-C) TO ALLOW FOR THE SALE OF ALCOHOL UNDER A TYPE  
41 (ON-SALE BEER & WINE) ALCOHOL LICENSE FOR  
TIO CHEMA, A BONA-FIDE PUBLIC EATING PLACE LOCATED AT 377 E. ORANGE  
AVENUE

WHEREAS: The City Council of the City of Porterville, at its regular scheduled meeting of April 4, 2023, conducted a public hearing to consider Conditional Use Permit (PRC 2023-003-C) to allow for the sale of alcohol under a Type 41 (On-sale Beer and Wine) alcohol license for a restaurant (Tio Chema) located at 377 E. Orange Avenue; and

WHEREAS: On March 24, 2023, a notice was published in *The Porterville Recorder* setting the date, time, and place of a public hearing for April 4, 2023 and similar notices were sent to owners of property within 500 feet of the Site and posted at City Hall and the City's website announcing the same; and

WHEREAS: The City Council of the City of Porterville received testimony from all interested parties related to said Conditional Use Permit; and

WHEREAS: The California Department of Alcoholic Beverage Control allows a specific number of licenses per census tract population. Census Tract 41.04 allows three (3) on-sale and four (4) off-sale alcohol licenses. Currently this Census Tract contains two (2) on-sale and eleven (11) off-sale. At the time of the application there was no over concentration of alcohol licenses, in which a letter of public convenience or necessity will not be required.

WHEREAS: On March 23, 2023, the Environmental Coordinator made a preliminary determination that the project is exempt from the California Environmental Quality act per CEQA Guidelines Section 15301 Existing Facilities as it contemplates use of an existing structure by a use that does not propose an expansion to the use previously occupying the site.; and

WHEREAS: The City Council made the following findings pursuant to PDO Section 604.04, the evidence for said findings substantiated in the record:

1. Approval of the proposed project will advance the goals and objectives of and is consistent with the policies of the general plan and any other applicable plan that the city has adopted .
2. The location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the district where it is located and conforms in all significant respects with the general plan, this development ordinance and with any other applicable plan adopted by the city council.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does find the project exempt from the California Environmental Quality Act under CEQA Guidelines Section 15301 and does hereby approve Conditional Use Permit (PRC 2023-003-C) subject to the following conditions:

1. No alcohol advertising shall be displayed and/or viewed from the outside of the building.
2. Upon approval of the conditional use permit, any future change in operation which substantially alters the conditions or nature of the subject business will require approval by the City Council. Further, any future violations of regulations of the codes relating to the sales or consumption of alcohol, and/or excessive service calls by the Police Department resulting from the sales of alcohol may result in revocation of the Conditional Use Permit.
3. Unless an extension of time is granted by the City Council, the conditional use permit shall expire two years after the date of approval if the on-sale alcohol license is not active or actively pursued. The City Council may approve a one-year extension of any permit or approval granted under this ordinance upon receipt of a written application with the required fee before the permit expires.
4. The applicant shall operate the establishment in such a manner as to preserve the public safety, health and welfare, to prevent the use from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. In the event that this or any other condition of approval is violated, the City Council may modify or revoke the conditional use permit as provided in Section 601.10 of the Porterville Development Ordinance.
5. Pursuant to Section 601.10(d) the City Council may revoke the permit if it makes any of the following findings:
  - That approval was obtained by means of fraud or misrepresentation of a material fact;
  - That the use in question has ceased to exist or has been suspended for one year or more;
  - That there is or has been a violation of or failure to observe the terms or conditions of the permit or variance, or the use has been conducted in violation of the provisions of this ordinance, law or regulation; or
  - That the use to which the permit or variance applies has been conducted in a manner detrimental to the public safety, health and welfare or so as to be a nuisance.
6. The hours of operation during which alcoholic beverages may be sold shall be limited to 9:00 a.m. to 9:00 p.m., Sunday thru Thursday and 9:00 a.m. to 10:00 p.m. Friday Thru Saturday. Any amendment to business hours that would modify this condition will be subject to a modification of this permit.
7. That the on-site consumption of alcoholic beverages shall be limited to the interior of the subject restaurant and the enclosed outdoor patio eating area as shown in Exhibit "A" and when approved by the California Department of Alcoholic Beverage Control

8. All activities associated with the proposed consumption of alcohol shall be exclusively confined to the area identified which will include the outdoor patio eating area and the interior of the building to the extent permitted by Alcohol Beverage Control.
9. Outdoor patio seating area shall comply with PDO Section 300.08 Outdoor Seating.
10. All signage, permanent and temporary are subject to Chapter 305 of the Porterville Development Ordinance and the Downtown Design Guidelines. Allowable permanent signage types include: awning and canopy, marquee, projecting, wall, window. Total sign allowance is calculated as two square feet per one linear foot of building frontage. Per Downtown Design Guidelines, signage in the Downtown Overlay zone shall be individual letters mounted to façade, pedestrian signs shall be hung below awnings, blade signs.

PASSED, APPROVED AND ADOPTED this 4<sup>th</sup> day of April, 2023.

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

ATTEST:  
John D. Lollis, City Clerk

By \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk



**Locator Map**  
**PRC 2023-003**



**CUP - Tio Chema**  
**@ 377 E. Orange Ave**

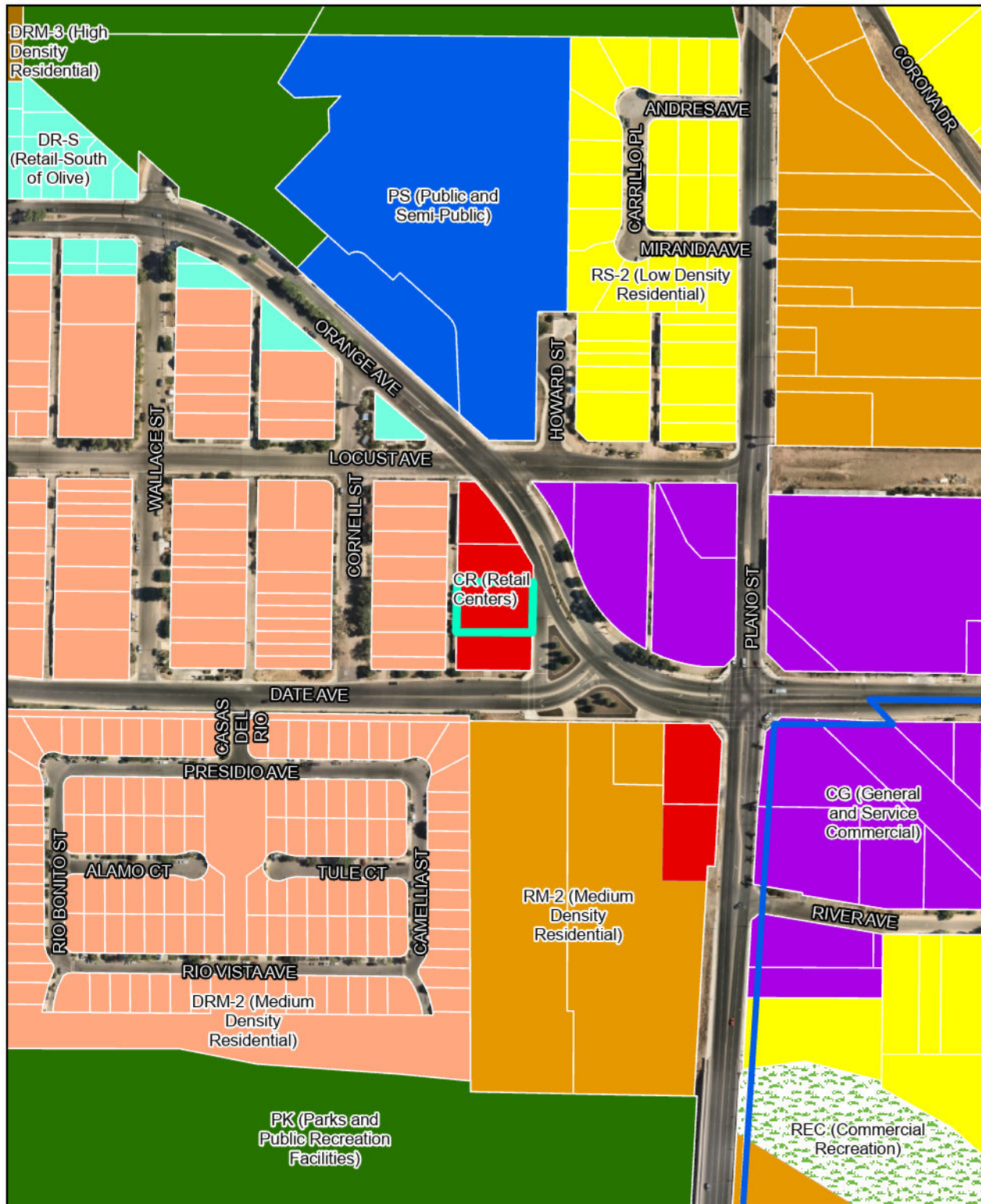
 Project Location  
 City Limits

1 in = 300 feet





# Zoning PRC 2023-003

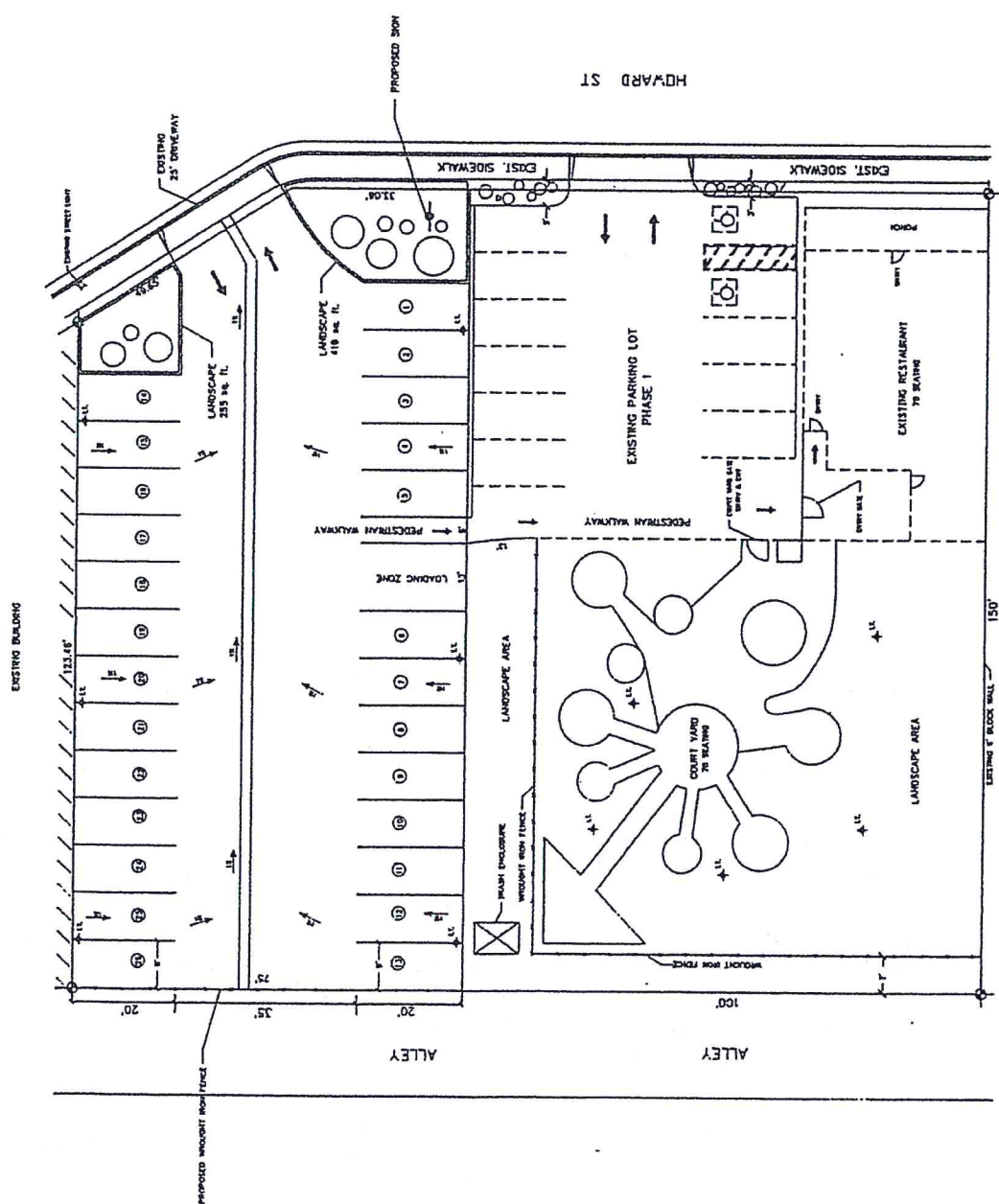


**CUP - Tio Chema  
@ 377 E. Orange Ave**

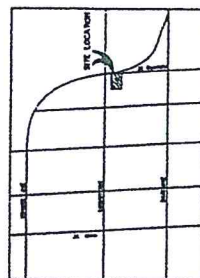
 Project Location  
 City Limits

1 in = 300 feet





NOTE, PHASE II  
LOT, 10133.5 SQ. FT.  
LANDSCAPE ..... 671 sq. ft.



LOCATOR MAP/ VICINITY MAP  
SCALE: N.E.



**SITE PLAN PHASE II**  
**SCALE: 1"=100'**



Parce / # 261-167-003

ts toward st

57 SEATS  
INSIDE

← 2 —

○ = Table

⊗ = Chair

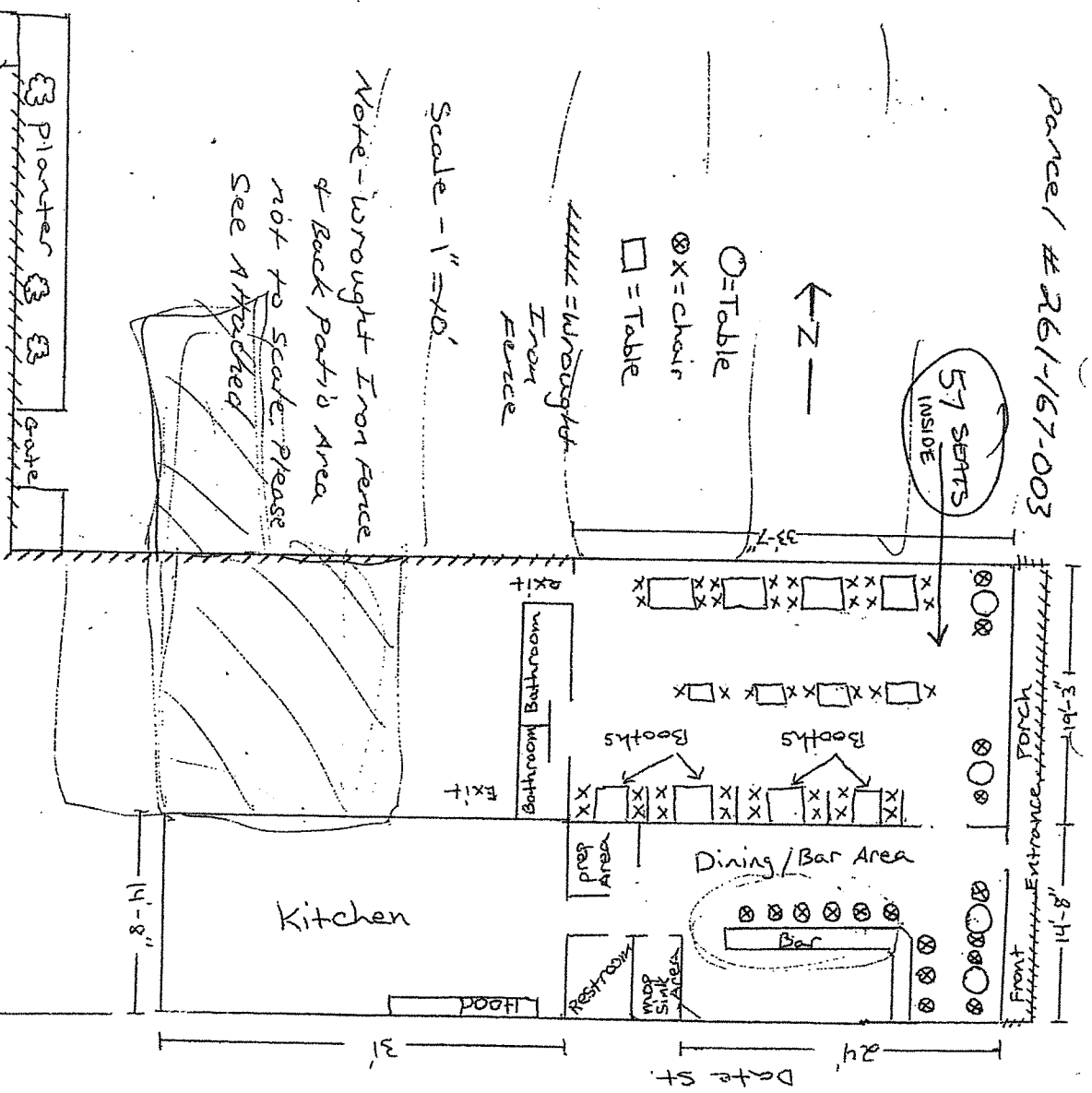
□ = Table

||||| = Wrought Iron Fence

Scale - 1" = 10'

Note - Wrought Iron Fence  
of Back Patio Area  
not to scale. Please  
see Attached

Patio  
Area



Fresh Enclosure

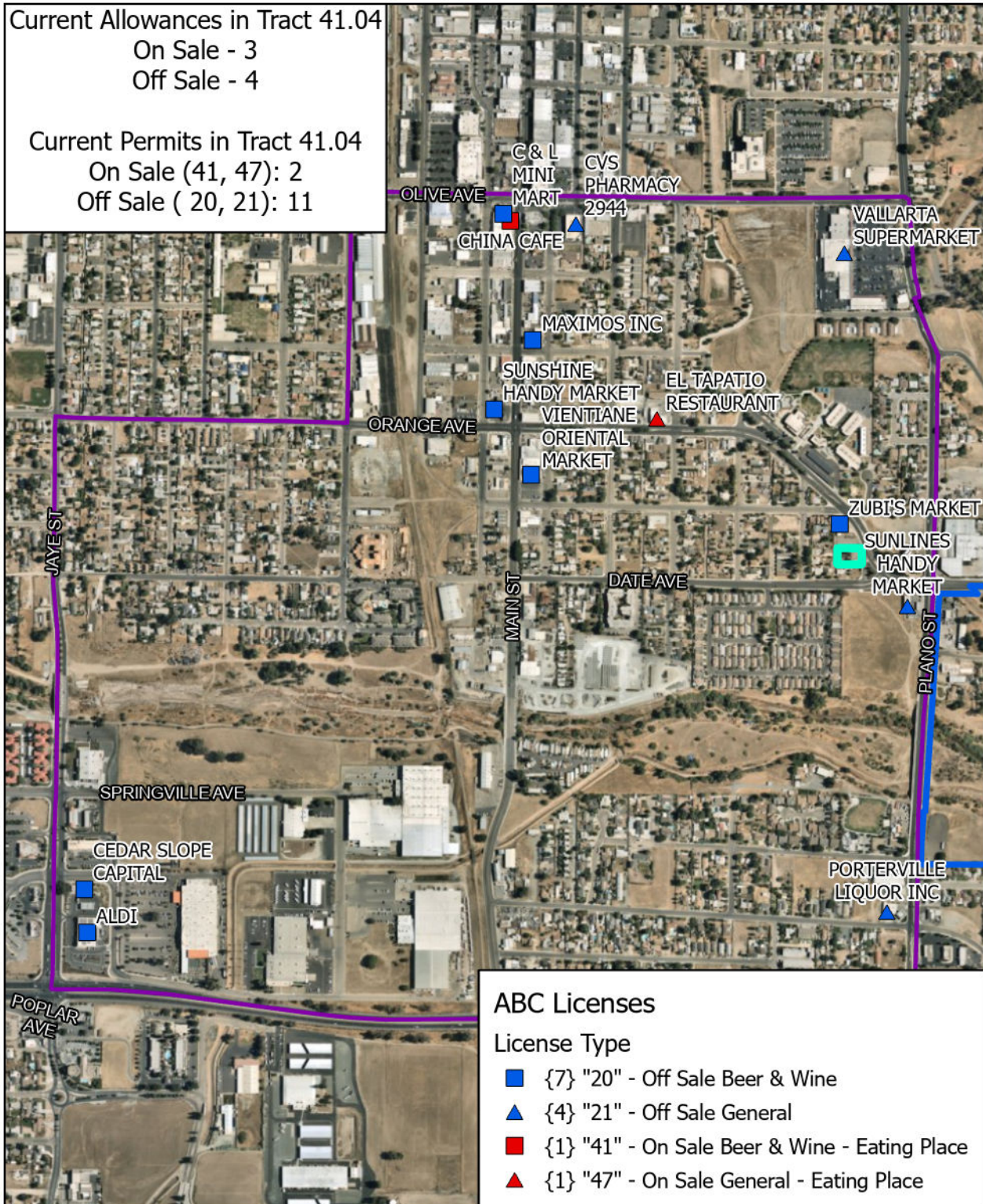
Gate  
Loading Zone



# ABC Map PRC 2023-003

Current Allowances in Tract 41.04  
On Sale - 3  
Off Sale - 4

Current Permits in Tract 41.04  
On Sale (41, 47): 2  
Off Sale ( 20, 21): 11



**CUP - Tio Chema**  
**@ 377 E. Orange Ave**

Census Tract 41.04

Project Location

City Limits

1 in = 938 feet





## CITY COUNCIL AGENDA – APRIL 4, 2023

**SUBJECT:** Intent to Abandon and Close to Public Use an Unimproved Alley Bounded by Morton Avenue and the East 7.5 Feet of the William Duncan Subdivision

**SOURCE:** Engineering and Project Management

**COMMENT:** This is the time and place set for the Public Hearing on the proposed vacation of an unimproved alley bounded by Morton Avenue to the south, and the east 7.5 feet of the William Duncan Subdivision.

The alley was dedicated for public highways as a part of the William Duncan Subdivision, recorded March 10, 1923. The City has authority to vacate the alley under Section 8320 & Section 8331, Part 3, Division 9 of the Streets and Highways Code of the State of California.

The United States Forest Service represents a majority proprietary interest to the property encompassing the north half of the proposed abandonment and is the requesting party. Jimmy and Peggy King represent proprietary interests in the south half of the proposed alley abandonment. The abandonment is necessary for the proposed orderly development of the property.

**RECOMMENDATION:** That the City Council:

1. Adopt the draft Resolution ordering the vacation of an unimproved alley bounded by Morton Avenue and the east 7.5 feet of the William Duncan Subdivision; and
2. Authorize the City Clerk to record the Resolution of Abandonment with the County Recorder.

**ATTACHMENTS:**

1. Draft Resolution
2. Exhibit A - Legal Description
3. Exhibit B - Legal Exhibit

**Appropriated/Funded:**

**Review By:**

Department Director:  
Javier Sanchez, Engineering & Project Management Director

Final Approver: John Lollis, City Manager

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
OF INTENTION TO VACATE AND CLOSE TO PUBLIC USE  
AN UNIMPROVED ALLEY BOUNDED BY MORTON AVENUE AND THE EAST 7.5  
FEET OF THE WILLIAM DUNCAN SUBDIVISION**

SECTION 1: The Council of the City of Porterville, California, pursuant to Division 9, Part 3, Section 8320, of Streets and Highways Code of the State of California, does hereby resolve as follows, to-wit:

That it is the intention of the Council of the City of Porterville to abandon and close to public use that certain public right of way located in the City of Porterville, County of Tulare, State of California, and known generally as an unimproved alley bounded by Morton Avenue and the east 7.5 feet of the William Duncan Subdivision.

SECTION 2: A map or plan of said public rights of way intended to be vacated, abandoned and closed to public use is on file in the office of the City Clerk of the City of Porterville, reference to which is hereby made.

SECTION 3: That the public convenience and necessity requires the reservation of easements and rights of way for structures enumerated in Section 8330 of the California Streets and Highways Code.

SECTION 4: The City of Porterville, in the abandonment of said public rights of way to public use, reserves and excepts from the vacation the permanent easement and right at any time, or from time to time to construct, maintain, operate, replace, remove and renew sanitary sewers, water lines, and storm drains and appurtenant structures in, upon, over, and across said street or part thereof proposed to be vacated and pursuant to any existing franchises or renewals thereof, or otherwise, to construct, maintain, operate, replace, remove, renew and enlarge lines of pipes, conduits, cables, wires, poles and other convenient structures, equipment and fixtures for the operation of gas pipe lines, telegraph and telephone lines, railroad lines, and from the transportation or distribution of electric energy, petroleum and its products, ammonia, water and incidental purposes, including the access and the right to keep the property free from flammable materials and wood growth, and otherwise protect the same from all hazards in, upon and over the street or part thereof herein proposed to be vacated.

SECTION 5: Notice is further given that on Tuesday, the 4<sup>th</sup> day of April, 2023, at 7:00 p.m., or as soon thereafter as the matter can be heard, in the Council Chambers at City Hall in the City of Porterville, at 291 North Main Street, is hereby fixed for the time and place for hearing any objections to the vacation, abandonment and closing to public use of said public rights of way.

---

Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

---

By: Patrice Hildreth, Chief Deputy City Clerk



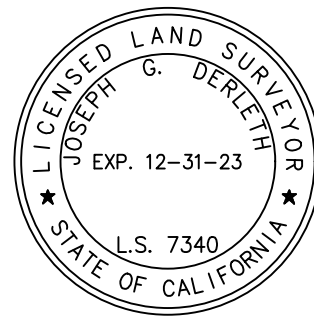
# Exhibit A

THAT PORTION OF THE 7.5 FOOT ALLEYWAY, LOCATED WITHIN THE WILLIAM DUNCAN SUBDIVISION, AS SHOWN ON THE MAP, RECORDED APRIL 02, 1923, IN BOOK 17, PAGE 36 OF MAPS IN TULARE COUNTY RECORDS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT 7.5 FOOT ALLEYWAY LYING CONTIGUOUS TO AND WESTERLY OF, THE EASTERLY LINE, OF SAID WILLIAM DUNCAN SUBDIVISION, BOUNDED ON THE NORTH BY THE NORTH LINE OF SAID WILLIAM DUNCAN SUBDIVISION AND SOUTHERLY BY THE NORTH LINE OF THE LANDS GRANTED TO THE CITY OF PORTERVILLE, BY GRANT DEED RECORDED SEPTEMBER 18, 1980, IN VOLUME 3797, PAGE 559 OF OFFICIAL RECORDS OF TULARE COUNTY AND ACCEPTED BY THE CITY OF PORTERVILLE BY RESOLUTION 9476.

THE AREA OF SAID ALLEYWAY PORTION IS APPROXIMATELY 7147 SQUARE FEET (0.05 ACRES).

12/19/2022  
\_\_\_\_\_  
JOSEPH G. DERLETH      DATE  
PLS 7340  
EXPIRES 12/31/2023



WILLIAM DUNCAN SUBDIVISION (17 MAPS 36)  
ALLEYWAY VACATION LEGAL DESCRIPTION

PORTERVILLE, CALIFORNIA

POR. SEC. 25, TOWNSHIP 21 SOUTH, RANGE 27 EAST, M.D.M. 1 OF 2



TO NW'LY COR. 17 MAPS 36 N89°37'49"W, 417.80' (417.90')

N'LY LINE WILLIAM DUNCAN  
SUBDIVISION, 17 MAPS 36 T.C.R.

NE COR. LOT 8,  
PER 3 MAPS 34,  
T.C.R.

**LEGEND:**

 = PROPOSED STREET VACATION AREA, 2417 SQ. FT (0.05 AC.)

**REFERENCES:**

BEARINGS AND DISTANCE SHOWN HEREON ARE  
RECORD PER UNRECORDED RECORD OF SURVEY  
22-012, RECORDED XX JANUARY, 2023, IN BOOK  
XX LICENSED SURVEYS, PAGE XX, UNLESS NOTED  
OTHERWISE.

( ) = RECORD PER THE WILLIAM  
DUNCAN SUBDIVISION, RECORDED  
IN 17 MAPS 36 T.C.R..

GRANT DEED  
INSTR. No. 13649  
VOL. 696/P. 338 O.R.

POR. A.P.N. 253-050-030

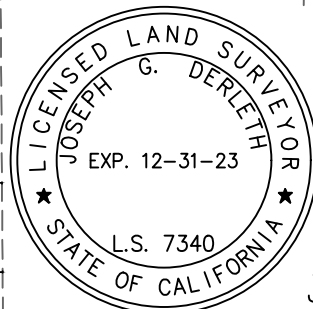
GRANT DEED INSTR. No. 13649  
696/338 O.R.  
POR. A.P.N. 253-050-030

FORMERLY KNOWN  
AS ROCHE AVE.  
VACATED PER  
ORDER 8385  
744/152 O.R.

N89°34'17"W, 150.89' (150.90')

TRUST TRANSFER  
DEED DOC. No.  
2015-0020082 O.R.

A.P.N. 253-050-050



JOSEPH G. DERLETH

N86°16'53"W, 161.86'

154.32'

GRANT DEED  
VOL. 3797/P. 559 O.R.

ROAD EASEMENT

VOL. 3789/P. 571

EASEMENT DEED

VOL. 2432/P. 175

269.62' 161.88' (161.88')

TO SW'LY COR. 17 MAPS 36 N89°33'52"E,

VARIES

TO 4TH ST. N89°33'52"W, 1364.18'

E. MORTON AVE.

SE COR. LOT 8, PER 3 MAPS 34, T.C.R.

**Exhibit A**

WILLIAM DUNCAN SUBDIVISION (17 MAPS 36)

ALLEYWAY VACATION PLAT

PORTERVILLE, CALIFORNIA



POR. SEC. 25, TOWNSHIP 21 SOUTH, RANGE 27 EAST, M.D.M.

2 OF 2



## CITY COUNCIL AGENDA – APRIL 4, 2023

**SUBJECT:** Review of City Participation in the Tulare County Regional Transit Agency

**SOURCE:** Public Works

**COMMENT:**

On August 11, 2020, the Joint Powers Agreement was approved creating the Tulare County Regional Transit Agency (TCRTA). TCRTA is comprised of member agencies from the Cities of Dinuba, Exeter, Farmersville, Porterville, Tulare, Woodlake and the County of Tulare. At its Special Meeting on August 24, 2022, the TCRTA Board of Directors acted to approve the addition of the Tule River Tribe of California as a member agency. Pursuant to the Agency Bylaws, any of the member agencies may, on or before May 1 of any year, give written notice to the Transit Agency that it is withdrawing from the Transit Agency and terminating its rights and duties under the Agreement at the end of the fiscal year, and such notice shall have the same effect on the 30th day of June thereafter. Withdrawal at any other time requires approval of the Agency Board of Directors.

As the City Council is aware, the finances of the TCRTA have been of concern, including the call for financial assistance from member agencies in September 2022, which the Council authorized the allocation of \$1.6 million to the TCRTA as a loan of its proportional share of the annual TCRTA fiscal budget in an effort to stabilize the finances of the Agency. With the financial assistance, the TCRTA indicated that it expected access to FTA funding in November 2022. At its meeting on March 29, 2023, the TCRTA Board took action to approve its monthly fiscal year-to-date Profit Loss (P&L) Statement through February 28, 2023. The P&L indicates that TCRTA is currently operating at a net loss of \$4,718,910, in significant part due to the continued inability of the Agency to draw down the Federal Transit Administration (FTA) apportionment for the respective member agencies. It was stated at the meeting that due to challenges and complications experienced by the Agency in its FTA draw downs, it is anticipated that the TCRTA will encounter a cash flow issue again in September 2023.

Adding to the challenges faced by the TCRTA has been the recent resignation of the Executive Director, Richard Tree, who has accepted the position of Director of Transportation with the Porterville Unified School District. The TCRTA Board is currently determining the process and timeline for beginning the recruitment for a new Executive Director.

**RECOMMENDATION:** That the City Council consider the City's continued participation in the Tulare County Regional Transportation Agency and act to authorize as determined.

ATTACHMENTS:

1. Tulare County Regional Transit Agency Bylaws
2. TCRTA Profit Loss Statement - FYTD February 28, 2023
3. TCRTA Request for Financial Support - September 15, 2022
4. City Council Agenda Staff Report - September 20, 2022

Appropriated/Funded:

Review By:

Department Director:  
Michael Knight, Public Works Director

Final Approver: John Lollis, City Manager

**TULARE COUNTY REGIONAL TRANSIT AGENCY  
AMENDED AND RESTATED JOINT POWERS AGREEMENT**

The Joint Powers Agreement (“Agreement”), dated this \_\_\_\_ day of \_\_\_\_\_, 2022, by and among the County of Tulare and the Cities of Exeter, Farmersville, Lindsay, Porterville, Tulare, Woodlake, and the Tule River Indian Tribe (each, a “Party” or “Member Agency” and together, the “Parties” or “Member Agencies” to this Agreement) is hereby entered into pursuant to Section 6500 *et seq.* of the Government Code of the State of California.

**Article I  
General Provisions**

**Section 1: Purpose**

The purpose of this Agreement is to empower the Parties to exercise their common powers by the formation and operation of a Joint Powers Agency, hereafter called “Tulare County Regional Transit Agency” or “Transit Agency,” with full power and authority to own, operate, and administer a public transportation system within the jurisdictions of the Member Agencies. The Transit Agency shall be a public agency separate and apart from the Member Agencies.

**Section 2: Name and Membership**

The legal name of the Transit Agency shall be “Tulare County Regional Transit Agency.” Agencies eligible to enter into this Agreement include the County of Tulare, all incorporated cities within Tulare County, and the Tule River Indian Tribe. Upon entering into this Agreement, Member Agencies shall be required to maintain membership for the duration of the remaining fiscal year in which the Member Agency joined, plus the following three (3) fiscal years. Early withdrawal of any agency under these terms may be approved by unanimous vote of the Transit Agency’s Board of Directors if withdrawal is determined to be mutually beneficial.

**Section 3: Boundaries**

The boundaries of the Transit Agency shall coincide with the exterior boundaries of Tulare County but shall exclude the territory of any incorporated city within Tulare County that is not a Party to this Agreement.

**Section 4: Powers**

The Transit Agency shall have all powers necessary to carry out the purpose of this Agreement, except the power to tax. The powers of the Transit Agency specifically include, but are not limited to, the following:

- a. To operate a public transportation system to service the Tule River Indian Tribe and incorporated areas of the cities who elect to become Member Agencies hereunder and the unincorporated areas of the County of Tulare.
- b. To acquire, hold, and dispose of real and personal property.

- c. To acquire, construct, manage, maintain, and/or operate any facilities or improvements.
- d. To own, lease, operate, and maintain vehicles and other property and equipment, which are necessary or reasonable to carry out the purpose of this Agreement.
- e. To expend funds. This power shall be limited only by the availability of funds as set forth in Article III, Sections 4 and 9 of this Agreement.
- f. To sue and be sued in its own name.
- g. To make and enter into contracts for services.
- h. To incur debts, liabilities, and obligations, none of which shall become a debt, liability, or obligation of any Member Agency pursuant to California Government Code section 6508.1 (a) without the express written consent of that Member Agency, except that any debt, liability, or obligation of the Transit Agency with respect to retirement liabilities of the Transit Agency shall be a joint debt, liability, or obligation of each Member Agency if the Transit Agency contracts with a public retirement system.
- i. To provide and enter into agreements for transportation services to locations outside the jurisdiction and boundaries of any of the Member Agencies.
- j. To apply for and execute agreements for financial assistance from the State of California, U.S. Government, and other sources, and to obligate the Transit Agency to operate the public transportation system in accordance with the terms and conditions of said financial assistance.
- k. To purchase insurance.
- l. To employ staff, or to contract with the Member Agencies, or private vendors or individuals to provide the agency with necessary and appropriate services, including, but not limited to, an Executive Director and legal counsel. If the Transit Agency elects to employ its own staff, then the Board shall establish appropriate personnel rules and benefit programs, and determine whether to seek and approve membership in the Tulare County Employees Retirement Association, another established retirement/pension system, or make other retirement/pension options available for its employees.
- m. To adopt local debt policies pursuant to California Government Code section 8855.
- n. To adopt a Conflict-of-Interest Code pursuant to California Government Code section 87300.
- o. All other powers that are necessary and proper for the Transit Agency in order to provide public transportation services.

## **Article II Organization**

### **Section 1:      Governing Board of Directors**

The powers of the Transit Agency are vested in its governing Board of Directors, hereafter called the "Board." The Board shall be composed of elected officials, hereafter called "Directors," from each Member Agency. Each Member Agency shall appoint one regular Director and one alternate Director to the Board. Each Director will serve at the pleasure of the Director's appointing authority; however, Directors who are members of the governing body of their respective Member Agencies shall cease to serve as Directors upon termination of that public office. The applicable appointing authorities shall fill vacancies on the Board of Directors.

The following shall sit as non-voting, *ex-officio* members of the Board:

- a. The Tulare County Association of Governments (TCAG) Board members sitting as the Public Transit Representative and Alternate (if different than an already seated Transit Agency Director).

## **Section 2:       Officers**

- a. The Board shall elect a Chair and Vice-Chair from among the Directors, and such other officers as the Board may deem necessary.

- b. The Chair shall preside at all meetings of the Board and generally shall perform all duties incident to the office of Chair and such other duties as may from time to time be assigned to such office by the Board.

- c. At the request of the Chair, or in case of his or her absence or disability, the Vice-Chair shall perform all duties of the Chair and, when so acting, shall have all the powers of, and be subject to all restrictions upon, the Chair. In addition, the Vice-Chair shall perform such other duties as may from time to time be assigned to that office by the Board of Directors or the Chair.

- d. The Chair, Vice-Chair, and such other officers as are elected by the Board each shall serve at the pleasure of the majority of the Board and be elected for a term of two years, with no limit on the number of terms served. Each such officer shall continue to serve until his or her successor is elected, or until his or her death, resignation, or removal from office by the majority of the Board, whichever occurs earlier.

- e. The Executive Director of the Transit Agency (provided for below) shall serve *ex-officio* as the Secretary of the Board. The Secretary shall (i) certify and keep at the office of the Transit Agency, or at such other place as the Board may order, the original or a copy of the Agreement, the Bylaws, and the other documents provided for below, as amended or otherwise altered; (ii) keep at the office of the Transit Agency, or at such other place as the Board may order, a book of minutes of all meetings of the Board, recording therein the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, and the proceedings thereat; (iii) see that all notices are duly given in accordance with the provisions of this Agreement, the Bylaws, or as required by law; (iv) be custodian of the records of the Transit Agency; (v) exhibit at all reasonable times to any Director, upon application, the Bylaws and minutes of the proceedings of the Board; and (vi) in general, perform all duties of the office of Secretary and such other duties as may from time to time be assigned to such office by the Board or the Chair.

- f. Any officer may resign at any time by giving written notice to the Board. Any such resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Agreement for regular election or appointment to such office.

- g. With prior Board approval, the Chair, the Vice-Chair, or the Secretary is authorized to execute all documents in the name of the Transit Agency.

## **Section 3:       Compensation**



The members of the Board shall serve without compensation but shall receive reimbursement for actual and necessary travel expenses incurred in the performance of their duties and outlined in accordance with policies established by the Board.

#### **Section 4:       Executive Director**

The Board shall appoint an Executive Director. The Executive Director shall serve at the pleasure of or upon the terms prescribed by the Board. The Executive Director so appointed may be an employee of a Member Agency, an employee of the Transit Agency, or an independent contractor (or employee of an independent contractor). Under rules and regulations provided by the Board, the powers and duties of the Executive Director are:

- a. To lead and coordinate the transit system of the Transit Agency and to be responsible to the Board for proper administration of all affairs of the Transit Agency.
- b. To appoint, assign, direct, supervise, and, subject to the personnel rules adopted by the Board, discipline or remove Transit Agency employees.
- c. To arrange for secondary support services, including: legal counsel, general services, office space, human resources, fiscal and administrative support, communications, information technology, payroll, and other support services necessary or convenient for the operation of the transit system and Transit Agency.
- d. To supervise and direct the preparation of the annual operating and capital improvement budgets, hereafter called "Budget", for the Board and be responsible for their administration after adoption by the Board.
- e. To formulate and present to the Board plans for transit facilities and/or services and the means to finance them.
- f. To supervise the planning, acquisition, construction, maintenance, and operation of the transit facilities and/or services of the Transit Agency.
- g. To provide regular performance updates to the Board.
- h. To attend all meetings of the Board and act as the Secretary of the Board. As Secretary, he or she shall cause to be kept minutes of all meetings of the Board, to cause a copy of the minutes of the previous Board meeting to be included with the agenda of the next regular meeting of the Board, and perform all of the duties prescribed in Section 2.e. above.
- i. To establish and maintain fare collection and deposit services.
- j. To organize and operate an ongoing transit marketing program, including special promotions.
- k. To evaluate and propose new programs and public transportation services, with implementation to occur as approved by the Board.
- l. To execute transfers within major budget units, in concurrence with the Treasurer/ Auditor-Controller of the Transit Agency, as long as the total expenditures of each major budget unit remain unchanged.
- m. To purchase or lease items, fixed assets, or services within the levels authorized in the applicable Budget.
- n. To lease buses, vans, and other transit vehicles on an "as needed" basis from public or private organizations when deemed necessary to assure continued reliability of service.

- o. To perform such other duties as the Board may require in carrying out the policies and directives of the Board.

## **Section 5: Meetings**

The Board shall hold regular monthly meetings and shall establish a date, time, and place for those meetings. Meetings may be canceled by a vote of the Board. Special meetings may be called at any time by the Chair, or at the suggestion of the Executive Director, or upon written request by any two members of the Board. Each member shall receive written notice at least 24 hours in advance of any special meeting unless the member has specifically waived this required notice.

## **Section 6: Ralph M. Brown Act**

All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

## **Section 7: Quorum**

A majority of the total membership of the Board shall constitute a quorum for the transaction of business.

## **Section 8: Voting**

Regular business will be acted upon by approval of a quorum of the Board, with the exception of the following actions which shall require approval by a unanimous vote of the Directors present and voting at a regular or special meeting of the Board, provided that a quorum of the Board is present and voting:

- a. Approval of the Budget.
- b. Local Transportation Fund (LTF) Claims Approval for Submittal to TCAG.
- c. Withdrawal of an agency prior to completion of initial new membership term (per Article I, Section 2).
- d. Readmission of an agency that was a prior member of the Transit Agency and has since withdrawn.

## **Section 9: Policies and Procedures, Bylaws, Conflict-of-Interest Code, and Debt Policies**

Within the first six (6) months of the Transit Agency's existence, the Board shall establish a Policies and Procedures Manual and Bylaws to govern the day-to-day operations of the Transit Agency, local debt policies pursuant to California Government Code section 8855, and a Conflict-of-Interest Code pursuant to California Government Code section 87300, all of which are not inconsistent either with applicable law or with this Agreement. Each Director and Member Agency shall receive a copy of the adopted Policies and Procedures Manual, the Bylaws, and the Conflict-of-Interest Code. Thereafter, the Board may amend or repeal any bylaw, regulation, policy, procedure or portion of the Conflict-of-Interest Code, provided that such action is not inconsistent with either the applicable law or this Agreement. The Executive Director

shall send to each Director and to each Member Agency all Bylaw amendments, and Debt Policy and Conflict-of-Interest Code revisions promptly after adoption by the Board.

#### **Section 10: New Members**

If a city or other eligible organization within the County of Tulare not a Party to this Agreement desires to join the Transit Agency, it may become a Member Agency subject to such terms and conditions as may be prescribed by the Board. Upon becoming a Member Agency, the new Member Agency shall become responsible for its share of the funding for public transportation provided by the Transit Agency. The new Member Agency's share of the funding shall be determined in the same manner as for the original Member Agencies, as set forth in Article III, Section 4, "Sources of Funds" of this Agreement.

If a new city is incorporated in Tulare County, it may become a Member Agency, subject to such terms and conditions as may be prescribed by the Board. Upon becoming a Member Agency, the new city shall become responsible for its share of the funding for public transportation provided by the Transit Agency. The new city's share of the funding shall be determined in the same manner as for the original Member Agencies as set for the in Article III, Section 4, "Sources of Funds" of this Agreement. Regardless of whether or not the new city elects to become a Member Agency, at the end of the fiscal year during which incorporation becomes effective, unless otherwise agreed among the new city, the County, and the Transit Agency, the County will no longer be responsible for funding public transportation within the area included in the new city.

New Member Agencies shall be required to maintain membership in this Agreement for the duration of the fiscal year in which the Member Agency joined, plus the following three (3) fiscal years.

#### **Section 11: Change of Boundaries**

In the case of annexations, reorganization of transit services and costs due to new jurisdictional boundaries will occur. Funding for transit services provided within Member Agencies' jurisdictions shall be determined as set forth in Article III, Section 4, "Source of Funds" of this Agreement.

#### **Section 12: Ratification and Effective Date**

This Agreement shall become effective upon ratification by the legislative bodies of all participating agencies. This Agreement shall be dated and shall be effective upon the last date ratified by a Member Agency.

#### **Section 13: Amendment of Agreement**

This Agreement may be amended at any time by a supplemental written agreement executed by all Parties. Amendments may be made only with the unanimous approval of the legislative bodies of all of the Member Agencies.

#### **Section 14:      Withdrawal and Readmission of Member Agencies**

Any Party to this Agreement may, on or before May 1 of any year, give written notice to the Transit Agency that it is withdrawing from the Transit Agency and terminating its rights and duties under the Agreement at the end of the fiscal year, and such notice shall have the same effect on the 30<sup>th</sup> day of June thereafter. Withdrawal at any other time requires approval of the Board per Article II, Section 8.

If a Member Agency chooses to withdraw, it nevertheless shall be responsible for its share of all Transit Agency contractual obligations in force on the effective date of withdrawal. Said share shall be determined in accordance with Article III, Section 4, "Sources of Funds" of this Agreement. The withdrawing agency shall remain responsible for said contractual obligations until the involved contracts legally expire or until the obligations can be changed or eliminated by negotiations between the contracting parties.

Each of the Parties to this Agreement hereby agrees that if it should withdraw from the Transit Agency and give up its rights and duties under this Agreement, as provided hereinabove, and the Transit Agency is not dissolved as a result of said withdrawal, then such withdrawing Party waives its right to any refund of contributions previously made by such Party to the Transit Agency and relinquishes to the Transit Agency all right, title, and interest it may have in any property of the Transit Agency.

After finalization of Member Agency withdrawal, that agency will be eligible to re-enter into this Agreement after one full fiscal year has passed. When any Party has ceased to be a Party to this Agreement, it shall not be entitled to again become a Party to this Agreement except upon unanimous consent of the Board and upon such terms and conditions as may be imposed by unanimous action of the Board.

#### **Section 15:      Duration of Agreement**

This Agreement shall continue in full force and effect until termination is approved by all or by all but one of the legislative bodies of the Member Agencies, or until withdrawals have reduced the number of Member Agencies to less than two.

In the case of termination, contractual obligations shall be met in the same manner as specified for withdrawals in Article II, Section 14, "Withdrawal and Readmission of Member Agencies" of this Agreement.

#### **Section 16:      Distribution of Surplus Money and Property**

Pursuant to California Government Code Sections 6511 and 6512, in the event that this Agreement is terminated, then all surplus money and property of the Transit Agency shall be distributed to the Member Agencies in proportion to the most recent annual contributions made by the Member Agencies under the terms of Article III, Section 4, "Source of Funds" of this Agreement. In the case of property, the Member Agencies may elect to receive their shares of the property in kind or may request that their shares be sold and the money distributed in the manner prescribed in this Section.

**Section 17: Notification of Secretary of State, State Controller, and Local Agency Formation Commission**

Pursuant to California Government Code Sections 6503.5 and 6503.6, the Transit Agency shall, within thirty (30) days of the effective date of this Agreement or amendment thereto, cause (a) a notice of the Agreement or amendment to be prepared and filed with the office of the California Secretary of State, (b) a full copy of the Agreement or amendment to be filed with the State Controller, and (c) a full copy of the Agreement or amendment to be filed with the Tulare County Local Agency Formation Commission.

**Article III  
Financial and Service Level Provisions**

**Section 1: Fiscal Year and Budget**

The fiscal year for the Transit Agency shall be July 1 through June 30 of the following calendar year.

The Board shall adopt an Annual Budget prior to the beginning of each fiscal year. Except as otherwise provided in Article III, Section 4 of this Agreement, a unanimous vote of approval by all Directors present and voting at a regular or special meeting of the Board, which must be a quorum, shall be required for the adoption of the Budget.

The Annual Budget may carry forward funds for future fiscal years where necessary to reflect obligations under state or federal funding or grant agreements.

**Section 2: Level of Service**

The minimum level of public transit service provided within the jurisdiction of each Member Agency shall be established by the Transit Agency. The Transit Agency shall set levels of service based on appropriate established criteria, including: needs of residents, service performance, TCAG performance measures and other requirements, Title VI compliance, and any other criteria deemed a) appropriate by the Transit Agency and/or b) required by law. Unmet needs found reasonable to meet will also be implemented as required.

Costs of services above the minimum level of service as set by the Transit Agency shall be calculated based upon the marginal increase in cost, plus an allocation of fixed costs of the additional services based upon the proportion of vehicle hours of the new service to the total vehicle hours provided by the Transit Agency, and shall be charged to and paid by the requesting Member Agency.

**Section 3: Service Changes**

Transportation Development Act (TDA)-funded services may be adjusted from time to time as deemed appropriate by the Board. Additionally, each Member Agency, by resolution of its governing body, may submit a request for changes in the services funded through TDA within said Member Agency's jurisdictional boundaries. Said request shall include a description of the requested changes.

In reviewing requests for service increases, the Transit Agency shall consider:

- a. Whether such changes are in substantial conformance with applicable plans, such as transit plans and the Regional Transportation Plan, and comply with required minimum levels of service.
- b. Whether there is sufficient funding available to implement the proposed service change.
- c. Whether there is sufficient personnel, operating capacity, and capital resources available to implement such services.
- d. Whether changes are permissible under state and federal law, and including Transit Agency's willingness and ability to implement necessary actions required for requested changes.

In reviewing requests for service decreases that will amount to a funding reduction of ten (10) percent or more from the requesting agency's share, the Transit Agency shall require up to six (6) months to negotiate changes with the requesting Member Agency and to implement any reductions approved by the Board. The Transit Agency shall consider whether such changes are in substantial conformance with applicable plans, such as transit plans and the Regional Transportation Plan, and comply with required minimum levels of service.

#### **Section 4: Sources of Funds**

The Transit Agency shall have the authority to apply for any funds available for transit purposes from any regional, local, state, or federal sources. Claims for Local Transportation Funds must be unanimously approved by Directors present at a regular or special meeting of the Board and voting on the matter, which must be a quorum.

Each Member Agency shall make an annual contribution to the Transit Agency. The contribution shall be the member's pro rata share of the Transit Agency's annual budget, less any transit assistance funds that can only be used for transit. The pro rata share shall be based on one-half on the ratios of populations within a member's jurisdictional boundary (excluding the population of any non-member jurisdiction), and one-half on ratios of transit service hours available to each Member Agency. Notwithstanding the foregoing, while any debt incurred by the Transit Agency in accordance with this Agreement remains outstanding, (i) the annual budget of the Transit Agency shall include the aggregate amount of all principal and/or interest payments payable on such debt for each application fiscal year (which aggregate amount so budgeted shall be deemed approved by all Member Agencies, whether or not the annual budget, as a whole, has been approved in accordance with Article III, Section 1 of this Agreement), and (ii) each Member Agency which is a member on the date on which the Transit Agency incurs the applicable debt, shall be obligated to annually contribute its Local Transportation Funds (Government Code section 29530 et seq.), to the Transit Agency (whether the Member Agency remains a member or withdraws as a member of the Transit Agency).

Population figures shall be those published by the California Department of Finance. Transit service hour ratios shall be developed by TCAG or Transit Agency staff, as applicable, and shall be included as part of the Annual Budget.

## **Section 5: Transfer of Transit-Related Assets**

Upon the effective date of this Agreement, each Member Agency shall consider the transfer to the Transit Agency, or retention, of the agency's existing transit-related assets. The terms and conditions for transfers and/or lease of assets shall be negotiated between the Transit Agency and applicable Member Agency. The Executive Director shall establish policies and procedures for maintaining assets and the use of assets necessary to provide public transportation services within its service area, including requirements for Transit Agency pre-approval of alterations and improvements.

## **Section 6: New Assets**

Upon the effective date of this Agreement, the Transit Agency will become responsible for the purchase all new transit vehicles and related equipment, at a minimum, for the provision of services within its service area.

## **Section 7: Assignment of Federal Transit Administration (FTA) Contracts and Grant Application Authority**

Subject to FTA and Transit Agency approval, Member Agencies may assign existing FTA contracts and policies, including contractual requirements, assurances, and responsibilities, over to the Transit Agency. The Executive Director shall be authorized to prepare, submit, and execute grant applications for the use of FTA operating, planning, and capital funds, as well as other state, federal, and local funds that may become available.

## **Section 8: Service Agreements**

Upon the effective date of this Agreement, the Transit Agency shall work with Member Agencies to assume service agreements, if possible and feasible, for services necessary for the operation of the Transit Agency and for provision of service within its service area. Where service agreements cannot be assumed, the Transit Agency will work with contracting Member Agencies to utilize services until such time that the agreements are terminated, as necessary and appropriate. A Member Agency shall not enter into new transit service agreements as required for operation of the Transit Agency once its existing transit service agreements are terminated.

## **Section 9: Limitation of Financial Commitment**

Except as provided in Article III, Section 4 of this Agreement, the Transit Agency shall not obligate Member Agencies to expenditure of general funds for transit purposes.

## **Section 10: Investment of Funds**

Pursuant to California Government Code section 6509.5, the Transit Agency shall have the power to invest any money in the treasury pursuant to California Government Code section 6505.5 that is not required for



the immediate necessities of the Transit Agency, as the Board determines is advisable, in the same manner and upon the same conditions as local agencies pursuant to California Government Code section 53601.

## **Article IV**

### **Miscellaneous provisions**

#### **Section 1:      Treasurer and Auditor**

Pursuant to California Government Code Section 6505.5, the County Treasurer and County Auditor of the County of Tulare are hereby designated as Treasurer and Auditor of the Transit Agency. As such, they shall have the powers, duties, and responsibilities as set forth in said section of the Government Code. The County shall be compensated for the services rendered. The amount and method of compensation agreed upon between the County and Transit Agency shall be set forth in the Annual Budget of the Transit Agency.

#### **Section 2:      Annual Audit**

The Board shall cause an annual audit to be prepared and filed pursuant to California Government Code Section 6505. The Transit Agency shall pay the cost of such audit whether conducted by the County Auditor or an independent auditor.

#### **Section 3:      Official Bonds**

Pursuant to California Government Code Section 6505.1, the Board shall require the official bonds be filed by any officers, employees, or agents, which have access to the property of the Transit Agency. The cost of said bonds shall be borne by the Transit Agency.

#### **Section 4:      Purchasing Procedures**

The Board may establish purchasing procedures and policies to ensure the Transit Agency receives competitive prices for the lease or purchase of goods and services. Formal bidding shall not be required unless specifically directed by the Board or required by applicable state or federal law.

#### **Section 5:      Indemnification**

The Transit Agency shall indemnify, defend, and hold harmless the Member Agencies, their officers, agents, and employees, and members of the Board of Directors, their officers, agents, and employees, and committee members, their officers, agents, and employees, from and against any and all claims and losses whatsoever, occurring or resulting to persons, firms, or corporations furnishing or supplying work, services, materials or supplies to the Transit Agency in connection with the performance of this Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any persons, firm or corporation, for damage, injury, or death arising out of or connected with the Transit Agency's performance of its obligations under this Agreement. Nothing herein shall limit the right of the Transit Agency to purchase insurance or to create a self-insurance mechanism to provide coverage for the foregoing indemnity.

In this regard, the Member Agencies do not intend hereby to be obligated either jointly or severally for the debts, liabilities or obligations of the Transit Agency, except as may be specifically provided for in California Government Code Section 895.2 as amended or supplemented. Provided, however, if any Member Agency is, under such applicable law, held liable for the acts or omissions of the Transit Agency caused by negligent or wrongful act or omission occurring in the performance of this Agreement, then such parties shall be entitled to contribution from the other Member Agencies so that after said contributions each Member Agency shall bear a proportionate share of such liability, in ratios consistent with those provided for in Article III, section 4 above. This Section 5 of Article IV does not apply to acts or omissions of a Member Agency in implementing the public transit system approved by the Transit Agency within such Member Agency's boundaries and managed in whole or in part by such Member Agency.

#### **Section 6: Privileges and Immunities**

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of officers, agents or employees of any Member Agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the auspices of the Transit Agency and the provisions of this Agreement.

#### **Section 7: Finance or Refinance Acquisition of Transit Equipment**

- a. Pursuant to California Government Code section 6518, the Transit Agency, without being subject to any limitations of any Party to the Agreement pursuant to California Government Code section 6509, may also finance or refinance the acquisition or transfer of transit equipment or transfer federal income tax benefits with respect to any transit equipment by executing agreements, leases, purchase agreements, and equipment trust certificates in the forms customarily used by a private corporation engaged in the transit business to effect purchases of transit equipment, and dispose of the equipment trust certificates by negotiation or public sale upon terms and conditions authorized by the parties to the agreement. Payment for transit equipment, or rentals therefor, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates payable from any source or sources of funds specified in the equipment trust certificates that are authorized by the parties to the agreement. Title to the transit equipment shall not vest in the Transit Agency until the equipment trust certificates are paid.
- b. If the Transit Agency finances or refinances transit equipment or transfers federal income tax benefits with respect to transit equipment under subdivision (a), it may provide in the agreement to purchase or lease transit equipment any of the following:
  - (1) A direction that the vendor or lessor shall sell and assign or lease the transit equipment to a bank or trust company, duly authorized to transact business in the state as trustee, for the benefit and security of the equipment trust certificates.
  - (2) A direction that the trustee shall deliver the transit equipment to one or more designated officers of the Transit Agency.
  - (3) An authorization for the Transit Agency to execute and deliver simultaneously therewith an installment purchase agreement or a lease of equipment to the Transit Agency.

- c. If the Transit Agency finances or refinances transit equipment or transfers federal income tax benefits with respect to transit equipment under subdivision (a), then it shall do all of the following:
  - (1) Have each agreement or lease duly acknowledged before a person authorized by law to take acknowledgments of deeds and be acknowledged in the form required for acknowledgment of deeds.
  - (2) Have each agreement, lease, or equipment trust certificate authorized by resolution of the Board.
  - (3) Include in each agreement, lease, or equipment trust certificate any covenants, conditions, or provisions that may be deemed necessary or appropriate to ensure the payment of the equipment trust certificate from legally available sources of funds, as specified in the equipment trust certificates.
  - (4) Provide that the covenants, conditions, and provisions of an agreement, lease, or equipment trust certificate do not conflict with any of the provisions of any trust agreement securing the payment of any bond, note, or certificate of the Transit Agency.
  - (5) File an executed copy of each agreement, lease, or equipment trust certificate in the office of the California Secretary of State, and pay the fee, as set forth in paragraph (3) of subdivision (a) of Section 12195 of the Government Code, for each copy filed
- d. The Transit Agency acknowledges that California Secretary of State may charge a fee for the filing of an agreement, lease, or equipment trust certificate under California Government Code section 6518. The agreement, lease, or equipment trust certificate shall be accepted for filing only if it expressly states thereon in an appropriate manner that it is filed under California Government Code section 6518. The filing constitutes notice of the agreement, lease, or equipment trust certificate to any subsequent judgment creditor or any subsequent purchaser.
- e. Each vehicle purchased or leased under California Government Code section 6518 shall have the name of the owner or lessor plainly marked on both sides thereof followed by the appropriate words "Owner and Lessor" or "Owner and Vendor," as the case may be.

## **Section 8: Issuance of Revenue Bonds or Other Debt**

Pursuant to Article 2, commencing with section 6540, of Chapter 5 of Division 7 of Title 1 of the California Government Code and upon the affirmative authorization of each of the Member Agencies, the Transit Agency may issue revenue bonds or other forms of indebtedness, including refunding bonds, pursuant to that article to pay the cost and expenses of acquiring or constructing mass transit facilities or vehicles, including any or all expenses incidental thereto or connected therewith, and such expenses may include engineering, inspection, legal and fiscal agents' fees, costs of the issuance and sale of said bonds, working capital, reserve fund, and bond interest estimated to accrue during the construction period and for a period of not to exceed 12 months after completion of construction. The proceeds of the bonds shall be used only for the project provided for in the indenture pursuant to which such revenue bonds are issued. Pursuant to California Government Code section 6547.8, no Director shall be personally liable on the bonds or subject to any personal liability by reason of the issuance of bonds pursuant to this authority. Pursuant to California Government Code section 6551, said revenue bonds shall not constitute a debt,

liability, or obligation of any Member Agency unless that Member Agency has given its express written consent to such obligation.

#### **Section 9:      Insurance**

The Transit Agency shall obtain insurance for all Directors and Member Agencies, including, but not limited to, directors and officers liability insurance, and general liability insurance, containing policy limits in such amounts as the Board shall determine will be necessary to adequately insure against the risks of liability that may be incurred by the Transit Agency.

#### **Section 10:     Dispute Resolution Procedures**

This Section shall govern the resolution of all controversies or claims among or between the Parties, including those that may arise between the Transit Agency and a Member Agency, that arise from or are related to this Agreement and any modifications hereto (collectively, "Arbitrable Disputes"). Wherever this Agreement makes reference to any means of resolving Arbitrable Disputes among or between the Parties, and/or the Transit Agency and a Member Agency, the Parties agree to follow the meet and confer and mediation procedure described below prior to initiating any litigation to resolve the dispute. Pending the resolution of any dispute hereunder, the Transit Agency and each Party shall continue to perform or otherwise fulfill its obligations under the Agreement. For convenience, the parties to a particular dispute are referred to in this Article as the "Disputants" and may include one or more Member Agencies and /or the Transit Agency.

- a. **Opportunity to Cure.** Notwithstanding any other provision in this Agreement, no Disputant may terminate the Agreement or pursue any remedy for any breach of this Agreement without first giving the applicable Party written notice of such breach and a reasonable time, not less than thirty (30) days, within which to cure such breach.
- b. **Voluntary Resolution, Meet and Confer Obligation.** In recognition of the government-to-government relationships of the Parties, the Disputants will make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Therefore, without prejudice to the right of any Disputant to seek injunctive relief against the other(s) pursuant to this Section 10, subsection e., when circumstances are deemed to require injunctive relief, the Parties hereby establish a threshold requirement that disputes between or among the Disputants first be subject to a process of meeting and conferring in good faith in order to allow the opportunity to cure any breach of contract issue between or among the Disputants, and to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Agreement, as follows:
  - (1) Any Disputant shall give the other applicable Disputant(s), as soon as possible after the event giving rise to the concern, written notice setting forth, with specificity, the issues to be resolved. Notice shall be provided consistent with Section 11 below. Said notice shall suggest a date, time and place for the meeting. The Disputants may jointly decide to meet at another time and place; provided, however, the Disputants agree that such meeting shall commence within fifteen (15) calendar days after the date that the original

notice was given to the applicable Party, unless the Disputants agree that there is good cause to extend this time limit.

- (2) The Disputants agree that the meet and confer, including proceedings or discussions concerning the proposed meet and confer, is to be considered a confidential settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during a meet and confer by any Party or a Party's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or be admissible for any purpose, including impeachment, in any litigation or other proceeding, including mediation, involving the Disputants; provided, however, that evidence otherwise subject to discovery or otherwise admissible is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with the meet and confer.
  - (3) Absent mutual consent of the Disputants, if a noticed meeting fails to commence within the fifteen (15) calendar day period, or if a reasonable attempt to schedule or reschedule the meeting has not been made within those fifteen (15) calendar days, then the meet and confer obligation imposed under this Section shall be deemed to have been satisfied and the Disputants shall be free to pursue their rights and remedies under this Section 10, unless the reason for such failure to meet and confer is the refusal of the Party asserting a claim to participate in the meet and confer, in which event said claim will be deemed to have been waived.
  - (4) If the dispute is not resolved to the satisfaction of the Disputants within thirty (30) calendar days after the first meeting, then upon the written request of any Disputant, the dispute may be submitted to non-binding mediation in accordance with Subsection c of this section ("Mediation Request"). The disputes submitted to non-binding mediation shall be limited to claims that this Agreement has been breached by one or more Disputants or the Transit Agency.
- c. **Mediation.** In the event a dispute arising under this Agreement is not resolved through the above-described meet and confer process, then within thirty (30) days after notice is provided through a Mediation Request, the Disputants to the dispute agree to participate in non-binding mediation administered by a mediator, mutually agreed to by the Disputants, to help mediate and settle the dispute as soon as practicable. The mediation shall proceed as follows:
- (1) The mediation shall be held at a mutually agreeable location within Tulare County, California.
  - (2) The Disputants shall work together to select a single mediator, but if the Disputants cannot agree on a mediator within forty-five (45) calendar days of the Mediation Request, then each Disputant will provide the others with three (3) names of proposed mediators based on substantive and procedural knowledge, availability, and location. Each Disputant will have an opportunity to strike one (1) name from the list provided by the other Disputants and rank the remaining two (2) names 1-2, with one (1) being the most favorable. The Disputants shall then exchange lists of proposed mediators and the ranking numbers from each Disputant will be added together; the proposed mediator whose combined ranking number is the lowest, which is most favorable, will be deemed to have been chosen to serve as mediator for the particular dispute (the "Mediator"). If any Disputant

fails to act within the forty-five (45) calendar day period, then the mediator shall be appointed by Fresno, California office of the American Arbitration Association ("AAA") in accordance with applicable AAA Commercial Arbitration Rules for large, complex commercial disputes.

- (3) The Mediator shall meet with and hear presentations by the Disputants as soon as practicable after appointment.
  - (4) Mediation will be conducted consistent with California Evidence Code Sections 1115-1129, this Section 10, and, to the extent practicable, the Commercial Mediation Procedures of the American Arbitration Association ("AAA"). The Mediator shall owe a professional duty to all Disputants, and shall be barred from testifying in any litigation or arbitration concerning any information obtained or disclosed in the course of the mediation.
  - (5) Each Disputant shall bear its own costs and attorneys' fees, and an equal proportionate share of all fees and expenses of the Mediator.
  - (6) Unless otherwise agreed upon by the Disputants in writing, the mediation shall be completed within ninety (90) days of the selection of the Mediator.
  - (7) The Mediator's recommendations shall not be binding on or admissible against any Disputant. The Arbitrable Dispute shall be resolved in accordance with the litigation provisions set forth in Subsection d. below if: (1) a Disputant elects to reject the Mediator's recommendations; or (2) the Mediator does not meet with the Disputants.
  - (8) The Disputants agree that the mediation, including proceedings or discussions concerning the mediation, is to be considered a confidential settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any Disputant or a Disputant's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the Disputants; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with the mediation.
- d. **Litigation.** Following the satisfaction of the meet and confer and mediation requirements, any controversy(ies) or claim(s) arising out of or relating to this Agreement that was not resolved during the meet and confer or mediation process (as applicable) may be resolved through litigation by or among the Disputants.
- e. **Expedited Procedure for Threats to Public Safety**
- (1) **Judicial Litigation.** If any Disputant reasonably believes that another Disputant's violation of this Agreement has caused or will cause an imminent and significant threat to public health or safety, resolution of which cannot be delayed for time periods otherwise specified in this Section 10, then the complaining Disputant may proceed with judicial litigation consistent with the provisions of this Section 10.
  - (2) The Parties consent to the jurisdiction of the Tulare County Superior Court for purposes of obtaining declaratory relief and specific performance under this Subsection.

## **Section 11: Notice**

All notices required by this Agreement will be deemed to have been given when made in writing and personally delivered or mailed to the respective representatives of Parties at their respective addresses on file with the Transit Agency. Any Party may change the address to which such communications are to be given by providing the other Parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change. All notices will be effective upon receipt and will be deemed received through delivery if personally served, or on the fifth (5th) day following deposit in the mail.

#### **Section 12: No Third Party Beneficiaries and No Assignment**

This Agreement is not intended to, and will not be construed to, confer a benefit or create any right for any person or entity that is not a Party. The Parties agree that this Agreement and any of the obligations of the Parties under this Agreement may not be assigned to any third party and that no third party possesses the right or power to bring an action to enforce any of the terms of this Agreement.

#### **Section 13: Waiver**

The waiver by any Party or any of its officers, agents or employees or the failure of any other Party or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

#### **Section 14: Authorized Representatives**

The persons executing this Agreement on behalf of the Parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of their respective Parties and to bind their respective Parties to the terms and conditions of this Agreement. The persons executing this Agreement on behalf of their respective Parties understand that all Parties are relying on these representations in entering into this Agreement.

#### **Section 15: Successors in Interest**

The terms of this Agreement will be binding on all successors in interest of each Party.

#### **Section 16: Severability**

If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. The Parties shall endeavor in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, with the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision in accordance with Article IV, section 10 of this Agreement.



**Section 17: Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter, and supersedes all prior negotiations, representations, or other agreements, whether written or oral. In the event of a dispute among the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement will be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any Party to this Agreement. Headings contained in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 18: Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

**Section 19: Counterparts**

The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document. A signed copy or signed counterpart of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of a signed original or signed copy of this Agreement.

**Section 20: Manual or Electronic Signatures**

The Parties may sign this Agreement by means of manual or electronic signatures. The Parties agree that the electronic signature of a Party, whether digital or encrypted, is intended to authenticate this Agreement and to have the same force and effect as a manual signature. For purposes of this Agreement, the term “electronic signature” means any electronic sound, symbol, or process attached to or logically associated with this Agreement and executed and adopted by a Party with the intent to sign this Agreement, including facsimile, portable document format, or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17), as it may be amended from time to time.

[THIS SPACE LEFT BLANK INTENTIONALLY; SIGNATURES FOLLOW ON NEXT PAGES]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first written above.

**COUNTY OF TULARE**

By \_\_\_\_\_  
Chair, Board of Supervisors

Attest: Jason T Britt, County Administrative Of-  
ficer/Clerk of the Board of Supervisors

By \_\_\_\_\_

Approved as to Form:  
COUNTY COUNSEL

By \_\_\_\_\_  
Deputy (Matter No. 20192039)

**CITY OF TULARE**

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
Tulare City Clerk

Approved as to Form:

By \_\_\_\_\_  
Tulare City Attorney

**CITY OF EXETER**

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
Exeter City Clerk

Approved as to Form:

By \_\_\_\_\_  
Exeter City Attorney

**CITY OF FARMERSVILLE**

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
Farmersville City Clerk

Approved as to Form:

By \_\_\_\_\_  
Farmersville City Attorney

**CITY OF LINDSAY**

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
Lindsay City Clerk

Approved as to Form:

By \_\_\_\_\_  
Lindsay City Attorney

**CITY OF PORTERVILLE**

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
Porterville City Clerk

Approved as to Form:

By \_\_\_\_\_  
Porterville City Attorney

**CITY OF WOODLAKE**

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
Woodlake City Clerk

Approved as to Form:

By \_\_\_\_\_  
Woodlake City Attorney

**TULE RIVER INDIAN TRIBE**

**By** \_\_\_\_\_  
**Chairperson**

**Approved as to Form:**

**By** \_\_\_\_\_  
**Tule River Tribal Attorney**

TCRTA  
Profit Loss Statement  
FYTD February 28, 2023

| Account | Account Description                                            | FY 22-23          | Actuals            | Difference        |
|---------|----------------------------------------------------------------|-------------------|--------------------|-------------------|
| 4801    | Interest                                                       |                   | 12,604             | (12,604)          |
| 5220    | Other Revenue - SCE                                            | 800,000           |                    | 800,000           |
| 5220    | Other Revenue - SJVAPCD                                        | 400,000           |                    | 400,000           |
| 5220    | Other Revenue - AHSC                                           | 1,581,585         | 403,591            | 1,177,994         |
| 5054    | State Funds STA                                                | 3,328,956         |                    | 3,328,956         |
| 5054    | State Funds LTF                                                | 3,661,302         | 924,235            | 2,737,067         |
| 5054    | State Funds LCTOP                                              | 902,580           | 1,045,911          | (143,331)         |
| 5054    | State Funds TIRCP                                              | 9,145,877         |                    | 9,145,877         |
| 5054    | PTMISEA Dinuba Fare System                                     | 51,455            |                    | 51,455            |
| 5054    | Grants Other (SGR/SB1 Capital)                                 | 1,429,188         |                    | 1,429,188         |
| 5700    | Federal Funds 5307 (ARPA)                                      | 739,290           |                    | 739,290           |
| 5700    | Federal Funds 5307 (FTA Claims)                                | 7,835,719         |                    | 7,835,719         |
| 5700    | Federal Funds 5311 Cares Act Funding                           | 2,533,398         |                    | 2,533,398         |
| 5700    | Federal Funds 5311 (Operating)                                 | 1,258,194         |                    | 1,258,194         |
| 5700    | Federal Funds 5339 (Dinuba)                                    | 243,455           |                    | 243,455           |
| 5700    | Federal Funds 5339a                                            | 1,912,500         |                    | 1,912,500         |
| 5700    | CMAQ (STBGP)                                                   | 3,086,000         |                    | 3,086,000         |
| 5700    | CMAQ (Micro Transit)                                           | 1,471,098         |                    | 1,471,098         |
| 5700    | CMAQ (Capital)                                                 | 1,750,000         |                    | 1,750,000         |
| 5835    | HVIP                                                           | 3,012,000         |                    | 3,012,000         |
| 5835    | Advertising                                                    | 130,000           | 22,912             | 107,088           |
| 5835    | Measure R Transit Funds                                        | 3,320,000         | 1,047,500          | 2,272,500         |
| 5835    | Measure R Revenues (Other financing sources)                   | 4,445             |                    | 4,445             |
| 5835    | MR Innovation & Tech Funds                                     | 1,000,000         |                    | 1,000,000         |
| 5835    | Public Transit Passenger Fares (Micro Transit)                 | 130,000           | 114,302            | 15,698            |
| 5873    | Public Transit Passenger Fares (Regular)                       | 459,000           | 235,530            | 223,470           |
|         | <b>Total Revenues</b>                                          | <b>50,186,042</b> | <b>3,806,585</b>   | <b>46,379,457</b> |
| 7000    | Operating Supplies                                             | 1,160             | 13                 | 1,148             |
| 7005    | Communications                                                 | 107,890           | 35,883             | 72,007            |
| 7010    | Insurance                                                      | 265,133           | 138,588            | 126,545           |
| 7021    | Repair & Maintenance Facility                                  | 202,739           | 44                 | 202,695           |
| 7024    | Maintenance-Bldg. & Improvements (TCAG)                        | 50                | 0                  | 50                |
| 7036    | Office Expense                                                 | 186,940           | 72,954             | 113,986           |
| 7040    | Courier / Mail                                                 | 700               | 0                  | 700               |
| 7043    | Safety and Security                                            | 100,000           |                    | 100,000           |
| 7043    | Professional and Specialized Expense                           | 712,216           |                    | 712,216           |
| 7043    | Contractual Services                                           | 16,393,222        | 7,424,145          | 8,969,077         |
| 7059    | Publications/Dues/Memberships/ Legal Notices                   | 1,000             | 715                | 285               |
| 7062    | Rent                                                           | 11,000            | 31,810             | (20,810)          |
| 7066    | Salaries and Employee Benefits (TCAG Staff Support)            | 45,000            |                    | 45,000            |
| 7066    | Salaries and Benefits TCRTA Staff                              | 804,989           | 155,788            | 649,201           |
| 7066    | Workers' Comp Ins                                              | 3,306             |                    | 3,306             |
| 7066    | Advertising ( Outreach)                                        | 35,000            |                    | 35,000            |
| 7066    | Special Dept Expense (RMA, County Counsel & Porterville Staff) | 89,367            | 43,606             | 45,761            |
| 7073    | Transpiration, Travel & Training                               | 7,000             | 10,756             | (3,756)           |
| 7081    | Utilities                                                      | 172,000           | 48,020             | 123,980           |
| 8345    | Capital Improvement Program                                    | 30,047,330        | 14,194             | 30,033,137        |
| 8345    | Innovations & Tech                                             | 1,000,000         | 548,980            | 451,020           |
|         | <b>Total Expense</b>                                           | <b>50,186,042</b> | <b>8,525,496</b>   | <b>41,660,546</b> |
|         | <b>Net Profit(Loss)</b>                                        | <b>0</b>          | <b>(4,718,910)</b> | <b>4,718,910</b>  |



# TCRTA

Tulare County Regional Transit Agency

Tulare County Regional Transit Agency  
559.623.0450  
210 North Church Street Suite B  
Visalia, CA 93291  
[www.tularecog.org](http://www.tularecog.org)

September 15, 2022

Mr. Jason Britt, County of Tulare  
Mr. John Lollis, City of Porterville  
Mr. Marc Mondell, City of Tulare  
Mr. Luis Patlan, City of Dinuba  
Mr. Ramon Lara, City of Woodlake

## **RE: TCRTA Request for Financial Support**

County Administrator and City Manager's,

As of September 15, 2022, TCRTA has not received its expected local, state, and federal funding to pay for transit operating expenses for FY 2022-2023. However, TCRTA is expecting revenues to be accessible to the agency on or before November 1, 2022.

To maintain a positive financial position and to prevent disruption in transit service, TCRTA is requesting financial support, based on the member agency's proportional amount, for anticipated expenses from July 1, 2022, through October 31, 2022. The table below is the distribution amount based on service hours.

### Financial Support Request

| <b>Member Agency</b>    | <b>Proportional %</b> | <b>Amount</b>      |
|-------------------------|-----------------------|--------------------|
| City of Porterville     | 32%                   | \$1,600,000        |
| City of Tulare          | 30%                   | \$1,500,000        |
| County of Tulare        | 30%                   | \$1,500,000        |
| City of Dinuba          | 7%                    | \$350,000          |
| <u>City of Woodlake</u> | <u>1%</u>             | <u>\$50,000</u>    |
| <b>Total</b>            |                       | <b>\$5,000,000</b> |

In addition, TCRTA has committed to obtaining additional financial administration support from the County of Tulare, including financial software and YTD financial reports; the ability to proceed with hiring TCRTA staff; and working with member agencies to develop a reserve policy and five-year financial plan within the next six months.

Should you have any questions, please contact me directly at (559) 623-0452 or [rtree@tularecog.ca.gov](mailto:rtree@tularecog.ca.gov).

Sincerely,

*Richard I. Tree*

Richard Tree, Executive Director  
Tulare County Regional Transit Agency



## CITY COUNCIL AGENDA – SEPTEMBER 20, 2022

**SUBJECT:** Tulare County Regional Transit Agency Request for Financial Support

**SOURCE:** City Manager's Office

**COMMENT:** On August 11, 2020, the TCRTA became the established regional transit authority for the County of Tulare and the Cities of Dinuba, Exeter, Farmersville, Lindsay, Porterville, Tulare and Woodlake. During the past two years while the TCRTA was being formed and becoming a recognized transit recipient by the Federal Transit Administration (FTA), the member agencies continued to independently fund with Local Transportation Fund (LTF) and operate its transit operations.

Beginning July 1, 2022, the TCRTA assumed responsibility for funding and operating the transit operations for the member agencies. Given the TCRTA is now the recognized recipient of FTA funding on behalf of the member agencies, the payment of transit providers and associated transit expenditures are the responsibility of the TCRTA, however, the receipt of funds is by reimbursement from the FTA either annually or semi-annually. To provide sufficient cash flow for the TCRTA to fund transit operations while awaiting reimbursement from the FTA, the TCRTA sought a loan from the Tulare County Treasury, which the Treasury declined to provide funding due to the agency having been established under the County itself, though similar to the Tulare County Local Area Formation Commission (LAFCO) and the Tulare County Association of Governments (TCAG). Due to the lack of current funding, the TCRTA has been unable to pay for transit operation services rendered by the contracted transit providers since July 1, 2022, causing the significant potential for the cessation of transit services for the member agencies effective October 1, 2022.

On September 15, 2022, the County Administrative Officer and the member City Managers met in regard to this significant issue, which the recommendation of the group was for each member agency to provide financial assistance to the TCRTA equivalent to its respective service expenses. The estimated service expenses to the City of Porterville from July 1, 2022 through October 31, 2022 is \$1,600,000, which is the recommended amount in LTF funds to be transferred to the TCRTA to provide sufficient cash flow for the Agency to operate pending FTA reimbursement.

**RECOMMENDATION:** That the City Council approve the request by the Tulare County Regional Transit Agency to provide financial support for ongoing

local transit operations in the amount of \$1,600,000 in Local Transportation Funds.

ATTACHMENTS: 1. TCRTA Request for Financial Support

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager





## CITY COUNCIL AGENDA – APRIL 4, 2023

**SUBJECT:** Consider Authorization to Distribute a Request for Qualifications to Add to the List of Qualified Material Testing Firms and Annual Review by City Council

**SOURCE:** City Manager's Office

**COMMENT:** At its meeting on March 21, 2023, the City Council approved Member Meister's request that the Council consider authorization to distribute a Request for Qualifications to add to the list of qualified material testing firms and to annually review the list.

In response to a Request for Qualifications (RFQ) to develop a list of on-call materials testing and/or field observation services, at its meeting on April 5, 2022, the Council approved the selection of six firms to serve on a list for up to five years, with an initial three-year term and up to two one-year extensions. Subsequent to the Council's approval of the selected firms, one of the firms (Sequoia Valley Testing & Inspections - SVTI) laboratory was determined to be only certified in one of three quality assurance programs instead of the required minimum of two, and was therefore disqualified from the list.

Given the removal of SVTI from the on-call list and the tremendous volume of City capital projects, the Council can consider authorizing again the distribution of an RFQ to add to the list of qualified material testing firms, and can annually review the City's capital work program and determine if the list is sufficient to meet its demands.

**RECOMMENDATION:** That the City Council:

1. Consider authorization to distribute a Request for Qualifications to add to the list of qualified material testing firms; and
2. Annually review the list of qualified material testing firms.

**ATTACHMENTS:**

1. Request for Qualifications - Materials Testing Services: February 2022
2. City Council Agenda Staff Report - February 1, 2022
3. City Council Agenda Staff Report - April 5, 2022
4. Sequoia Valley Testing & Inspection Letter - May 31, 2022
5. Resolution No. 16-2001

**Appropriated/Funded:**

Review By:

Department Director:  
John Lollis, City Manager

Final Approver: John Lollis, City Manager

# CITY OF PORTERVILLE, CALIFORNIA



## REQUEST FOR QUALIFICATIONS

### Materials Testing Services

#### ON CALL SERVICES

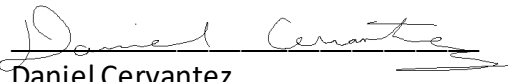
Valid for 5 Years from Date of Award

#### PREPARED BY:

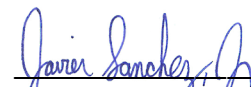
ENGINEERING & PROJECT MANAGEMENT DEPARTMENT

February 2022

REVIEWED BY:

  
Daniel Cervantez  
City Engineer

APPROVED BY:

  
Javier Sanchez, Jr.  
Eng. & Project Management Dir.

**I     Introduction and Objectives:**

The City of Porterville (hereinafter referred to as "CITY") is requesting proposals to establish a list of competent consultants to provide on-call materials testing and field observation services for multiple Capital Improvement Projects through task orders on an as-needed basis.

**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 RFP and that it is capable of performing quality work to achieve the objectives of CITY.

**III   Addenda/Clarifications:**

Any CITY changes to this RFP will be made by written addendum. No verbal modification/s shall be binding.

**IV    Proposal Requirements:**

Proposals for this project will be accepted at this office until 4:00 p.m., on Tuesday, March 8, 2022. Three (3) copies of the proposal shall be submitted in a sealed envelope, plainly marked "On-Call Materials Testing Services Proposal for the City of Porterville." Cost proposals shall not be submitted until requested by the CITY. Proposals shall be addressed to:

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

The City reserves the right to reject any and all proposals, which do not meet the requirements of this RFP 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 RFP; 2) Submitting its proposal to CITY; 3) Negotiating with CITY any matter related to this RFP 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 consultants in the preparation of proposals. Pre-contractual expenses shall not be included in the fee proposal.

**VI      Exceptions/Deviations:**

Any exceptions to the requirements of this RFP 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's 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 on-call services. Should the consultant's primary representative be unable to continue with the services, 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 the on-call services. 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 the on-call services to the satisfaction of CITY.

**VIII    Local Agency Representation:**

Daniel Cervantez, City Engineer, shall be project manager and contact person for all communications with CITY.

Fabian Mendoza, Construction Project Manager, shall be the City's alternate representative in this matter.

**IX      Insurance Requirements:**

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

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

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

**X       Indemnification:**

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

**XI      Subcontracting:**

Only those firms identified in the Contract as subcontractors or sub-consultants shall be allowed to perform work for the on-call services. 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 the on-call services contract.

**XII      Federal, State, and Local Laws:**

The consultant shall comply with all federal, state, and local laws, rules, regulations, ordinances, and statutes. Adherence to all Federal and State processes regarding preparation of geotechnical pavement investigation reports and accompanying documents shall be maintained.

**XIII      PROPOSAL EVALUATION CRITERIA:**

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

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

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

**XIV      CONSULTANT SELECTION AND INTERVIEWS:**

CITY selection committee, consisting of the Contract Administrator and at least two additional staff members familiar with the project requirements, will review all proposals and rank CONSULTANTS according to their demonstrated competence and professional qualifications as assessed by their response to this RFQ and the evaluation criteria contained in the CITY'S Consultant Selection Rating Form. The highest ranked CONSULTANT(s) may be invited for oral interviews with CITY team. Interviews, if deemed necessary by CITY, are tentatively scheduled for the third week of March 2022. Each participating firm will be contacted via telephone for verification of interview date and time. Failure to be available at the time of a scheduled interview shall be considered non-responsive and shall be cause for elimination from any further consideration. CITY reserves the right to begin negotiations and enter into a Contract without interviews or further discussion.

**XV      COST PROPOSAL:**

The cost proposal shall not be submitted until requested by the CITY. Negotiations with the top-ranked candidate(s) may begin immediately. If an agreement cannot be reached within ten (10) working days, CITY may begin negotiations with the next selected

candidate(s) and proceed. If necessary, this process will continue until either an agreement is reached or CITY elects to re-advertise for new proposals. CITY reserves the right to reject any and all proposals prior to award of a Contract. All cost proposals not opened shall be returned to their respective firms.

**XVI CONTRACTS/AGREEMENTS:**

The successful CONSULTANTS shall enter into upcoming Contracts with CITY that are based on the contents of this RFQ, the CONSULTANT's proposal, and CITY Contract. Where two or more CONSULTANTS desire to submit a single proposal (joint venture), only one CONSULTANT shall be listed as prime CONSULTANT. All others shall be listed as sub-consultants. The list of chosen on-call CONSULTANTS is expected to be presented at the City Council meeting scheduled for Tuesday, March 15, 2022, or the City Council meeting scheduled for Tuesday, April 5, 2022. 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 any CONSULTANT on the chosen on-call list, and cancel any or all portions of this RFQ and resulting Contract. CITY also reserves the right to award individual or groups of projects to different firms at the sole discretion of CITY.

**XVII COMPENSATION:**

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

**XVIII OWNERSHIP OF REPORTS AND DOCUMENTS:**

Originals of all documents, letters, drawings, design calculations, estimates, specifications, and other documents and data produced under the terms of the Contract shall become the property of CITY. CITY shall retain all rights in copyright. Copies may be made and retained by the CONSULTANT for its records,



but shall not be furnished to others without the written consent of CITY for a period of three (3) years from the date of acceptance, by CITY, of all requirements of this project.

**XIX PROPOSAL FORMAT AND CONTENT:**

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

A. Firm Experience:

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

B. Consultant Team:

Name of prime consulting firm, sub-consultant(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 sub-consultants are used, names of sub-consultant 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 sub-consultant.
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 sub-consultant(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 "On-Call Material Testing Services Consultant Qualifications and Selection Criteria"; and
- h. Exceptions to or deviations from the requirements of this RFQ, separating technical exceptions from contractual exceptions. Any alternative approach proposed by the CONSULTANT shall be thoroughly explained and shall meet the objectives of CITY.

**CITY OF PORTERVILLE**  
**REQUEST FOR QUALIFICATIONS FOR MATERIALS TESTING SERVICES – ON CALL SERVICES**

The City of Porterville (hereinafter referred to as “CITY”) is requesting proposals for On-Call Materials Testing Services and Field Observation Services for Capital Improvement projects located within Porterville, CA.

This document identifies the general project scope and procedures for Consultant

**SCOPE OF SERVICES:**

The City of Porterville is seeking the services of a qualified material testing representative and laboratory to assist in verification that appropriate materials are being utilized for Capital Improvement projects. Testing and inspection is to be completed in accordance with applicable City Standard Plans, Greenbook Specifications, Caltrans Standards, City of Porterville’s Quality Assurance Program, and project Plans and Specifications. Duties include, but are not limited to, the following:

- Reviewing Plans and Specifications for a project to become thoroughly familiar with them as they apply to the material to be inspected and field observations to be completed.
- Provide all necessary field documentation associated with the preparation of federal paperwork for compliance with the requirements of the Caltrans Local Assistance Procedures Manual.
- Field observation and compaction testing during subgrade preparation for pavement and/or concrete. Including roadway subgrade and utility trench backfill.
- Field observations and reporting of concrete placement. Concrete slump test, air-entrainment test and concrete cylinder test for curb, gutter, sidewalk, and median concrete construction. One test shall be taken by the greater of every day or every 50 cy or for every structure of concrete placed. See project manual for details and testing specifications.
- Field observation and compaction testing during all asphalt concrete paving operations.
- Batch plant inspection and sampling during the asphalt concrete production phase.
- Laboratory testing of applicable and appropriate materials used during all stages of construction including, but not limited to, extraction, stability, unit weight, gradation, maximum density test, and sand equivalent/gradation.
- Laboratory testing of concrete materials used, including but not limited to concrete compressive strength test at 7, 14 and 28 day strength.
- Material testing agents shall prepare and submit daily written reports

with copies for City staff and the job superintendent. Reports shall be emailed as a PDF to the city representative/s at [dcervantez@ci.porterville.ca.us](mailto:dcervantez@ci.porterville.ca.us) and [fmendoza@ci.porterville.c.us](mailto:fmendoza@ci.porterville.c.us)

- At the conclusion of construction, preparation of a Final Inspection Report that details a professional opinion of the inspection and testing performed shall be submitted. This report shall detail and summarize the construction activities, conditions, and results of all tests and inspections. Final inspections and testing report shall be printed and submitted to the CITY representative. Final report shall also be emailed as a PDF to the CITY representative at [dcervantez@ci.porterville.ca.us](mailto:dcervantez@ci.porterville.ca.us) and [fmendoza@ci.porterville.c.us](mailto:fmendoza@ci.porterville.c.us)

**INFORMATION PROVIDED BY CITY:**

1. Task Order/Contract for Specific Projects
2. Project plans and specifications
3. CITY Quality Assurance Program

**MEETINGS:**

The consultant shall be available to meet with the CITY team to present and discuss material testing issues, obtain feedback and coordinate any other project related issues.

**QUALITY CONTROL/QUALITY ASSURANCE:**

All submittals (calculations, reports and associated documents) shall include evidence of quality control and quality assurance (QC/QA) reviews. The Consultant will be required to submit a QC/QA program to the CITY team for review and approval. Major reviews and procedures shall be identified which are specific for this project,

**DELIVERABLES:**

At the close of the project, the consultant shall provide the City with all project related documentation including but not limited to the items listed in the scope of work (bullet items). Documents may be emailed to the CITY representative.

**SCHEDULE:**

The proposal phase schedule is as follows:

|                                                              |                                    |
|--------------------------------------------------------------|------------------------------------|
| City releases RFP for On-Call Material Testing Services..... | February 5, 2022                   |
| Consultant Proposal Due.....                                 | March 8, 2022                      |
| Consultant interviews (if deemed necessary).....             | 3 <sup>rd</sup> week of March 2022 |
| City Council awards contract.....(tentative)                 | March 15, 2022 or April 5, 2022    |
| Estimated start of On Call Services Contract.....            | Upon Council Award                 |

## **PROPOSAL EVALUATION CONSIDERATIONS**

The written proposals for services shall be evaluated on the following six categories of consideration:

**A. Project Approach and Schedule:**

Proposals will be evaluated taking the following into consideration: As presented in the proposal, does the firm seem to understand the requirements of the on-call services? Has the firm clearly presented how it would complete the on-call services? Has the firm suggested innovative ideas? Has the firm pointed out areas of concern and potential solutions based on its experience? Has the firm proposed an on-call services response schedule that meets the CITY'S needs and is achievable?

**B. Experience and-Qualifications of the Project Manager:**

Proposals will be evaluated taking the following into consideration in regards to experience and qualifications of the Project Manager: Does the proposal indicate that the Project Manager has the necessary experience? Does the Project Manager possess other qualifications valuable for this project?

**C. Experience of the Firm and other project Team Members:**

Proposals will be evaluated taking the following into consideration in regards to experience and qualifications of the Firm and Team Members: Does the proposal indicate that the firm and, more particularly, the other team members have the necessary experience and certifications for their designated project task?

**D. Time Commitment of Key Staff:**

The time commitment of key staff will be evaluated taking the following into consideration: How many man-hours are key staff committing to the project/s? Are they or junior staff doing a significant amount of the work? Do the proposal properly assign staff based on the complexity of the tasks that may be warranted on different project types? I.e., a complex study will require a greater percentage of key or senior staff time than a less complex project.

**E. Record of Success on Recent Similar Projects:**

The record of success of a firm will be evaluated based on the references provided in the proposal and the following details garnered from those contacts: In communicating with other agencies for whom the proposing firm and project team have worked, have they completed similar on-call services on time and on budget? Has the project manager been able to work successfully with other clients? Would the references use the firm or project manager again?

### **PROPOSED EVALUATION PROCESS:**

The City of Porterville Consultant Selection Rating Form shall be used to evaluate the proposals in addition to the items stated above. Additional consideration shall be given to the firms based upon experience in years and certifications of individuals performing tests.

The proposals will be reviewed by a committee of City staff. The committee will consist of the Project Manager under whom the work will be funded, and other City staff as directed by the Engineering and Project Management Director.

An example Consultant Selection Rating Form follows. Each reviewer will independently evaluate each proposal. The reviewers will compare and discuss their evaluations. The evaluation score of each firm will be the combined score of the reviewers.

The proposing firms will be ranked using the above process, without consideration of the on-call services fee. This is accomplished by fees only being submitted for negotiation once an individual/firm has been identified as qualified for the on-call list. Staff will review the evaluation score and the proposed fee for each of the identified firms and present these with a recommendation to the City Council.

| CONSULTANT SELECTION RATING FORM |                                                                                                                                                                                    |                   |                                                                                     |       |       |       |      |
|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-------------------------------------------------------------------------------------|-------|-------|-------|------|
| Project Name:<br>Project Number: | Date:<br><br>                                                                                                                                                                      | Evaluation Factor | Rating Factor<br>Numerical Range &<br>Weighting Based on<br>Importance of<br>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 25<sup>th</sup> 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 (\$2,000,000) per occurrence; and
- (iii) Errors and Omissions insurance of One Million Dollars (\$2,000,000) 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 (\$2,000,000) 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 hold harmless, release and indemnify the CITY against any liability for damages, including but not limited to liabilities for personal injury or death or for loss or damage to property, caused by the negligence of CONSULTANT or any of its employees or agents, or CONSULTANT'S negligent activities related to the terms and conditions of or implementation of this Agreement. "Consultant has no obligation to pay for any of the City's defense related cost prior to a final determination of liability, but will reimburse the City for those costs, and Consultant has no obligation to pay any amount that exceeds Consultant's finally determined percentage of liability based upon the comparative fault of Consultant."***

#### **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 \_\_\_\_\_

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

(For Local Assistance Federal-aid Projects)

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

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

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

**TABLE OF CONTENTS**

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

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

## ARTICLE I INTRODUCTION

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

The name of the "CONSULTANT" is as follows:

(NAME OF CONSULTANT)

Incorporated in the State of (NAME OF STATE)

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

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

(NAME)

The Contract Administrator for LOCAL AGENCY will be (NAME)

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated (DATE). The approved CONSULTANT's Cost Proposal is attached hereto (Attachment #) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

## ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

*(Choose either Option 1 or Option 2)*

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

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

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

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



**ARTICLE III STATEMENT OF WORK**

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

**A. CONSULTANT Services**

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

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

**B. Right of Way**

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

**C. Surveys**

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

**D. Subsurface Investigations**

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

**E. Local Agency Obligations**

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

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

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

**G. Checking Shop Drawings**

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

**H. CONSULTANT Services During Construction**

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

I. Documentation and Schedules

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

J. Deliverables and Number of Copies

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

#### ARTICLE IV PERFORMANCE PERIOD

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

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

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

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

C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five (5) years.

#### ARTICLE V ALLOWABLE COSTS AND PAYMENTS

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

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

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

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

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

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

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

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

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

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

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.

- D. After a project to be performed under this AGREEMENT is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

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

- F. *(Local Agency to include either (a) or (b) below; delete the other one)*  
(a) Reimbursement for transportation and subsistence costs shall not exceed State rates.  
(b) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
- K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination

of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

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

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

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

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article III Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT

number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

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

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

## ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

## ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.



## ARTICLE VIII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

## ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit



recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

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

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
  3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
  4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

**ARTICLE X SUBCONTRACTING**

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.
- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.
- F. Prompt Progress Payment

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

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

- G. Prompt Payment of Withheld Funds to Subconsultants

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

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

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

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

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

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

## ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.

- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
  2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

## ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be

verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- a. The information contained in the payroll record is true and correct.
  - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
- a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
  - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
  - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.

**F. Penalty**

1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
  - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
  - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
  - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.

6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

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

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

## ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.

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

#### **ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

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

#### **ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

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

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
  2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.



**ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

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

## ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
  1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  3. Does not have a proposed debarment pending; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

## ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. CONSULTANT, subrecipient (LOCAL AGENCY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify [at date of proposal opening](#) that the DBE firm is certified as [a DBE by using the California Unified Certification Program \(CUCP\) database and possesses the most specific available North American Industry Classification System \(NAICS\) codes or work code applicable to the type of work the firm will perform on the contract](#). Additionally, the CONSULTANT is [responsible to](#) document the [verification](#) record by printing out the CUCP data for each DBE firm. A

list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTs who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is \_\_\_\_\_%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-O2: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance

Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

#### E. Termination and Substitution of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the LOCAL AGENCY's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.

The LOCAL AGENCY authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONSULTANT and the LOCAL AGENCY of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

## F. Commitment and Utilization

The LOCAL AGENCY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subconsultant
  - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the LOCAL AGENCY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the LOCAL AGENCY within 90 days of contract acceptance. The LOCAL AGENCY will withhold \$10,000 until the form is submitted. The LOCAL AGENCY will release the withhold upon submission of the completed form.

In the LOCAL AGENCY's reports of DBE participation to Caltrans, the LOCAL AGENCY must display both commitments and attainments.

- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of

DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10<sup>th</sup> of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the Agency.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

## ARTICLE XIX INSURANCE

*(Choose either Option 1 or Option 2)*

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

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

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

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

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

## **ARTICLE XX FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

## **ARTICLE XXI CHANGE IN TERMS**

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

## **ARTICLE XXII CONTINGENT FEE**

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide

established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

## ARTICLE XXIII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

*(Choose either Option 1 or Option 2)*

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

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

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

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

## ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

## ARTICLE XXV SAFETY

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



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

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

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

#### **ARTICLE XXVI OWNERSHIP OF DATA**

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

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

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

- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

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

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.

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

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

#### **ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

## ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

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

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

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

## ARTICLE XXXII TITLE VI ASSURANCES

### APPENDICES A - E of the TITLE VI ASSURANCES

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

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

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

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

### APPENDIX A

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

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

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

## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

#### (HABENDUM CLAUSE)

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

## APPENDIX C

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

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

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

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

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

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

#### **APPENDIX D**

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

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

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

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

## APPENDIX E

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

### Pertinent Non-Discrimination Authorities:

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

**ARTICLE XXXIII NOTIFICATION**

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

CONSULTANT:

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

LOCAL AGENCY:

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

**ARTICLE XXXIV CONTRACT**

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

**ARTICLE XXXV SIGNATURES**

(Name of LOCAL AGENCY)

(Name of CONSULTANT)

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

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

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

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



Reset Form

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

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

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

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

Consultant \_\_\_\_\_

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

**DIRECT LABOR**

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

**LABOR COSTS**

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

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

c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]** \_\_\_\_\_ \$ 0.00**INDIRECT COSTS**d) Fringe Benefits (Rate: 0.00% ) e) Total Fringe Benefits [(c) x (d)] \_\_\_\_\_ \$ 0.00f) Overhead (Rate: 0.00% ) g) Overhead [(c) x (f)] \_\_\_\_\_ \$ 0.00h) General and Administrative (Rate: 0.00% ) i) Gen & Admin [(c) x (h)] \_\_\_\_\_ \$ 0.00j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]** \_\_\_\_\_ \$ 0.00**FIXED FEE**k) **TOTAL FIXED FEE [(c) + (j)] x fixed fee 0.00% ]** \_\_\_\_\_ \$ 0.00**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)**

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

l) **TOTAL OTHER DIRECT COSTS** \_\_\_\_\_ \$ 0.00**m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

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

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

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

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

m) **TOTAL SUBCONSULTANTS' COSTS** \_\_\_\_\_ \$ 0.00n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]** \_\_\_\_\_ \$ 0.00**TOTAL COST [(c) + (j) + (k) + (n)]** \_\_\_\_\_ \$ 0.00**NOTES:**

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

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

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

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

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

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

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

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

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

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

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

**NOTES:**

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

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

**Certification of Direct Costs:**

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

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

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

**Prime Consultant or Subconsultant Certifying:**

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

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

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

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

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

List services the consultant is providing under the proposed contract:

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

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

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

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

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

## BILLING INFORMATION

## CALCULATION INFORMATION

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

(Add pages as necessary)

## NOTES:

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

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

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

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

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

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

Note: Add additional pages if necessary.

## NOTES:

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

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

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

**Certification of Direct Costs:**

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

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

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

**Prime Consultant or Subconsultant Certifying:**

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

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

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

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

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

List services the consultant is providing under the proposed contract:

|  |
|--|
|  |
|--|

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

Note: Mark-ups are Not Allowed

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

Consultant \_\_\_\_\_

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

**Unit/Item of Work:**

(Example: Log of Test Boring for Soils Report, or ADL Testing for Hazardous Waste Material Study) Include as many Items as necessary.

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

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

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

Note: Attach additional pages if necessary.

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

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



**EXHIBIT 10-H3 COST PROPOSAL** Page 2 of 2

**Certification of Direct Costs:**

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

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

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

**Prime Consultant or Subconsultant Certifying:**

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

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

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

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

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

List services the consultant is providing under the proposed contract:

|  |
|--|
|  |
|--|



## CITY COUNCIL AGENDA – FEBRUARY 1, 2022

**SUBJECT:** Authorization to Distribute Request for Qualifications - Materials Testing

**SOURCE:** Engineering and Project Management

**COMMENT:** Almost all capital improvement projects administered by the City require materials testing and/or field observation services by individuals and/or firms specifically certified to conduct said services. There are times when the full extent of the types or extent of these services needed on a project may change based on the conditions found once construction begins.

In an effort to expedite the process of procuring materials testing and field observation services for each project when needed and to provide flexibility in this process when unknown conditions are discovered, staff has prepared a Request for Qualifications (RFQ) for these services in order to develop an on-call list of qualified professionals and/firms that staff can readily utilize. Individuals and/or firms interested in providing materials testing field observation services shall submit a statement of qualifications that complies with the RFQ that will be rated by a selection panel. Qualified individuals/firms will be asked to submit a fee schedule for their services.

Staff will present the proposed list of individuals/firms for final Council approval once staff review is complete.

**RECOMMENDATION:** That City Council authorize staff to distribute a Request for Qualifications for On-Call Materials Testing.

**ATTACHMENTS:** 1. Draft Request for Qualifications

**Appropriated/Funded:**

**Review By:**

Department Director:  
Javier Sanchez, Engineering & Project Management Director

Final Approver: John Lollis, City Manager



## CITY COUNCIL AGENDA – APRIL 5, 2022

**SUBJECT:** Selection of On-Call Materials Testing Consultants

**SOURCE:** Engineering and Project Management

**COMMENT:** At its meeting on February 1, 2022, the City Council authorized the distribution of a Request for Qualifications (RFQ) to develop an on-call list for materials testing and/or field observation services. On March 8, 2022, staff received nine (9) Statements of Qualifications (SOQs) by the 4:00 pm deadline for consideration in the creation of the on-call materials testing and/or field observation services list. A tenth SOQ was received at 4:22 pm, after the noticed deadline, and, as such, is excluded from review and ranking. The SOQs were ranked in accordance with the "Policy for Selecting Consultants to Provide Architectural, Engineering, and Similar Services" adopted by the City Council (Resolution #16-2001). The proposed contract has a term of up to five (5) years; an initial three (3) years with two (2) possible one-year extensions. Staff reviewed the nine (9) SOQs provided by the firms wherein they were rated according to the aforementioned policy, with the following results:

|                                                 |          |
|-------------------------------------------------|----------|
| (1) BSK Associates                              | 88.6 pts |
| (2) Soils Engineering, Inc (SEI)                | 88.0 pts |
| (3) Krazan & Associates, Inc                    | 85.1 pts |
| (4) Universal Engineering Sciences              | 81.6 pts |
| (5) RMA GeoScience                              | 82.1 pts |
| (6) Sequoia Valley Testing & Inspections (SVTI) | 80.3 pts |
| (7) Smith-Emery                                 | 78.9 pts |
| (8) DC Inspections, Inc                         | 77.6 pts |
| (9) Achievement Engineering Corp.               | 70.2 pts |

Staff is pleased with the level of interest in this RFQ and the quality of the SOQs received. Staff recommends negotiating a contract with the six (6) top-ranked firms (those receiving a score of 80.0 or higher) identified in the ranking above as BSK Associates, Soils Engineering, Inc (SEI), Krazan & Associates, Inc, Universal Engineering Sciences, RMA GeoScience, and Sequoia Valley Testing & Inspections (SVTI).

**RECOMMENDATION:** That the City Council:

1. Authorize staff to negotiate on-call contracts with BSK Associates, Soils Engineering, Inc (SEI), Krazan & Associates, Inc, Universal Engineering Sciences, RMA GeoScience, and Sequoia Valley Testing & Inspections (SVTI);
2. Authorize the Mayor to sign contract agreements;
3. Authorize the Engineering & Project Management Director to sign

task orders; and

4. Authorize staff to make payments up to 100% upon satisfactory completion of tasks.

ATTACHMENTS:                    1.     Resolution No. 16-2001

Appropriated/Funded:

Review By:

Department Director:

Javier Sanchez, Engineering & Project Management Director

Final Approver: Patrice Hildreth, Deputy City Manager



**Engineering & Project  
Management Department**

May 31, 2022

Sequoia Valley Testing & Inspections (SVTI)  
Attention: Roger Pereda  
1279 W Henderson Avenue, #299  
Porterville, CA 93257

Subject: On-Call Materials Testing Services Request for Qualifications (RFQ)

Mr. Pereda:

Thank you for your interest in the City of Porterville's "On-Call Materials Testing Services". This letter is to inform you that City staff has reviewed and rated your submitted response to the RFQ and, while it scored very high during review, we are unable to include your firm on our On-Call List for Materials Testing. The City's Quality Assurance Program requires laboratories to participate in at least two (2) of the following: AASHTO Materials Reference Laboratory (AMRL), Cement and Concrete Reference Laboratory (CCRL), and Caltran's Reference Samples Program (RSP). Upon review it was determined that your laboratory only participates in one (1) of the three.

We sincerely appreciate the time and effort that went into your proposal and hope that you will respond to future qualification requests in the future. Please let us know if you have any questions.

Sincerely,

ENGINEERING & PROJECT MANAGEMENT DEPARTMENT  
Javier Sanchez Jr, Engineering & Project Management Director

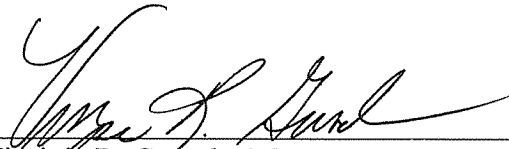
RESOLUTION NO. 16-2001

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
AMENDING THE GUIDELINES FOR RETAINING CONSULTANTS TO  
PROVIDE ARCHITECTURAL AND ENGINEERING SERVICES AS SET FORTH  
IN THE PURCHASING POLICY AND PROCEDURES MANUAL IN  
COMPLIANCE WITH SENATE BILL 2034

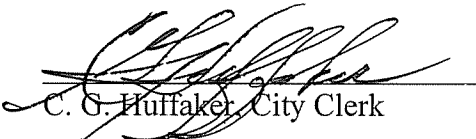
WHEREAS, on November 15, 1988 the City Council of the City of Porterville adopted City Council Resolution 118-88 authorizing staff to amend the Purchasing Policy and Procedures Manual to comply with Senate Bill 2034 by establishing guidelines for retaining consultants to provide architectural and engineering services; and

WHEREAS, different guidelines were established for three levels of anticipated fee. In the Informal Selection Process, staff would select the consultant and enter into the agreement. In the Semiformal and Formal Selection Processes, the consultant would be selected by a committee and the contract awarded by the Council, using guidelines and rating form provided by the seven—member municipal engineering committee of the American Public Works Association;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville that the Formal Selection Process shall be amended as set forth in the Guidelines For Retaining Consultants to Provide Architectural And Engineering Services which is attached hereto, along with the rating form, and made a part of this resolution.

  
\_\_\_\_\_  
Virginia R. Garrola, Mayor

ATTEST:

  
\_\_\_\_\_  
C. G. Huffaker, City Clerk

CITY OF PORTERVILLE  
GUIDELINES FOR RETAINING CONSULTANTS TO PROVIDE  
ARCHITECTURAL AND ENGINEERING SERVICES

Introduction

The variety, complexity, size, and quantity of annual projects required of the City justifies an efficient procurement effort. These guidelines have been developed to establish the City's policy for selection of consultants for architectural and engineering services. Separate guidelines are hereby established for three levels of anticipated fee:

Informal Selection Process: Anticipated fees less than \$25,000.

Semiformal Selection Process: Anticipated fees from \$25,000 to \$100,000.

Formal Selection Process: Anticipated fees over \$100,000.

It is the City's intent to limit submittals by interested firms. It is believed that this is in everyone's best interest and allows for more equal competition between small and medium size firms and large firms that have substantial overhead or PR budgets. The architect/engineer is expected to extend costs and effort in applying for consideration without any guarantee of success. The City is interested in seeking broad competition and encouraging extensive participation. It is therefore incumbent upon the City to minimize the information and effort required to institute a short list. This would encourage greater participation, reduce cost to both the City and the consultant, reduce selection time, and increase the responsiveness of the selection process.

In order to promote fairness and objectivity in evaluating consultants, a rating form has been developed. Consultants shall be evaluated and rated in accordance with the contents of the City's 'Consultant Selection Rating Form' (Form GFRC-1, dated 11-1-88, as amended).

Informal Selection Process (Anticipated fees less than \$25,000)

- A. The highest ranking registered Engineer or Architect in charge of the project shall select a Consultant based on the applicable criteria in the Consultant Selection Rating Form. The Consultant will be selected from a list maintained by the Engineering Division. New consulting firms are encouraged to make their capabilities known to the City. Selection of consultants by this method will be made on a rotational basis insofar as practicable; however, professional expertise and experience in the applicable field will be the major criteria for selection on any project.
- B. The Director of Community Development & Services is authorized, by adoption of these guidelines, to execute professional services contracts under \$25,000.

Semiformal Process (Anticipated fees between \$25,000 and \$100,000)

- A. The Director of Community Development & Services (or his designee) will notify the professional community through advertisement in a newspaper or by other means, of the City's proposed project and its need for professional services. Interested consultants will be invited to obtain a request for proposals (RFP) from the City.
- B. The RFP will contain a brief description of the project, the estimated budget and selection criteria.
- C. Interested consulting firms will be told what is expected to be in their submittal.
- D. The Director of Community Development & Services (or his designee) shall develop a short list of at least three (3) firms who appear to have the desired professional expertise, experience, and capacity. These firms selected shall be invited to an interview to be conducted by a three (3) member staff committee. Said committee will consist of the director, the highest ranking engineer or architect in charge of the project and one other staff member. Prior to the interview, firms will be asked to prepare a presentation that develops their approach to the project.
- E. The professional services contract will be awarded by City Council.

Formal Selection Process (anticipated fees over \$100,000)

- A. The Director of Community Development & Services (or his or her designees) will notify the professional community through advertisement in a newspaper or by other means, of the City's proposed project and its need for professional services. Interested consultants will be invited to obtain a request for proposals (RFP) from the City.
- B. The RFP will contain a description of the work to be done, the estimated project budget and other pertinent information regarding the project. The RFP will define the specific questions to be addressed in the proposal and selection criteria to be used.
- C. The consulting firm will be told what specific information should be contained in their written proposal. Question responses regarding the firms technical perspective of the project are to be strictly limited to brief statements addressing consultants general concepts and approach to the project. Detailed, voluminous design information is not desired and will not be considered in the selection process.
- D. A short list of at least three (3) firms whenever possible shall be developed under the direction of the Dept. Head who is responsible for the project.
- E. Those consultants short listed will be formally invited to make presentations before a formal selection committee. All interviews will be conducted by the same people and be completed in one day. Consultant may be limited on participants allowed at the interview, based on the size and complexity of the project.



- F. The formal selection committee shall be composed of three (3) members. The formal selection committee is as follows:
- (\*) One - Professional from the private or public sector with specific knowledge in the field required of the consultant;
  - (\*) Two - City Council members rotated per interview appointed by the Mayor;
  - (\*) One - City staff person appointed by the Dept. Head under whose service the work will be performed. No City staff shall participate in the rating of the consultants, other than to advise the committee upon request and assist in the tabulation of the results for ranking purposes.
- G. Staff will assist in selecting the private sector professional.
- H. Authorization for staff to negotiate a professional service contract requires City Council approval.

STATE OF CALIFORNIA)  
(SS  
COUNTY OF TULARE )

I, C. G. HUFFAKER, 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 a resolution duly and regularly passed and adopted by the Council of the City of Porterville at a regular meeting of the Porterville City Council regularly called and held on the 6th day of February, 2001.

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

| Councilmen: | IRISH | WOODS | WILSON | LEAVITT | GURROLA |
|-------------|-------|-------|--------|---------|---------|
| AYES:       | X     | X     | X      | X       | X       |
| NOES:       |       |       |        |         |         |
| ABSENT:     |       |       |        |         |         |
| ABSTAIN:    |       |       |        |         |         |

C. G. HUFFAKER, City Clerk

By Georgia Hawley  
Georgia Hawley, Deputy City Clerk



## CITY COUNCIL AGENDA – APRIL 4, 2023

SUBJECT: Status and Review of Declaration of Local Flood Emergency

SOURCE: Administrative Services

COMMENT: On March 13, 2023, Mayor Martha A. Flores in conjunction with the Acting City Manager Patrice Hildreth declared the existence of a local emergency within the City of Porterville. Said Declaration was made pursuant to Chapter 9 of the Porterville Municipal Code, and in response to the increasing threat to life and property in the city caused by a series of storm systems striking California and in particular the Porterville area, impacting Success Lake and significantly increasing flows of the Tule River. Pursuant to the California Emergency Services Act (California Government Code 8558 et seq.), emergency declarations must be ratified by the governing body within seven days of being declared. At its Special Meeting on March 17, 2023, the City Council acted to ratify the Declaration of Local Emergency. The Act also requires that the emergency declaration be renewed every sixty (60) days to remain in effect.

On March 10, 2023, due to the volume of water added to Success Lake from significant storm activity, Tulare County Sheriff Mike Bourdreaux issued an Evacuation Warning for both the north and south sides of the Tule River, and the Tulare County Office of Emergency Services (TCOES) established a Temporary Evacuation Point (TEP) and Emergency Shelter in the gymnasium at Porterville College.

On March 15, 2023, due to the water level of Success Lake rising to the point of running over the spillway of the Richard L. Schafer Dam, Sheriff Boudreaux issued a Mandatory Evacuation Order for the residences, businesses and structures between Schafer Dam and Road 284, east of the city of Porterville.

On March 18, 2023, due to water levels dropping on the Tule River, Sheriff Boudreaux reduced the Mandatory Evacuation Order back to an Evacuation Warning.

On March 15, 2023, due to rising flood waters, Sheriff Boudreaux issued a Mandatory Evacuation Order for the area between Olive Avenue (Avenue 152) to Avenue 144 and the Friant-Kern Canal and the Tule River and Westwood Street, west of the city of Porterville. On March 25, 2023, Sheriff Boudreaux reduced the Mandatory Evacuation Order back to an Evacuation Warning.

On March 15, 2023, due to rising water levels of the Tule River, City Public Works Department staff took extraordinary measures to protect the neighborhood north of River Springs Drive, avoiding potentially catastrophic

flooding of the area.

On March 16, 2023, due to the historic water levels and flows of the Tule River causing erosion to the river banks, Police Chief Jake Castellow issued a Mandatory Evacuation Order for eight residences along Rio Vista Avenue, providing information on the TEP and Emergency Shelter established at Porterville College. City Public Works Department staff took extraordinary measures over the next several days to mitigate and protect the river banks from affecting the residences. On March 24, 2023, Chief Castellow reduced the Mandatory Evacuation Order of the eight residences back to an Evacuation Warning.

On March 19, 2023, due to continued erosion of the banks of the Tule River and the performance of immediate necessary mitigation efforts by Public Works Department personnel, Chief Castellow issued a Mandatory Evacuation Order for both the north and south banks of the Tule River within City limits (not including permanent structures with a designated address), and provided information on the TEP and Emergency Shelter established at Porterville College. Public Works Department continue to work diligently in shoring the banks of the Tule River.

To accommodate upcoming ceremonies and events in the gymnasium at Porterville College, the City is aware that the County intends to close the TEP and Emergency Shelter at the College by no later than April 11, 2023, though no new TEP and Emergency Shelter has yet been identified.

The significant threat of local emergency continues to exist with the estimated over three hundred percent (300%) of normal snow pack in the Sierra Nevada mountains and the potential for a warm storm or heat wave this Spring to again inundate the Tule River, described as a "loaded locomotive at the top of the hill." A presentation prepared by the National Weather Service reflects approximately five million acre feet of stored water in the current snow pack above the capacity of reservoir storage.

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. Declaration of Local Emergency - March 13, 2023
2. Resolution No. 11-2023
3. Rio Vista Avenue Mandatory Evacuation Order - March 16, 2023
4. Tule River Banks Mandatory Evacuation Order - March 19, 2023
5. National Weather Service - 2023 Tulare Flooding Incident Update - March 27, 2023
6. Municipal Code Chapter 9 - Civil Defense and Disaster
7. California Government Code 8558

Appropriated/Funded:

Review By:

Department Director:  
Patrice Hildreth, Deputy City Manager

Final Approver: John Lollis, City Manager



## DECLARATION OF LOCAL EMERGENCY

**WHEREAS**, severe winter storm systems have struck California and in particular, the Porterville area, beginning in late February and continuing into March bringing damaging winds and historic precipitation, including rainfall in the Southern Sierra Nevada mountains already impacted by above-normal snow levels; and

**WHEREAS**, it is forecasted that additional storms will continue to threaten the Porterville area, bringing additional rain, significantly impacting Lake Success which is above capacity, and significantly increasing flows in the Tule River; and

**WHEREAS**, under the provisions of the City Charter, I find that conditions of extreme peril to the safety of persons and property exist due to these storms; and

**WHEREAS**, I find that the conditions caused by these storms, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the City of Porterville and may require the combined forces of mutual aid and/or unified command to appropriately respond.

**NOW, THEREFORE, I, MARTHA A. FLORES**, Mayor of the City of Porterville, in accordance with the authority vested in me by the Porterville City Charter, **HEREBY DELCARE A LOCAL EMERGENCY** to exist in the City of Porterville.

**IT IS HEREBY ORDERED** that the City's Emergency Management Team under the direction of Fire Chief/Incident Commander Bryan Cogburn has the authority to procure any and all resources deemed necessary in this event.

DECLARED, this 13<sup>th</sup> day of March, 2023.

Martha A. Flores, Mayor

ATTEST:

  
Patrice Hildreth, Chief Deputy City Clerk

RESOLUTION NO. 11 -2023

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF PORTERVILLE CONFIRMING THE EXISTENCE  
OF A LOCAL EMERGENCY

WHEREAS, Chapter 9 of the Porterville Municipal Code of the City of Porterville provides for the ability to declare the existence or threatened existence of a local emergency when the City is affected or likely to be affected by a public calamity; and

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen within the City of Porterville caused by severe winter storm systems striking California, and in particular the Porterville area, beginning in late February and continuing into March bringing damaging winds and historic precipitation, including rainfall in the Southern Sierra Nevada mountains already impacted by above-normal snow levels; and

WHEREAS, it is forecasted that additional storms will continue to threaten the Porterville area, bringing additional rain, significantly impacting Lake Success which is above capacity, and significantly increasing flows in the Tule River that create or will likely create conditions of extreme peril; and

WHEREAS, Mayor Martha A. Flores in conjunction with City Manager John Lollis did declare the existence of a local emergency within the City of Porterville on the 13<sup>th</sup> day of March, 2023, which is subject to ratification by the City Council within seven (7) days. A copy of said Declaration is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby find that the aforesaid conditions of extreme peril did warrant and necessitate the declaration of the existence of a local emergency; and

BE IT RESOLVED that said local emergency shall be deemed to continue to exist until termination is proclaimed by the City Council of the City of Porterville, State of California.

PASSED, APPROVED AND ADOPTED this 17<sup>th</sup> day of March, 2023.



Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk



By: Patrice Hildreth, Chief Deputy City Clerk





## DECLARATION OF LOCAL EMERGENCY

**WHEREAS**, severe winter storm systems have struck California and in particular, the Porterville area, beginning in late February and continuing into March bringing damaging winds and historic precipitation, including rainfall in the Southern Sierra Nevada mountains already impacted by above-normal snow levels; and

**WHEREAS**, it is forecasted that additional storms will continue to threaten the Porterville area, bringing additional rain, significantly impacting Lake Success which is above capacity, and significantly increasing flows in the Tule River; and

**WHEREAS**, under the provisions of the City Charter, I find that conditions of extreme peril to the safety of persons and property exist due to these storms; and

**WHEREAS**, I find that the conditions caused by these storms, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the City of Porterville and may require the combined forces of mutual aid and/or unified command to appropriately respond.

**NOW, THEREFORE, I, MARTHA A. FLORES**, Mayor of the City of Porterville, in accordance with the authority vested in me by the Porterville City Charter, **HEREBY DELCARE A LOCAL EMERGENCY** to exist in the City of Porterville.

**IT IS HEREBY ORDERED** that the City's Emergency Management Team under the direction of Fire Chief/Incident Commander Bryan Cogburn has the authority to procure any and all resources deemed necessary in this event.

DECLARED, this 13<sup>th</sup> day of March, 2023.

Martha A. Flores, Mayor

ATTEST:

Patrice Hildreth, Chief Deputy City Clerk



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

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 17<sup>th</sup> day of March, 2023.

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

|          |        |          |           |         |         |
|----------|--------|----------|-----------|---------|---------|
| Council: | FLORES | CARRILLO | WEYHRAUCH | BELTRAN | MEISTER |
| AYES:    | X      | X        | X         | X       | X       |
| NOES:    |        |          |           |         |         |
| ABSTAIN: |        |          |           |         |         |
| ABSENT:  |        |          |           |         |         |



JOHN D. LOLLIS, City Clerk

By:

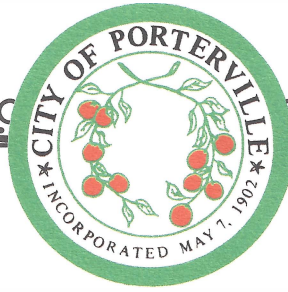
Fernando Gabriel-Moraga, Deputy City Clerk

## Police Department

350 North "D" Street  
Porterville, CA 93257  
(559) 782-7400/FAX (559) 784-1070  
www.PortervillePolice.com

**Jake Castellow**

Chief of Police



March 16th, 2023

This is a message from Tulare County & the City of Porterville. Due to the recent storm events, and the water levels in the Tule River, there is erosion to the bank of the river. An Evacuation order has been issued for all residences, businesses, and structures that are on the south side of Rio Vista Ave with the addresses of **191 Rio Vista Avenue, 201 Rio Vista Avenue, 211 Rio Vista Avenue, 221 Rio Vista Avenue, 231 Rio Vista Avenue, 241 Rio Vista Avenue, and 245 Rio Vista Avenue.**

An evacuation order, also known as a mandatory evacuation, means that all residents and visitors should **leave now** before the water causes unsafe conditions for the residence. If you are unable to evacuate and require assistance, please call 9-1-1. For additional resources or information, please call 2-1-1. Please refer to the map on the Tulare County website, emergencies page, at [TulareCounty.CA.gov/emergencies](https://TulareCounty.CA.gov/emergencies).

A Temporary Evacuation point has been set up at Porterville College, 100 E College Avenue. Thank you.

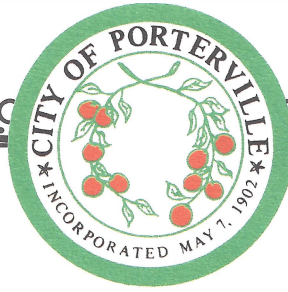
Jake Castellow  
Chief of Police

## Police Department

350 North "D" Street  
Porterville, CA 93257  
(559) 782-7400/FAX (559) 784-1070  
www.PortervillePolice.com

**Jake Castellow**

Chief of Police



March 19, 2023

This is a message from Tulare County & the City of Porterville. Due to the recent storm events, there is erosion to the banks of the Tule River.

An **Evacuation Order** has been issued for the north bank and south bank of the Tule River, from Westwood Street, to the Plano bridge, but does not include the south bank from Westwood Street, east to the bridge of State Route 65. This evacuation order does not include permanent structures with a designated address, other than those for which a previous evacuation order has been issued.

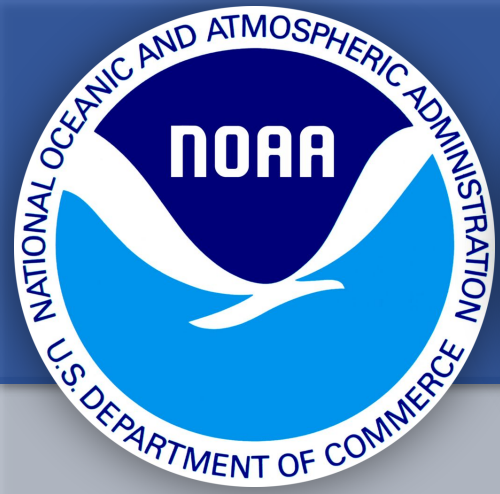
An evacuation order, also known as a mandatory evacuation, means that all residents and visitors should leave immediately due to the unsafe conditions of the river banks. If you are unable to evacuate and require assistance, please call 9-1-1. For additional resources or information, please call 2-1-1. Please refer to the map on the Tulare County website, emergencies page, at [TulareCounty.CA.gov/emergencies](https://TulareCounty.CA.gov/emergencies).

A Temporary Evacuation point has been set up at Porterville College, 100 E College Avenue.

Jake Castellow

Chief of Police





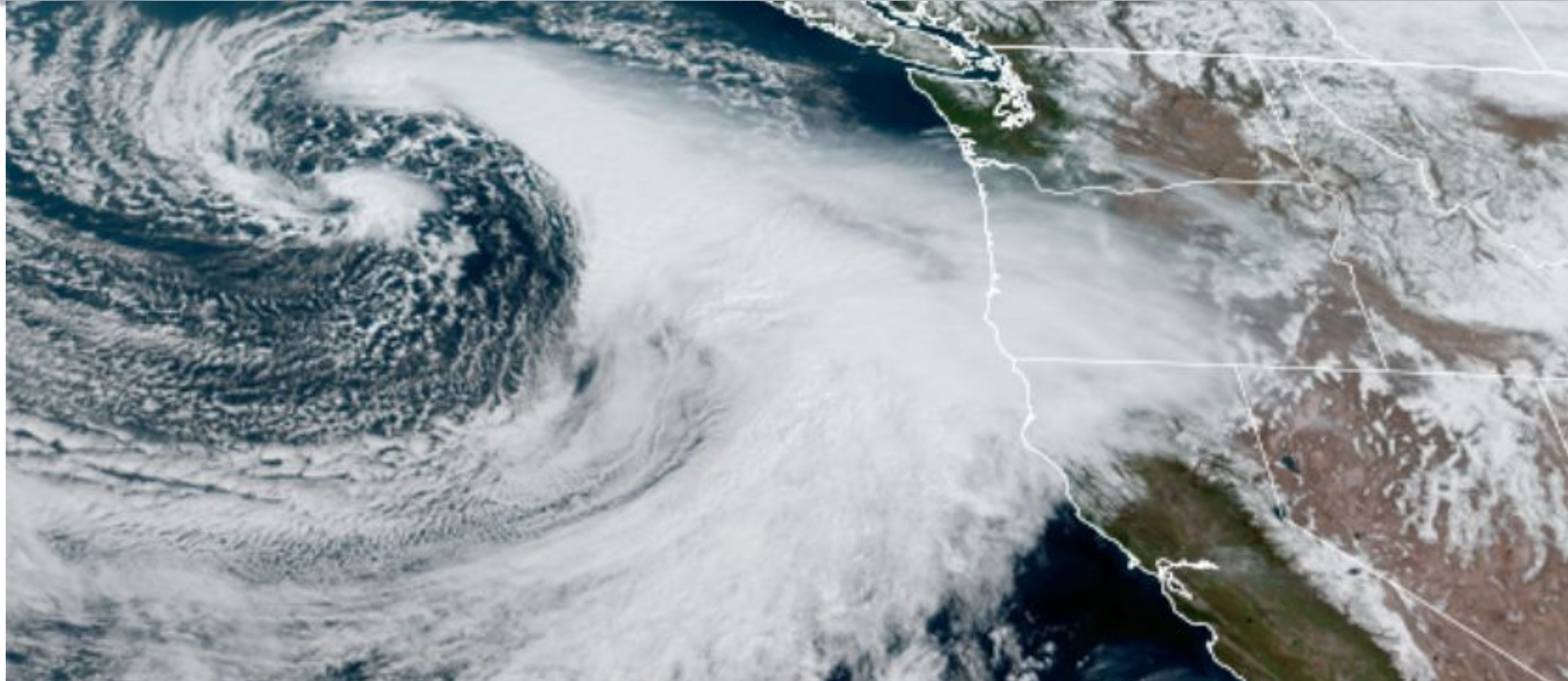
# 2023 Tulare Flooding Incident

Weather Forecast Office

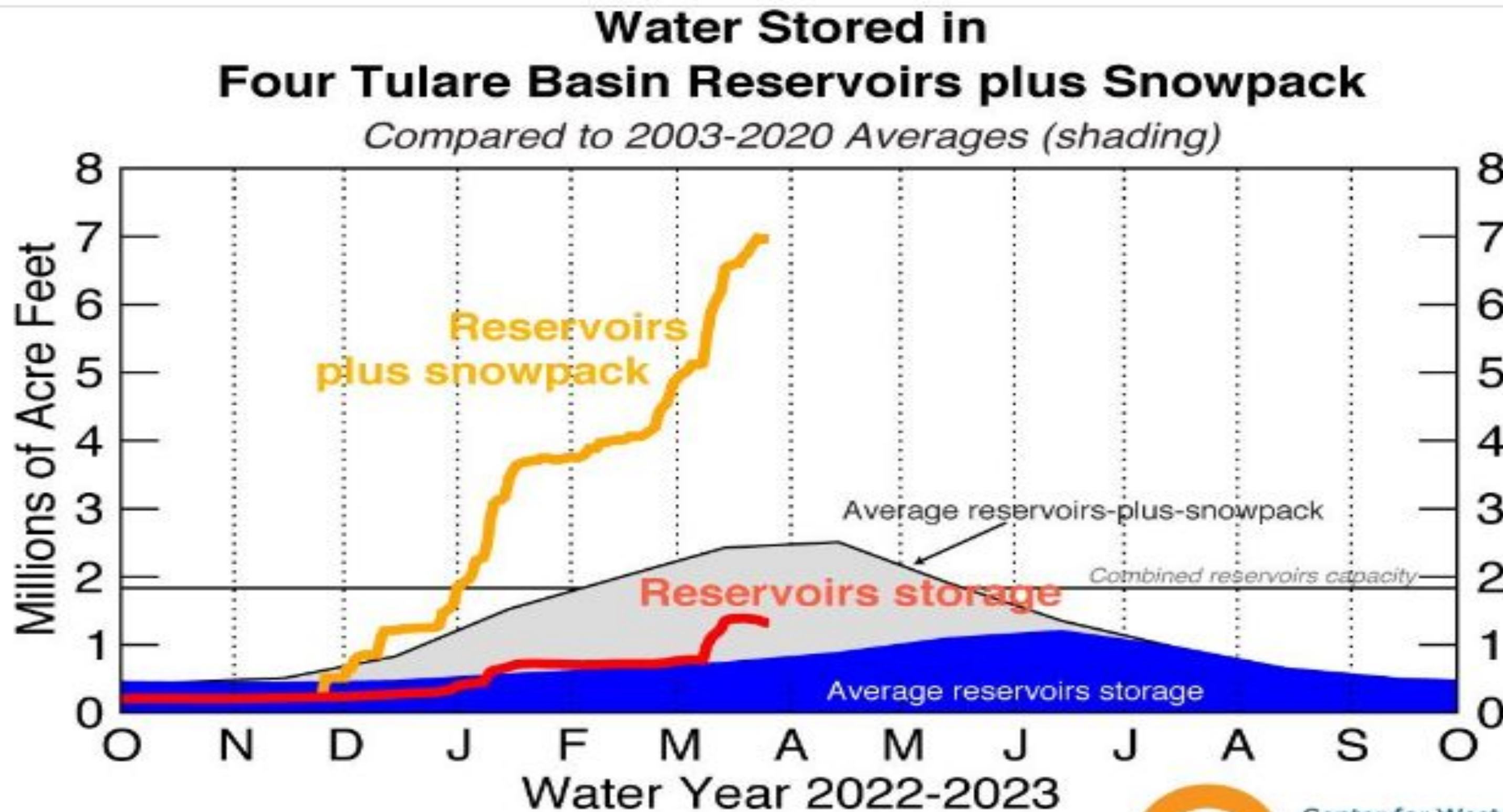
Hanford, CA

Monday, March 27

Presenter: Ryan Walbrun-IMET







SOURCES: SWE dailies from <https://cdec.water.ca.gov/querySWC.html>  
 SWE volume conversion factor based on Margulis et al, JHM 2016, SWE reanalysis  
 Reservoir storage from <https://cdec.water.ca.gov/queryDaily.html>  
 Reservoirs: PNF, TRM, SCC, ISB



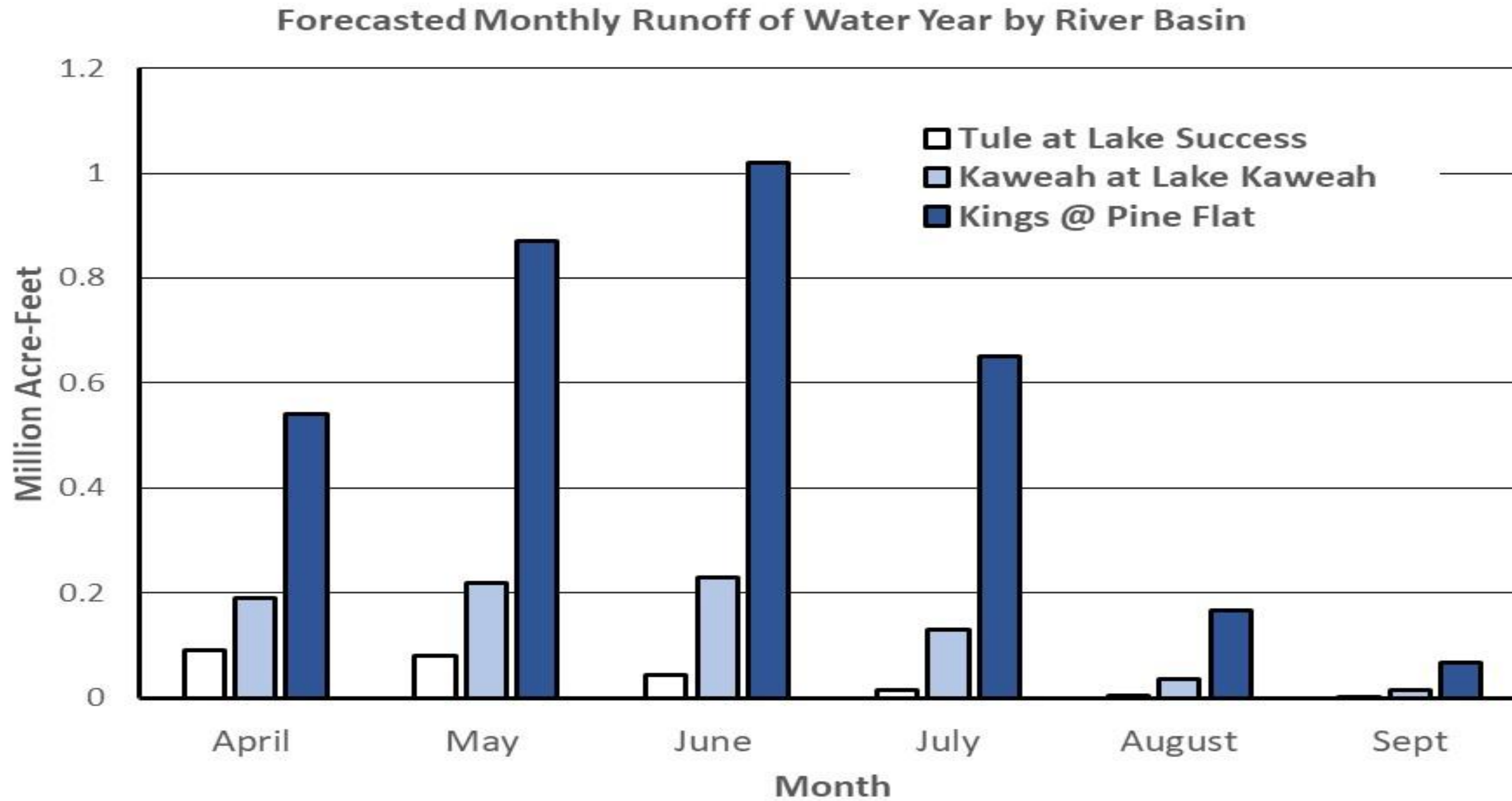
Center for Western Weather  
and Water Extremes  
SCRIPPS INSTITUTION OF OCEANOGRAPHY  
AT UC SAN DIEGO

[https://cnap.ucsd.edu/storage\\_in\\_sierra\\_ucrb](https://cnap.ucsd.edu/storage_in_sierra_ucrb)  
 Updated thru: 03/27/2023



# Forecast Ruoff by Month

Weather Forecast Office  
Hanford, CA  
Monday, March 27



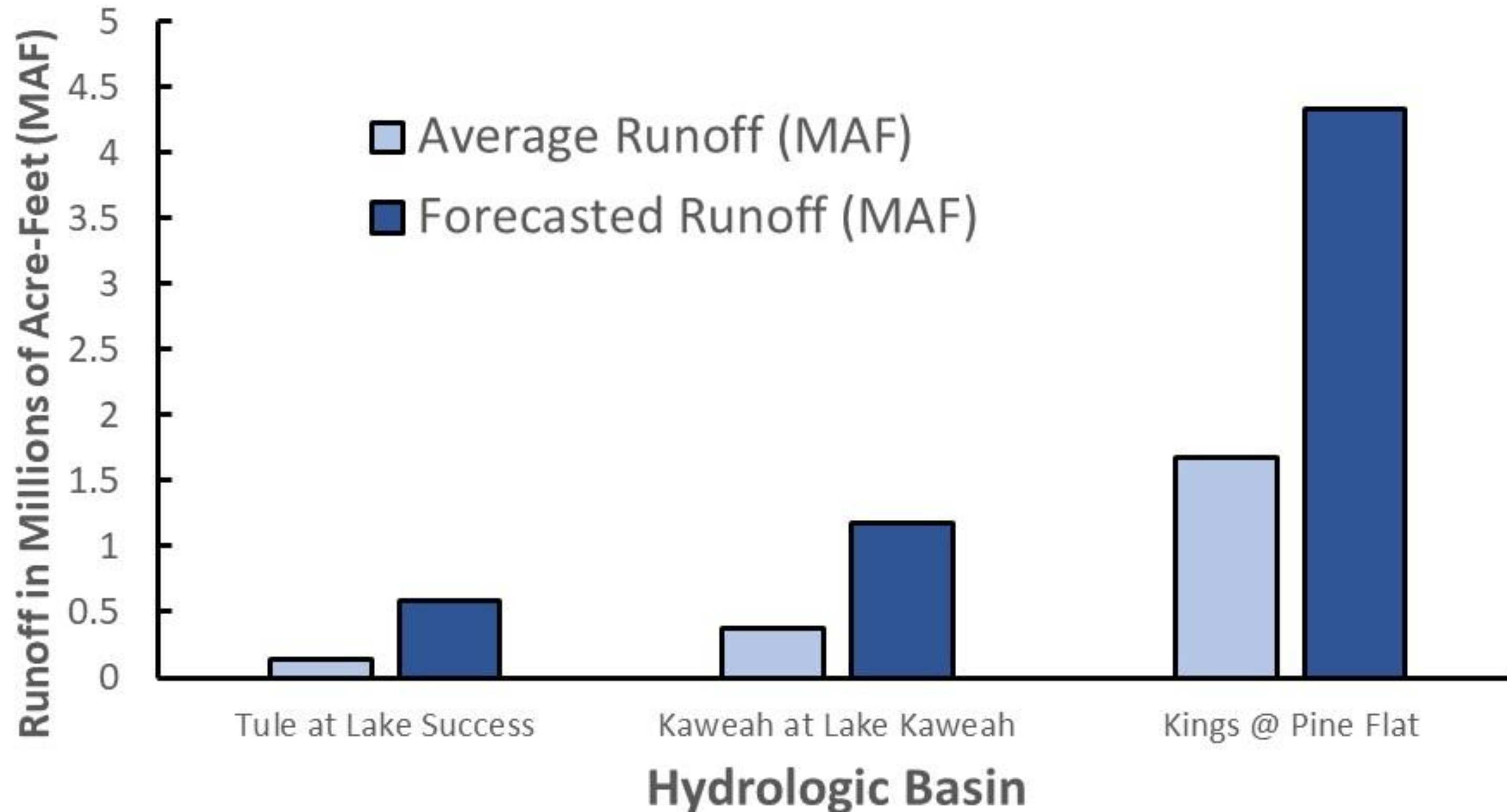




# Forecast Runoff vs 29 year Average

Weather Forecast Office  
Hanford, CA  
Monday, March 27

## Water Year Forecasted Runoff Volume vs. 29-Year Average Water Year Runoff Volume

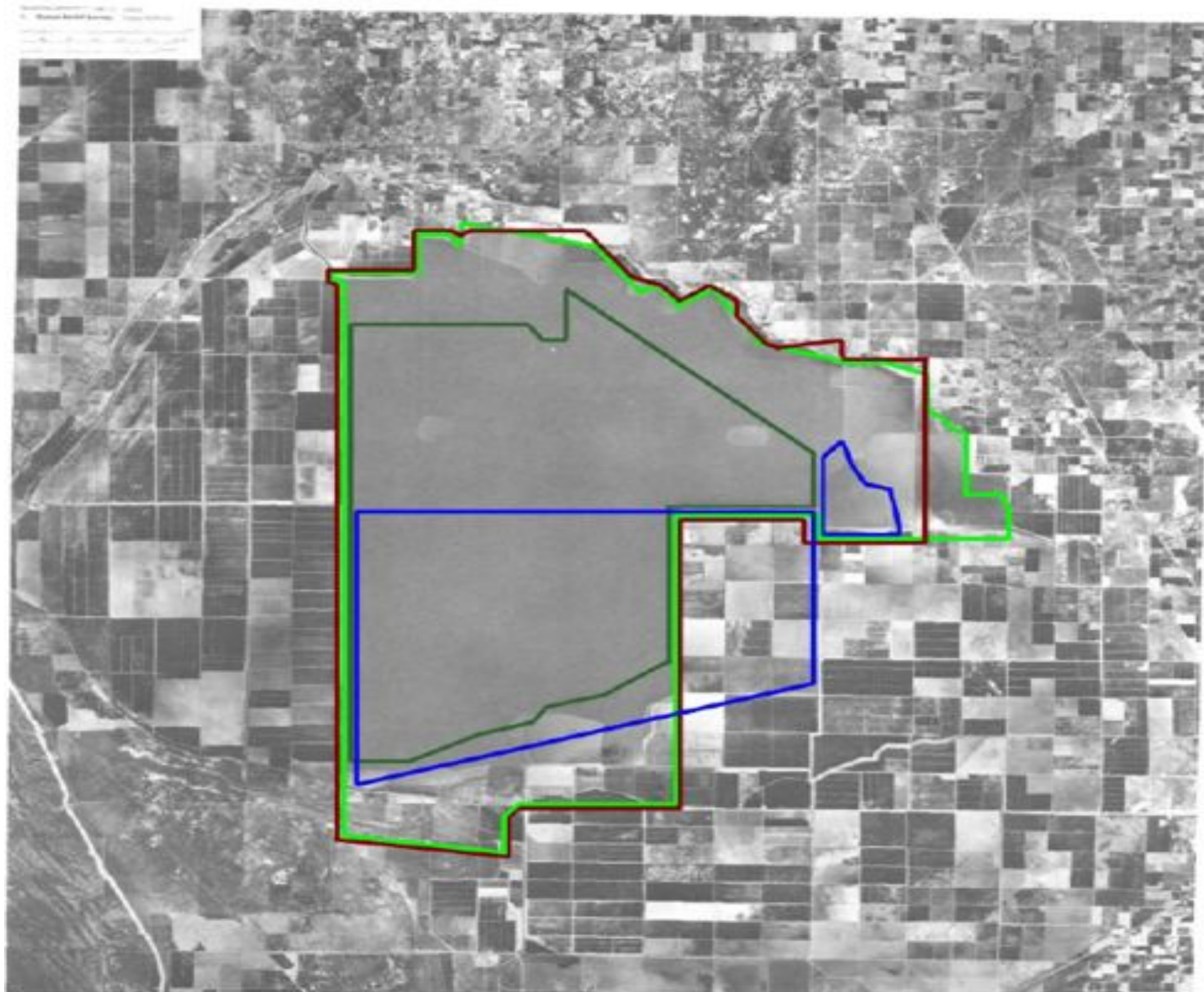




# Old Floods of Record and Water Sources

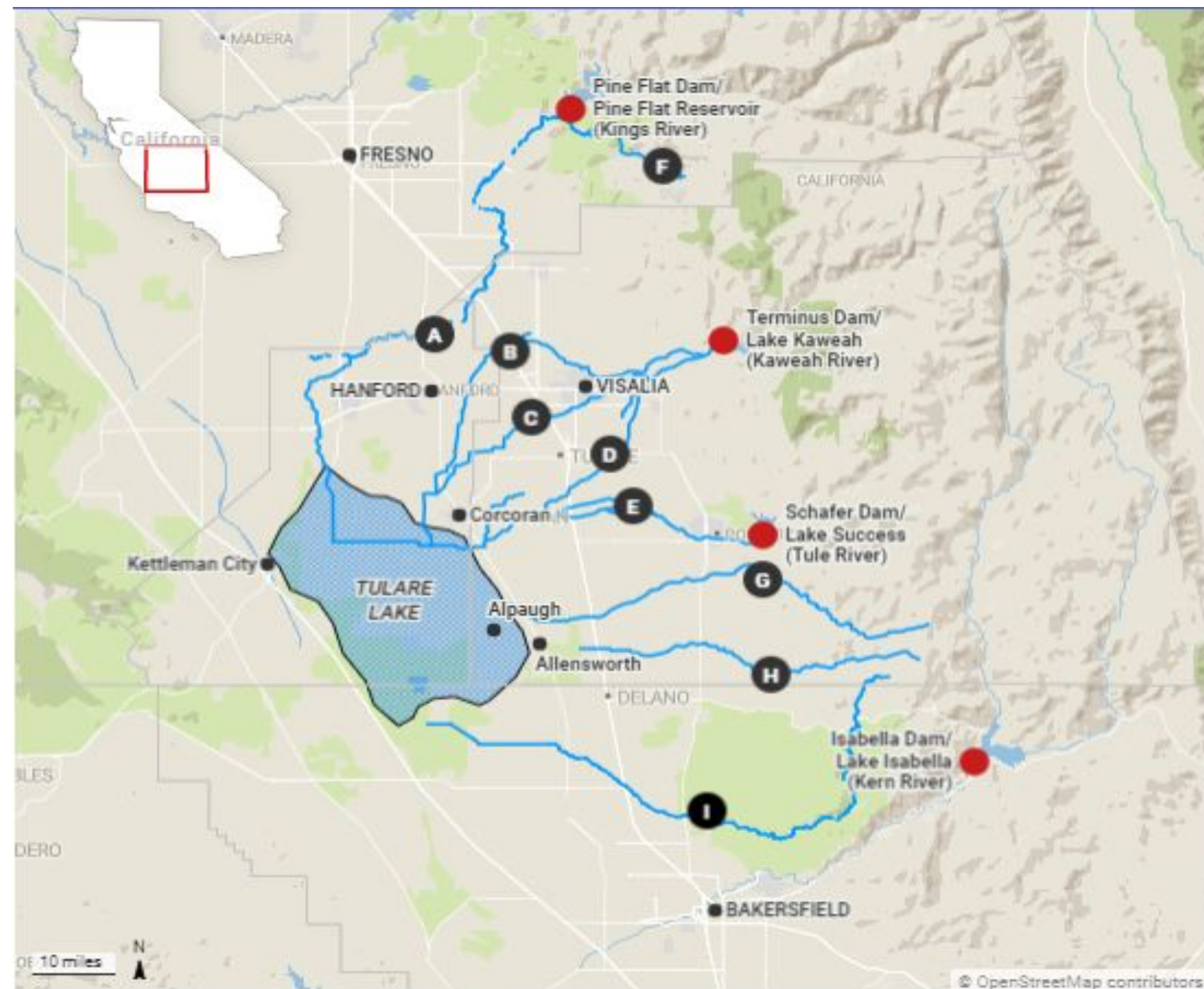
Weather Forecast Office  
Hanford, CA  
Monday, March 27

Extent of Flooded Cropland in the Tulare Lake Bed  
During 1969, 1983, 1997 & 1998



Aerial Photograph taken on October 5, 1969

1969 1983 1997 1998



- River/Stream
- Dam/Reservoir
- ▨ Tulare Lake (historic area)
- A** Kings River
- B** St. John's River/Cross Creek
- C** Kaweah River/Packwood Creek
- D** Elk Bayou/Outside Creek
- E** Tule River
- F** Mill Creek
- G** Deer Creek
- H** White River
- I** Poso Creek





# Key Points

Weather Forecast Office  
Hanford, CA  
Monday, March 27

- **Rain and mountain snow arrive by Tuesday evening lasting into Wednesday. Rain totals 0.50-1.00" valley, 1-3" inches foothills and 1-3 feet of snow above 4000 feet.**
- **Winter Storm Warning in the mountains Tuesday into Weds**
- **Lingering showers Thursday. Drying trend but continued cool Friday into Saturday**



# Weather Risk Outlook

Weather Forecast Office  
Hanford, CA  
Monday, March 27

|           | Tuesday,<br>Mar 28                    | Wednesday,<br>Mar 29                              | Thursday,<br>Mar 30                    | Friday,<br>Mar 31      | Saturday,<br>Apr 1     | Sunday,<br>Apr 2 | Monday,<br>Apr 3 |
|-----------|---------------------------------------|---------------------------------------------------|----------------------------------------|------------------------|------------------------|------------------|------------------|
| Valley    | High River Flows Rain develops PM     | Showers and Thunderstorms High River Flows        | Lingering Showers and High River Flows | High River Flows       | High River Flows       | High River Flows | High River Flows |
| Foothills | Windy with PM Rain                    | Showers and Thunderstorms                         | Lingering Showers                      | Lingering Showers      | Dry                    | Dry              | Dry              |
| Mountains | Heavy Snow Developing above 4000 feet | Heavy Snow 1-3 feet of total snow above 4000 feet | Lingering snow showers                 | Lingering snow showers | Lingering snow showers | Snow showers     | Snow showers     |

|             |                |       |          |       |         |
|-------------|----------------|-------|----------|-------|---------|
| Risk Levels | Little to None | Minor | Moderate | Major | Extreme |
|-------------|----------------|-------|----------|-------|---------|



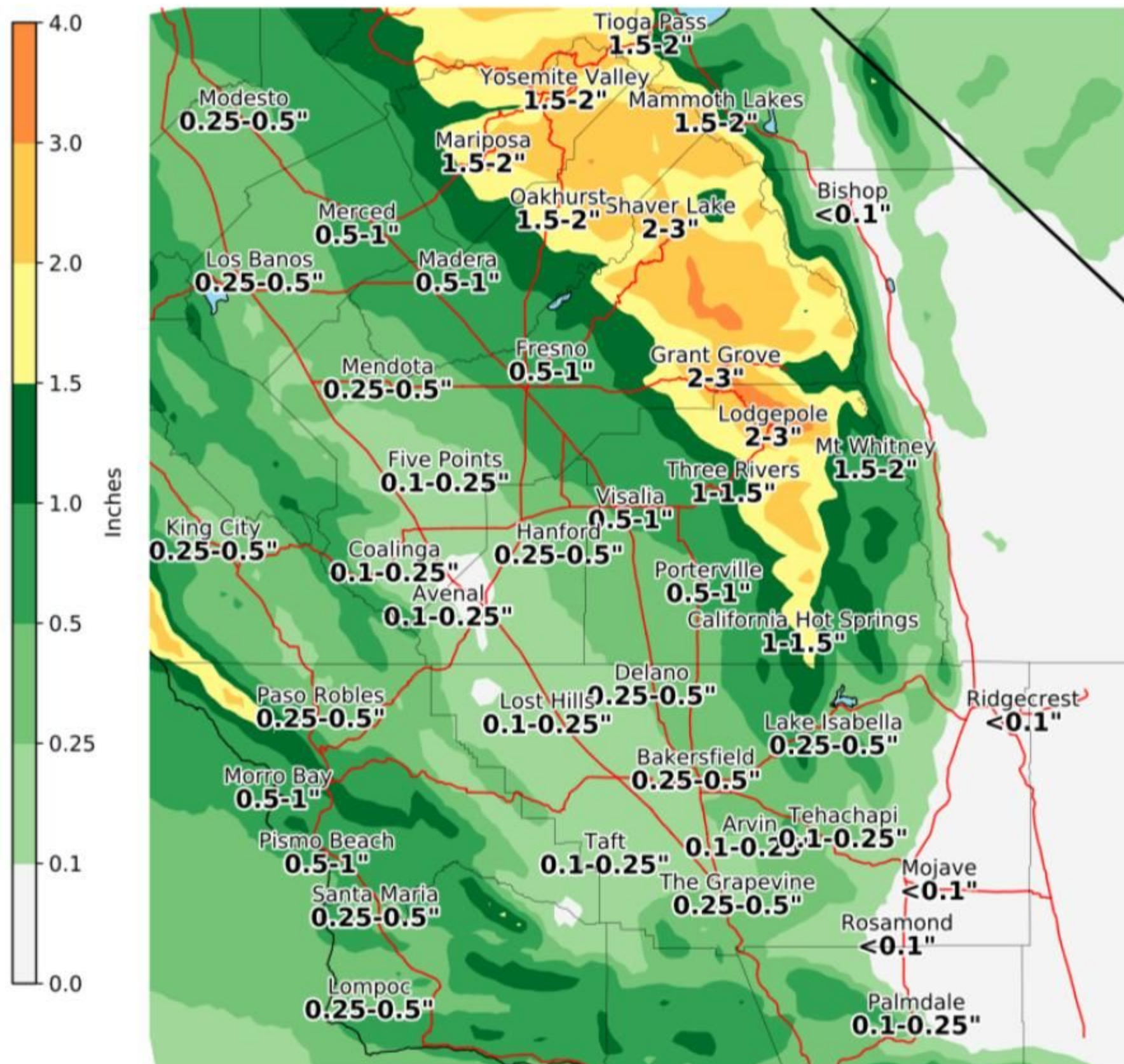


# Projected Precipitation Tuesday Through Wednesday

Weather Forecast Office  
Hanford, CA  
Monday, March 27

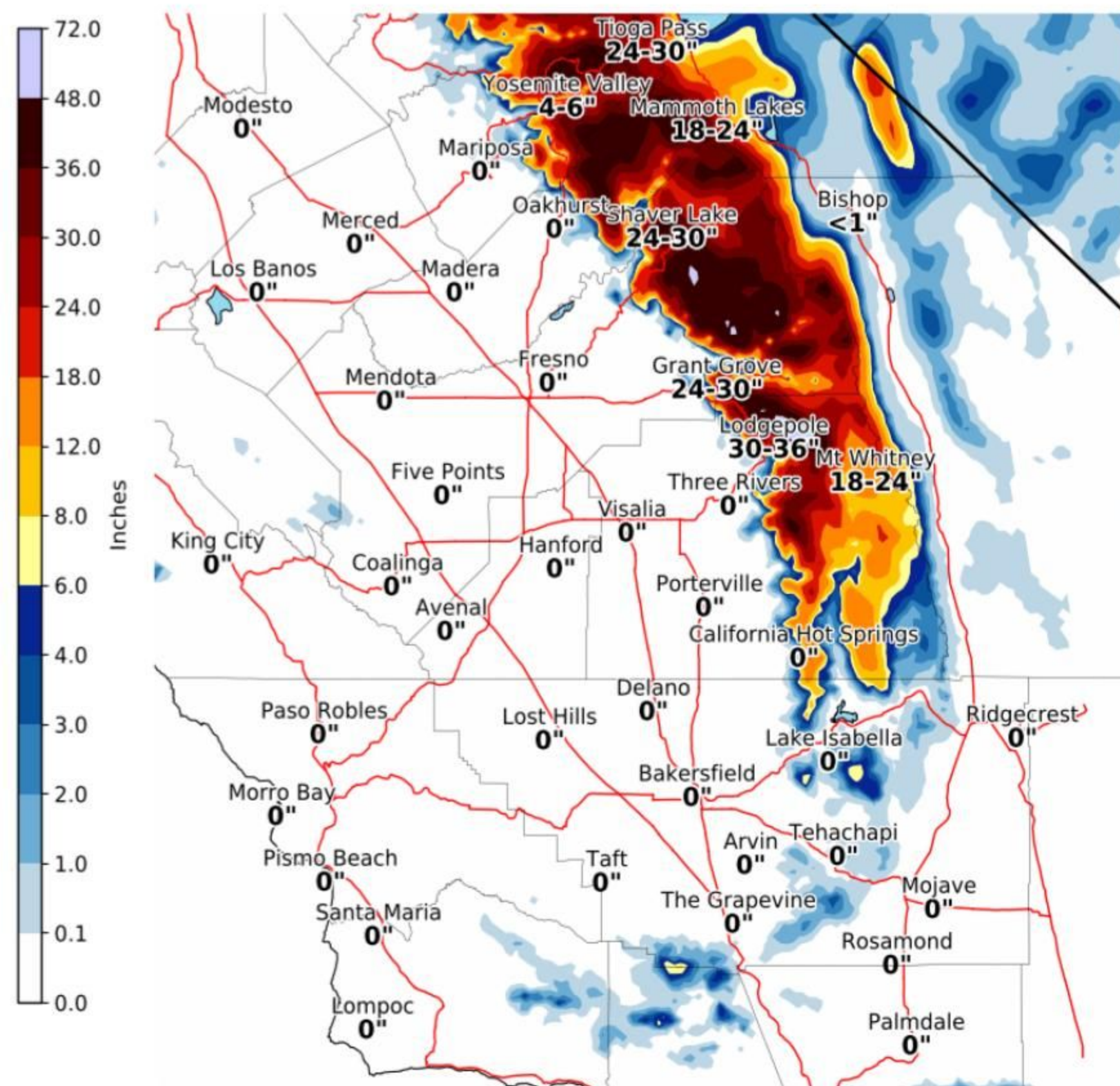
## Forecast Precipitation

Valid: 03/28/2023 05:00 AM - 03/29/2023 11:00 PM PDT



## Forecast Snow

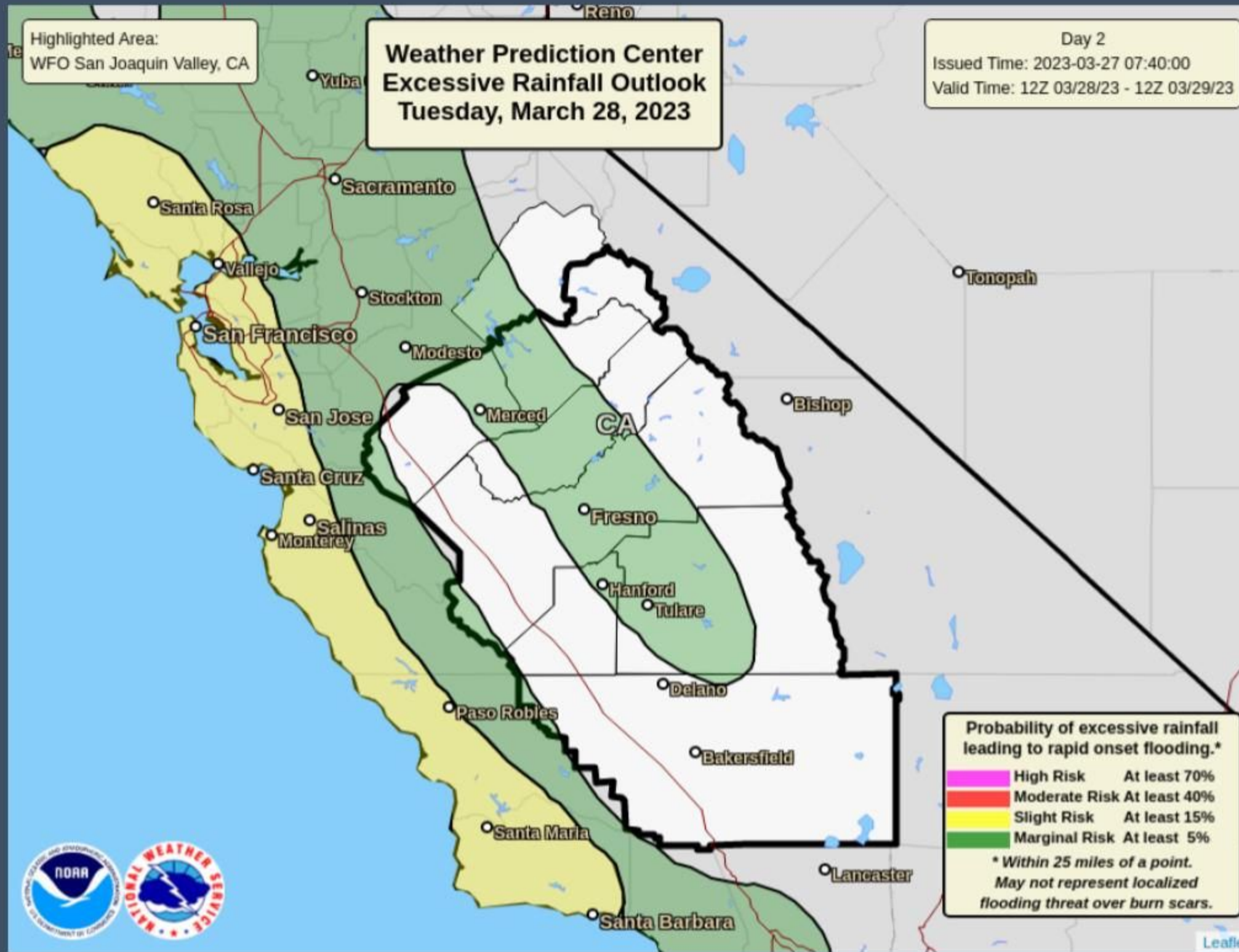
Valid: 03/28/2023 05:00 AM - 03/29/2023 11:00 PM PDT





# Excessive Rainfall Possible Tuesday and Tuesday Night

## *Information as of Monday, March 27 at 4:53 AM*



### BOTTOM LINE

- There is a marginal risk (5-15%) of excessive rainfall in the eastern part of the San Joaquin Valley and Sierra Nevada foothills (green, shaded area)
- Tuesday and Tuesday night

### WHAT TO DO

- BE PREPARED!
- Do not drive through standing water
- Pay close attention to the weather



**Hanford, CA**  
WEATHER FORECAST OFFICE



facebook.com/NWSHanford



@NWSHanford

<http://www.weather.gov/hnx>

**March 27, 2023**



# Winter Storm Warning

*Information as of Sunday, March 26 at 2:56 PM*

## Winter Storm Warning

FROM 0800 AM TUESDAY UNTIL 1100 PM WEDNESDAY

Weather Forecast Office  
Hanford, CA

Issued Mar 26, 2023 2:48 PM PDT



f t NWSHanford

weather.gov/hnx

## BOTTOM LINE

- Snowfall 1 to 2 feet above 4,000 feet Tuesday afternoon and night
- Snowfall 2 to 3 feet above 6,000 feet with local accumulation of 4 feet
- From 8 AM PDT Tuesday until 11 PM PDT Wednesday

## WHAT TO DO

- Expect travel to be extremely difficult or nearly impossible
- Anticipate road closures due to snow
- Delay travel plans



**Hanford, CA**  
WEATHER FORECAST OFFICE



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<http://www.weather.gov/hnx>

**March 26, 2023**



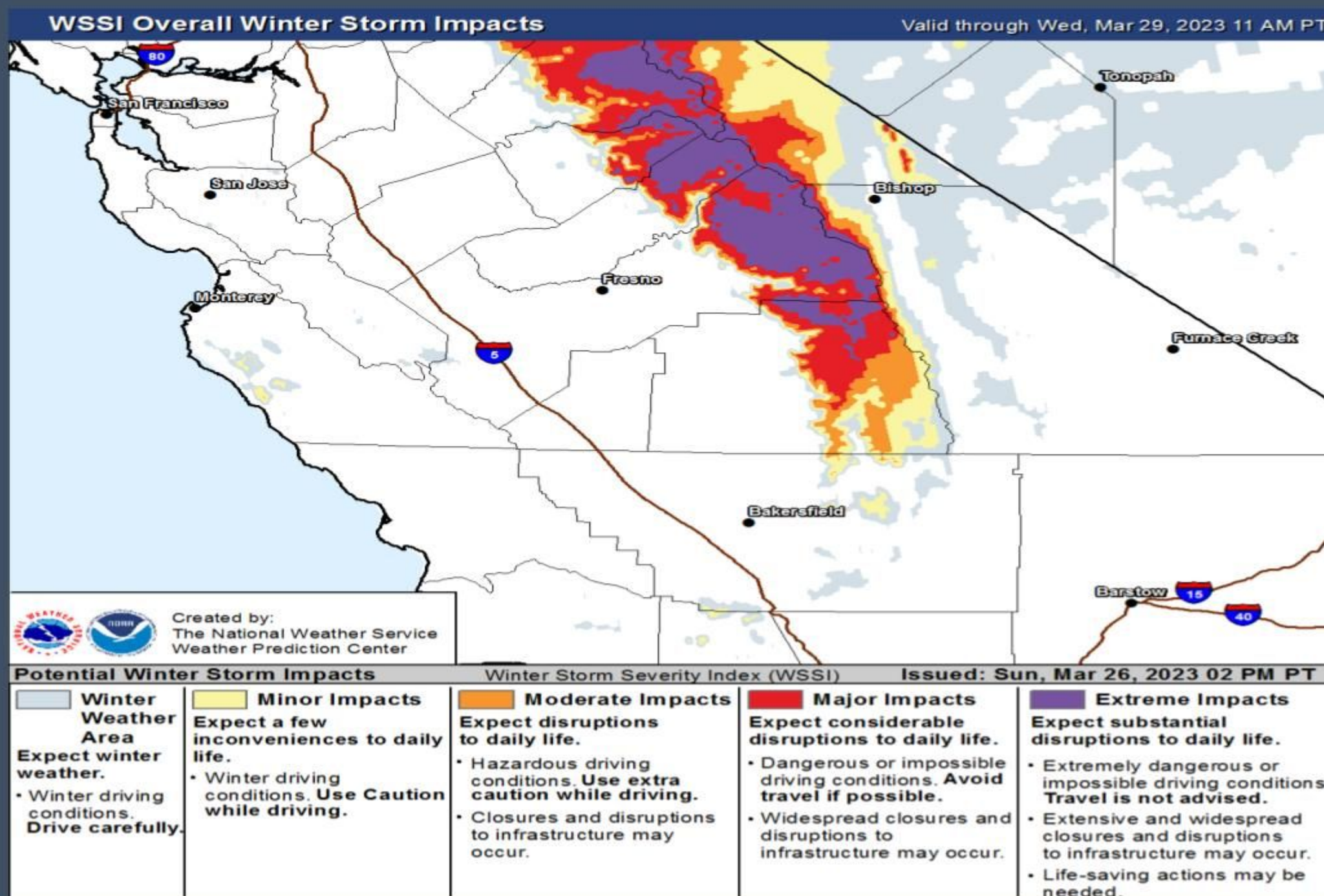


# Winter Storm Severity Index

Weather Forecast Office  
Hanford, CA  
Monday, March 27

## Winter Storm Severity Index

*Information as of Monday, March 27 at 5:04 AM*



### BOTTOM LINE

- Major to extreme winter storm impacts are expected in the Sierra Nevada due to snow load, blowing snow, and snow amounts up to 3 feet
- From 8 AM PDT Tuesday morning until 11 PM PDT Wednesday evening

### WHAT TO DO

- Plan on extremely difficult or nearly impossible travel
- Prepare for road closures due to snow cover



**Hanford, CA**  
WEATHER FORECAST OFFICE

<http://www.weather.gov/hnx>  
facebook.com/NWSHanford @NWSHanford

March 27, 2023

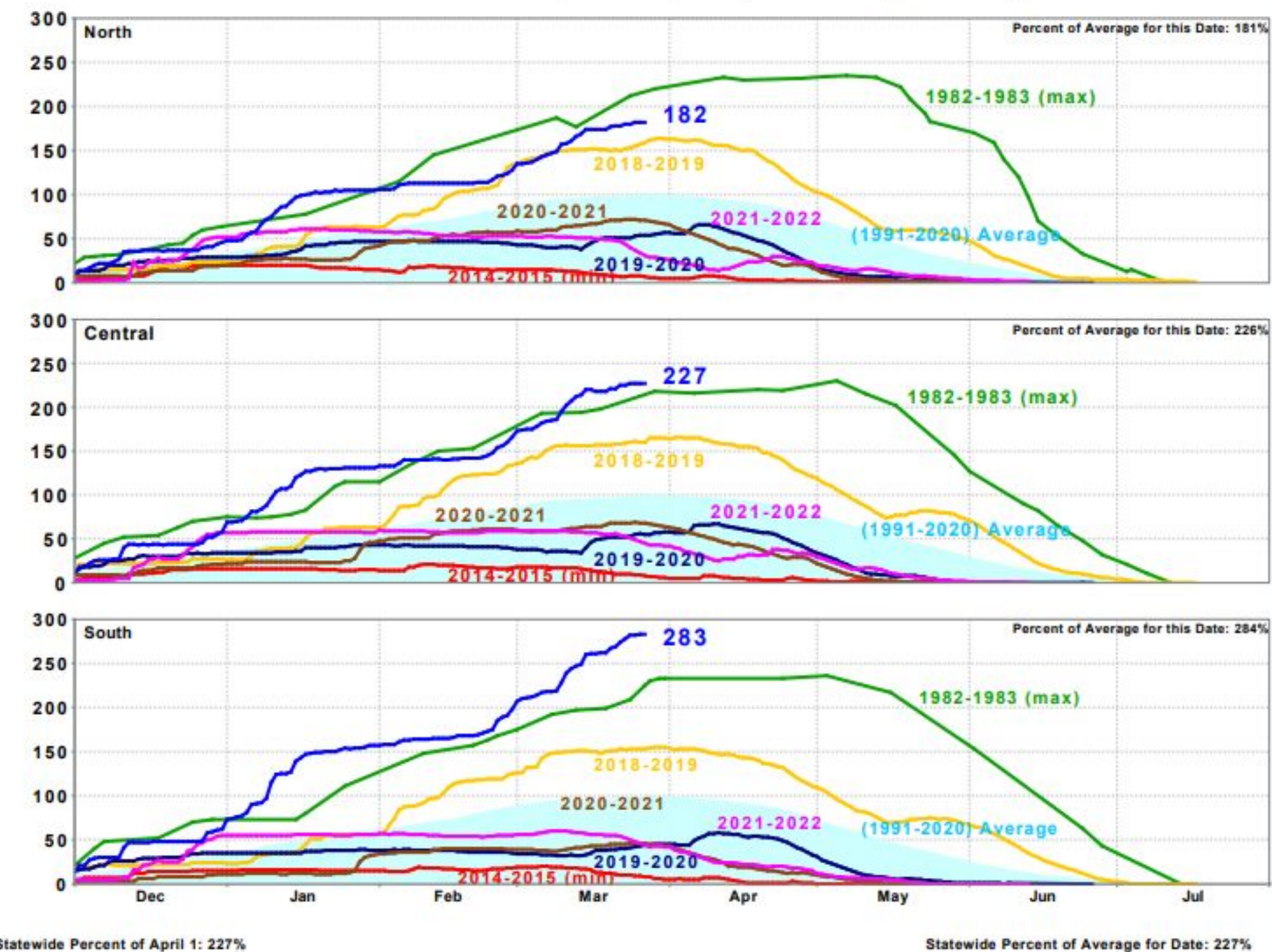




# Snow Water Equivalent Snowpack

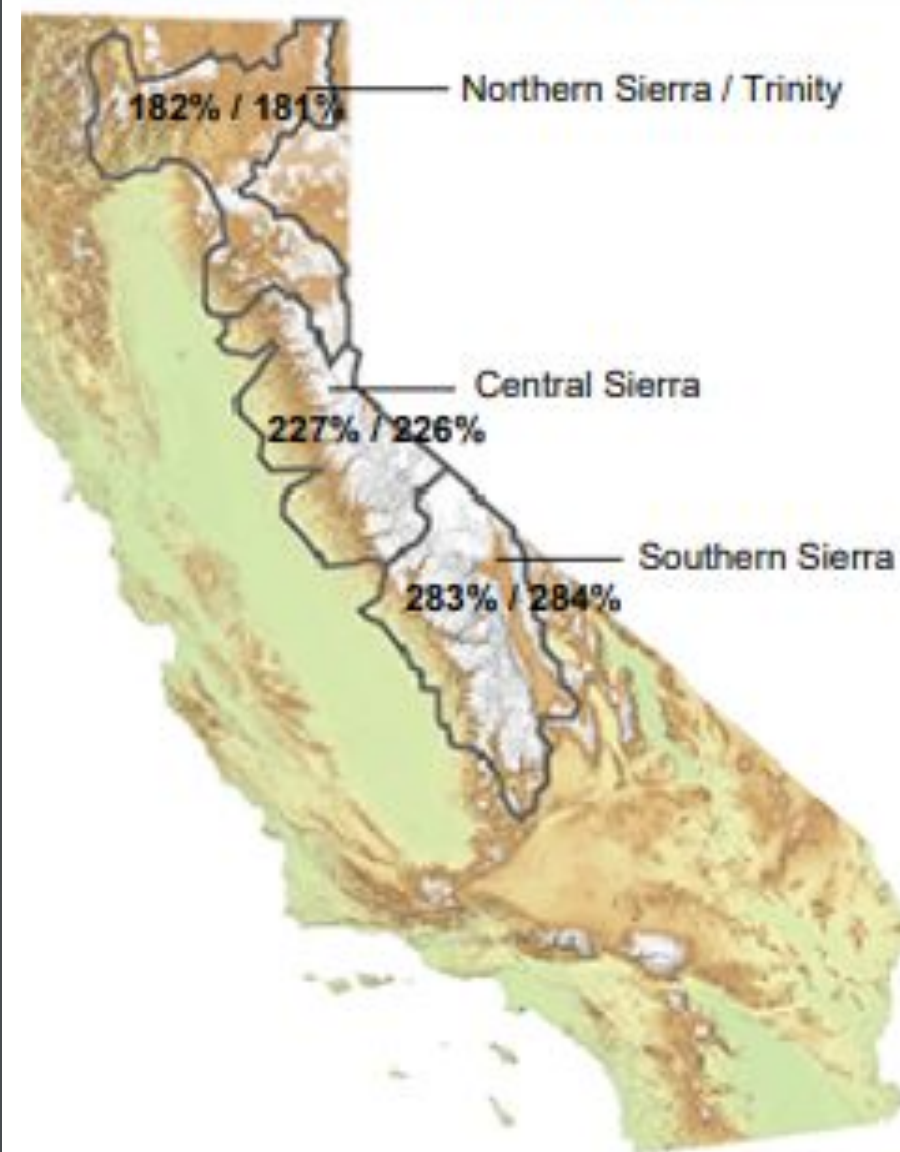
Weather Forecast Office  
Hanford, CA  
Monday, March 27

California Snow Water Content, March 27, 2023, Percent of April 1 Average



CURRENT REGIONAL SNOWPACK FROM AUTOMATED SNOW SENSORS

Percent of April 1 Average / % of Normal for This Date



| NORTH                                  |      |
|----------------------------------------|------|
| Data as of March 27, 2023              |      |
| Number of Stations Reporting           | 25   |
| Average snow water equivalent (Inches) | 52.9 |
| Percent of April 1 Average (%)         | 182  |
| Percent of normal for this date (%)    | 181  |

| CENTRAL                                |      |
|----------------------------------------|------|
| Data as of March 27, 2023              |      |
| Number of Stations Reporting           | 47   |
| Average snow water equivalent (Inches) | 59.8 |
| Percent of April 1 Average (%)         | 227  |
| Percent of normal for this date (%)    | 226  |

| SOUTH                                  |      |
|----------------------------------------|------|
| Data as of March 27, 2023              |      |
| Number of Stations Reporting           | 27   |
| Average snow water equivalent (Inches) | 60.5 |
| Percent of April 1 Average (%)         | 283  |
| Percent of normal for this date (%)    | 284  |

| STATE                                  |      |
|----------------------------------------|------|
| Data as of March 27, 2023              |      |
| Number of Stations Reporting           | 99   |
| Average snow water equivalent (Inches) | 58.2 |
| Percent of April 1 Average (%)         | 227  |
| Percent of normal for this date (%)    | 227  |

Statewide Average: 227% / 227%



nws.hanford@noaa.gov



(559) 584-9051



weather.gov/hanford







# Forecast Weather

Weather Forecast Office  
Hanford, CA  
Monday, March 27

Weather Forecast

|                      | 3/28<br>Tue |      |     | 3/29<br>Wed |     |      | 3/30<br>Thu |      |     |      | 3/31<br>Fri |      |     |      | 4/1<br>Sat |      |     |      | 4/2<br>Sun |      |     |      | 4/3<br>Mon |      |     |      |
|----------------------|-------------|------|-----|-------------|-----|------|-------------|------|-----|------|-------------|------|-----|------|------------|------|-----|------|------------|------|-----|------|------------|------|-----|------|
|                      | 6am         | 12pm | 6pm | 12am        | 6am | 12pm | 6pm         | 12am | 6am | 12pm | 6pm         | 12am | 6am | 12pm | 6pm        | 12am | 6am | 12pm | 6pm        | 12am | 6am | 12pm | 6pm        | 12am | 6am | 12pm |
| Camp Nelson          |             |      |     |             |     |      |             |      |     |      |             |      |     |      |            |      |     |      |            |      |     |      |            |      |     |      |
| Cutler/Orosi         |             |      |     |             |     |      |             |      |     |      |             |      |     |      |            |      |     |      |            |      |     |      |            |      |     |      |
| Exeter               |             |      |     |             |     |      |             |      |     |      |             |      |     |      |            |      |     |      |            |      |     |      |            |      |     |      |
| Johnsondale          |             |      |     |             |     |      |             |      |     |      |             |      |     |      |            |      |     |      |            |      |     |      |            |      |     |      |
| Ponderosa            |             |      |     |             |     |      |             |      |     |      |             |      |     |      |            |      |     |      |            |      |     |      |            |      |     |      |
| Poterville           |             |      |     |             |     |      |             |      |     |      |             |      |     |      |            |      |     |      |            |      |     |      |            |      |     |      |
| Three Rivers         |             |      |     |             |     |      |             |      |     |      |             |      |     |      |            |      |     |      |            |      |     |      |            |      |     |      |
| Tulare               |             |      |     |             |     |      |             |      |     |      |             |      |     |      |            |      |     |      |            |      |     |      |            |      |     |      |
| Tule Rvr Reservation |             |      |     |             |     |      |             |      |     |      |             |      |     |      |            |      |     |      |            |      |     |      |            |      |     |      |
| Visalia              |             |      |     |             |     |      |             |      |     |      |             |      |     |      |            |      |     |      |            |      |     |      |            |      |     |      |

\*Created: 4 pm PDT Mon 3/27/2023. Shows most impactful weather for the period beginning at the time shown. Weather symbols display where Probability of Precipitation  $\geq$  0%.

- Rain +

- Wintry Mix +

- Snow +





# Rainfall Forecast

Weather Forecast Office  
Hanford, CA  
Monday, March 27

## Liquid Equivalent Forecast

|                      | 3/28<br>Tue |      |      | 3/29<br>Wed |      |      |      | 3/30<br>Thu |      |      |      | 3/31<br>Fri |      |      |      | 4/1<br>Sat |      |      |      | 4/2<br>Sun |      |      |      | 4/3<br>Mon |      | Total |
|----------------------|-------------|------|------|-------------|------|------|------|-------------|------|------|------|-------------|------|------|------|------------|------|------|------|------------|------|------|------|------------|------|-------|
|                      | 6am         | 12pm | 6pm  | 12am        | 6am  | 12pm | 6pm  | 12am        | 6am  | 12pm | 6pm  | 12am        | 6am  | 12pm | 6pm  | 12am       | 6am  | 12pm | 6pm  | 12am       | 6am  | 12pm | 6pm  | 12am       | 6am  |       |
| Camp Nelson          | 0.02        | 0.28 | 1.61 | 0.20        | 0.06 | 0.13 | 0.25 | 0.12        | 0.08 | 0.00 | 0.00 | 0.00        | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.03       | 2.78 |       |
| Cutler/Orosi         | 0.01        | 0.44 | 0.25 | 0.02        | 0.01 | 0.17 | 0.22 | 0.01        | 0.01 | 0.00 | 0.00 | 0.00        | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 1.14  |
| Exeter               | 0.00        | 0.31 | 0.29 | 0.06        | 0.01 | 0.13 | 0.21 | 0.02        | 0.01 | 0.00 | 0.00 | 0.00        | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 1.04  |
| Johnsondale          | 0.00        | 0.20 | 1.28 | 0.21        | 0.04 | 0.11 | 0.24 | 0.07        | 0.05 | 0.00 | 0.00 | 0.00        | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.02       | 2.22 |       |
| Ponderosa            | 0.02        | 0.29 | 1.47 | 0.21        | 0.06 | 0.12 | 0.24 | 0.09        | 0.08 | 0.00 | 0.00 | 0.00        | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.02       | 2.60 |       |
| Poterville           | 0.00        | 0.16 | 0.30 | 0.05        | 0.01 | 0.12 | 0.22 | 0.02        | 0.01 | 0.00 | 0.00 | 0.00        | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.89  |
| Three Rivers         | 0.00        | 0.30 | 0.95 | 0.06        | 0.01 | 0.17 | 0.19 | 0.05        | 0.03 | 0.00 | 0.00 | 0.00        | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.03       | 1.79 |       |
| Tulare               | 0.01        | 0.26 | 0.18 | 0.02        | 0.02 | 0.16 | 0.14 | 0.02        | 0.00 | 0.00 | 0.00 | 0.00        | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.81  |
| Tule Rvr Reservation | 0.00        | 0.20 | 1.20 | 0.12        | 0.01 | 0.13 | 0.29 | 0.10        | 0.04 | 0.00 | 0.00 | 0.00        | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.01 | 0.03       | 2.13 |       |
| Visalia              | 0.01        | 0.34 | 0.21 | 0.05        | 0.02 | 0.14 | 0.15 | 0.02        | 0.01 | 0.00 | 0.00 | 0.00        | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.00 | 0.00 | 0.00       | 0.00 | 0.95  |

\*Table values in inches

\*\*Created: 4 pm PDT Mon 3/27/2023

\*\*\*Values are accumulations over the period beginning at the time shown.





# Snowfall Forecast

Weather Forecast Office  
Hanford, CA  
Monday, March 27

## Snow Forecast

|                      | 3/28<br>Tue |      |      | 3/29<br>Wed |     |      |     | 3/30<br>Thu |     |      |     | 3/31<br>Fri |     |      |     | 4/1<br>Sat |     |      |     | 4/2<br>Sun |     |      |     | 4/3<br>Mon |     | Total |
|----------------------|-------------|------|------|-------------|-----|------|-----|-------------|-----|------|-----|-------------|-----|------|-----|------------|-----|------|-----|------------|-----|------|-----|------------|-----|-------|
|                      | 6am         | 12pm | 6pm  | 12am        | 6am | 12pm | 6pm | 12am        | 6am | 12pm | 6pm | 12am        | 6am | 12pm | 6pm | 12am       | 6am | 12pm | 6pm | 12am       | 6am | 12pm | 6pm | 12am       | 6am |       |
| Camp Nelson          | 0.0         | 0.0  | 0.2  | 2.4         | 0.8 | 1.7  | 3.6 | 1.7         | 1.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 11.4  |
| Cutler/Orosi         | 0.0         | 0.0  | 0.0  | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0   |
| Exeter               | 0.0         | 0.0  | 0.0  | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0   |
| Johnsondale          | 0.0         | 0.0  | 0.0  | 1.6         | 0.4 | 1.3  | 3.3 | 1.0         | 0.5 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 8.1   |
| Ponderosa            | 0.1         | 2.6  | 14.4 | 3.0         | 0.9 | 1.8  | 3.8 | 1.5         | 1.2 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.2 | 29.5  |
| Poterville           | 0.0         | 0.0  | 0.0  | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0   |
| Three Rivers         | 0.0         | 0.0  | 0.0  | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0   |
| Tulare               | 0.0         | 0.0  | 0.0  | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0   |
| Tule Rvr Reservation | 0.0         | 0.0  | 0.0  | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0   |
| Visalia              | 0.0         | 0.0  | 0.0  | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0         | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0  | 0.0 | 0.0        | 0.0 | 0.0   |

\*Table values in inches

\*\*Created: 4 pm PDT Mon 3/27/2023

\*\*\*Values are accumulations over the period beginning at the time shown.

D





# Maximum Temperature Forecast

Weather Forecast Office  
Hanford, CA  
Monday, March 27

| Maximum Temperature Forecast |             |      |     |             |     |      |     |             |     |      |     |             |     |      |     |            |     |      |     |            |     |      |     |            |     |      |         |
|------------------------------|-------------|------|-----|-------------|-----|------|-----|-------------|-----|------|-----|-------------|-----|------|-----|------------|-----|------|-----|------------|-----|------|-----|------------|-----|------|---------|
|                              | 3/28<br>Tue |      |     | 3/29<br>Wed |     |      |     | 3/30<br>Thu |     |      |     | 3/31<br>Fri |     |      |     | 4/1<br>Sat |     |      |     | 4/2<br>Sun |     |      |     | 4/3<br>Mon |     |      | Maximum |
|                              | 6am         | 12pm | 6pm | 12am        | 6am | 12pm | 6pm | 12am        | 6am | 12pm | 6pm | 12am        | 6am | 12pm | 6pm | 12am       | 6am | 12pm | 6pm | 12am       | 6am | 12pm | 6pm | 12am       | 6am | 12pm |         |
| Camp Nelson                  | 47          | 49   | 41  | 37          | 35  | 36   | 33  | 30          | 33  | 34   | 33  | 27          | 39  | 42   | 38  | 33         | 45  | 47   | 43  | 37         | 45  | 46   | 43  | 38         | 39  | 39   | 49      |
| Cutler/Orosi                 | 61          | 66   | 60  | 51          | 52  | 57   | 53  | 46          | 51  | 58   | 55  | 44          | 55  | 63   | 60  | 47         | 57  | 66   | 63  | 50         | 58  | 66   | 63  | 51         | 53  | 59   | 66      |
| Exeter                       | 62          | 68   | 62  | 53          | 53  | 58   | 55  | 47          | 51  | 59   | 56  | 45          | 55  | 64   | 61  | 48         | 58  | 67   | 64  | 52         | 58  | 66   | 63  | 52         | 53  | 59   | 68      |
| Johnsondale                  | 48          | 55   | 45  | 36          | 36  | 42   | 37  | 28          | 34  | 40   | 36  | 27          | 40  | 48   | 42  | 30         | 45  | 53   | 46  | 36         | 45  | 53   | 46  | 36         | 40  | 45   | 55      |
| Ponderosa                    | 40          | 42   | 34  | 33          | 28  | 29   | 27  | 25          | 26  | 28   | 28  | 22          | 33  | 36   | 33  | 28         | 37  | 41   | 38  | 33         | 39  | 41   | 38  | 34         | 32  | 33   | 42      |
| Poterville                   | 62          | 68   | 64  | 54          | 53  | 57   | 54  | 47          | 50  | 56   | 54  | 45          | 55  | 62   | 60  | 48         | 58  | 65   | 62  | 53         | 58  | 64   | 62  | 53         | 52  | 57   | 68      |
| Three Rivers                 | 60          | 65   | 60  | 50          | 49  | 55   | 52  | 43          | 46  | 53   | 51  | 41          | 52  | 61   | 58  | 46         | 57  | 65   | 62  | 50         | 57  | 63   | 60  | 50         | 50  | 55   | 65      |
| Tulare                       | 61          | 68   | 63  | 51          | 54  | 58   | 55  | 46          | 51  | 59   | 56  | 44          | 55  | 64   | 61  | 47         | 57  | 67   | 64  | 50         | 58  | 66   | 63  | 50         | 54  | 60   | 68      |
| Tule Rvr Reservation         | 56          | 59   | 54  | 47          | 44  | 46   | 45  | 41          | 41  | 45   | 44  | 38          | 48  | 53   | 51  | 43         | 52  | 57   | 54  | 48         | 52  | 55   | 54  | 48         | 46  | 48   | 59      |
| Visalia                      | 62          | 67   | 61  | 52          | 53  | 58   | 55  | 46          | 51  | 59   | 56  | 44          | 55  | 64   | 61  | 47         | 57  | 67   | 64  | 51         | 58  | 66   | 63  | 51         | 54  | 59   | 67      |

\*Table values in °F

\*\*Created: 4 pm PDT Mon 3/27/2023

\*\*\*Values are maximums over the period beginning at the time shown.

Do





# Minimum Temperature Forecast

Weather Forecast Office  
Hanford, CA  
Monday, March 27

| Minimum Temperature Forecast |             |      |     |             |     |      |     |             |     |      |     |             |     |      |     |            |     |      |     |            |     |      |     |            |     |      |         |
|------------------------------|-------------|------|-----|-------------|-----|------|-----|-------------|-----|------|-----|-------------|-----|------|-----|------------|-----|------|-----|------------|-----|------|-----|------------|-----|------|---------|
|                              | 3/28<br>Tue |      |     | 3/29<br>Wed |     |      |     | 3/30<br>Thu |     |      |     | 3/31<br>Fri |     |      |     | 4/1<br>Sat |     |      |     | 4/2<br>Sun |     |      |     | 4/3<br>Mon |     |      | Minimum |
|                              | 6am         | 12pm | 6pm | 12am        | 6am | 12pm | 6pm | 12am        | 6am | 12pm | 6pm | 12am        | 6am | 12pm | 6pm | 12am       | 6am | 12pm | 6pm | 12am       | 6am | 12pm | 6pm | 12am       | 6am | 12pm |         |
| Camp Nelson                  | 34          | 42   | 37  | 33          | 32  | 34   | 30  | 27          | 27  | 34   | 28  | 26          | 26  | 40   | 33  | 31         | 31  | 45   | 38  | 35         | 35  | 44   | 39  | 36         | 35  | 37   | 26      |
| Cutler/Orosi                 | 42          | 62   | 52  | 47          | 47  | 54   | 46  | 43          | 43  | 53   | 45  | 40          | 40  | 58   | 49  | 43         | 43  | 60   | 51  | 46         | 45  | 61   | 52  | 46         | 45  | 55   | 40      |
| Exeter                       | 42          | 65   | 53  | 48          | 48  | 55   | 48  | 44          | 44  | 53   | 46  | 42          | 42  | 58   | 49  | 44         | 44  | 61   | 53  | 48         | 47  | 61   | 53  | 47         | 46  | 55   | 42      |
| Johnsondale                  | 27          | 49   | 36  | 32          | 29  | 39   | 29  | 25          | 23  | 37   | 28  | 23          | 23  | 44   | 31  | 27         | 27  | 49   | 37  | 33         | 32  | 49   | 37  | 32         | 30  | 41   | 23      |
| Ponderosa                    | 28          | 37   | 33  | 29          | 26  | 28   | 25  | 22          | 22  | 27   | 23  | 21          | 21  | 34   | 28  | 26         | 26  | 39   | 33  | 31         | 31  | 39   | 34  | 32         | 31  | 31   | 21      |
| Poterville                   | 44          | 65   | 54  | 48          | 48  | 55   | 48  | 44          | 44  | 52   | 46  | 42          | 42  | 57   | 49  | 45         | 45  | 61   | 54  | 49         | 49  | 60   | 54  | 48         | 47  | 54   | 42      |
| Three Rivers                 | 44          | 62   | 50  | 45          | 44  | 51   | 43  | 40          | 39  | 48   | 42  | 38          | 38  | 55   | 47  | 42         | 42  | 60   | 51  | 46         | 46  | 59   | 51  | 45         | 44  | 52   | 38      |
| Tulare                       | 40          | 65   | 52  | 47          | 46  | 56   | 47  | 42          | 42  | 53   | 45  | 41          | 41  | 58   | 49  | 42         | 42  | 60   | 52  | 46         | 46  | 61   | 52  | 46         | 45  | 57   | 40      |
| Tule Rvr Reservation         | 43          | 56   | 47  | 42          | 42  | 45   | 41  | 37          | 37  | 42   | 39  | 37          | 37  | 50   | 44  | 41         | 41  | 54   | 48  | 45         | 45  | 53   | 49  | 45         | 44  | 46   | 37      |
| Visalia                      | 42          | 65   | 52  | 48          | 47  | 55   | 47  | 43          | 43  | 53   | 45  | 41          | 41  | 58   | 49  | 43         | 43  | 60   | 52  | 47         | 47  | 61   | 52  | 47         | 46  | 56   | 41      |

\*Table values in °F

\*\*Created: 4 pm PDT Mon 3/27/2023

\*\*\*Values are minimums over the period beginning at the time shown.





# Hydrologic Conditions as of 1500 hours on March 27th

Weather Forecast Office  
Hanford, CA  
Monday, March 27

- Lake Success, Lake Kaweah, and Pine Flat Reservoir are currently building capacity (3/27/23 @ 1500)
  - 69.2% capacity at Lake Success
  - 80.1% capacity at Lake Kaweah
  - 75.4% capacity at Pine Flat Reservoir
- Current outflows :
  - Lake Success has a current release of 3178 cfs (3/27/23 @ 1500)
  - Lake Kaweah has a current release of 5468 cfs (3/27/23 @ 1500)
  - Pine Flat Reservoir has a current release of 8569 cfs (3/27/23 @ 1500)
    - Release decreased by 90 cfs at 1100
- Kings River has a flow of 9015 cfs below Mill Creek (3/27/23 @ 1500)
- Flow on Dry Creek (below Lake Kaweah) is at 175 cfs and dropping (3/27/23 @ 1500)
- Mill Creek below Pine Flat Reservoir is 434 cfs and dropping (3/27/23 @ 1500)
- Flow at Army Weir towards Tulare Lake increased to 1212 cfs (3/27/23 @ 1500)

## Forecasted Conditions:

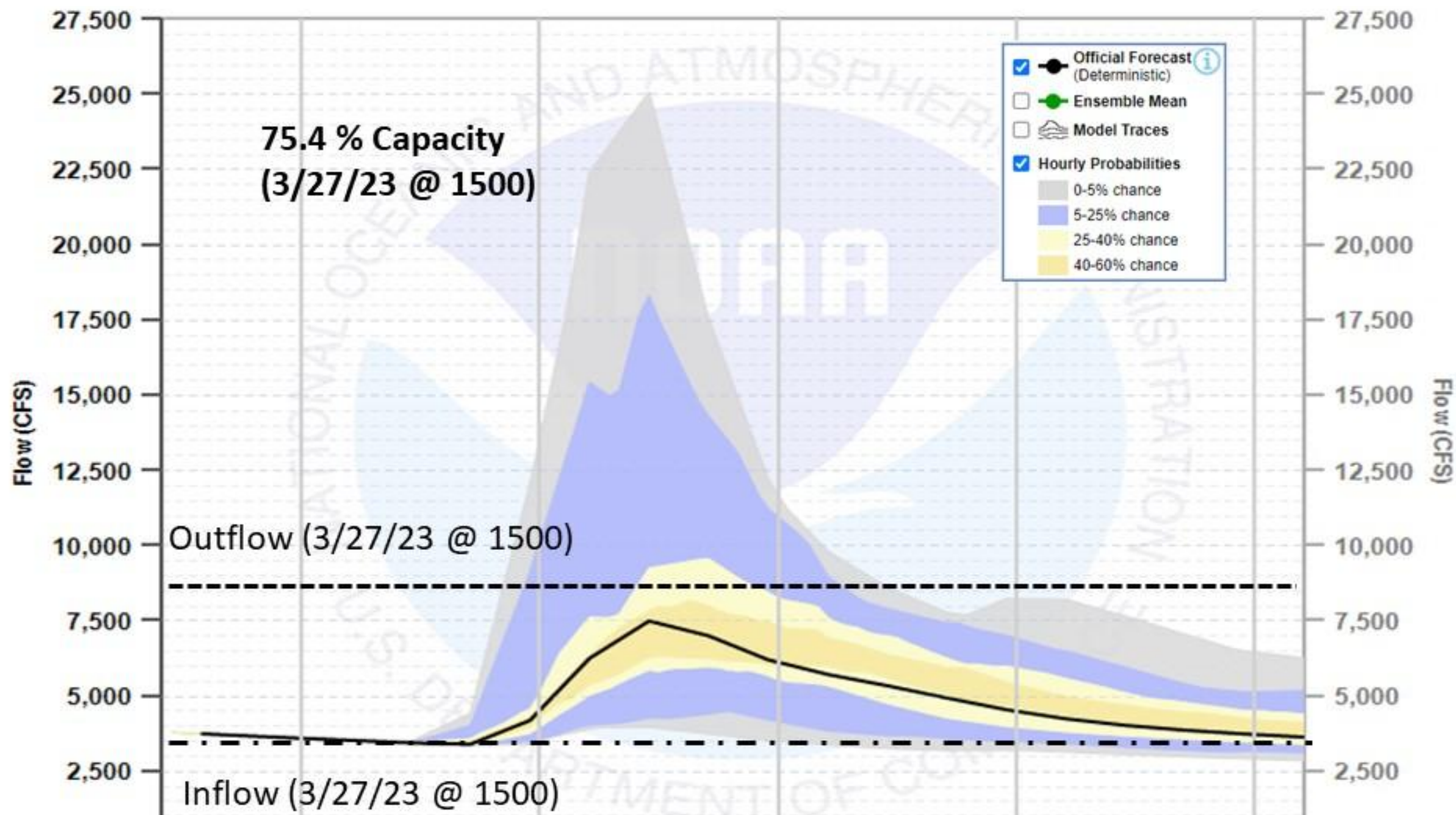
- No reported release changes since (3/27/23 @ 1100)
- Forecasts suggest increasing runoff into reservoirs and increasing runoff from unregulated streams starting late Tuesday afternoon (**3/28/23**)
- Flow into reservoirs and peak flows on unregulated streams expected to peak Wednesday morning (**3/29/23**)
- Predicted watershed runoff volumes within Incident:
  - Kings, Pine Flat water year snowmelt prediction 4.33-million-acre feet and 259% above average
  - Kaweah, Terminus water year snowmelt prediction 1.325-million-acre feet and 311% above average





# Kings River- Pine Flat Forecast

Weather Forecast Office  
Hanford, CA  
Monday, March 27

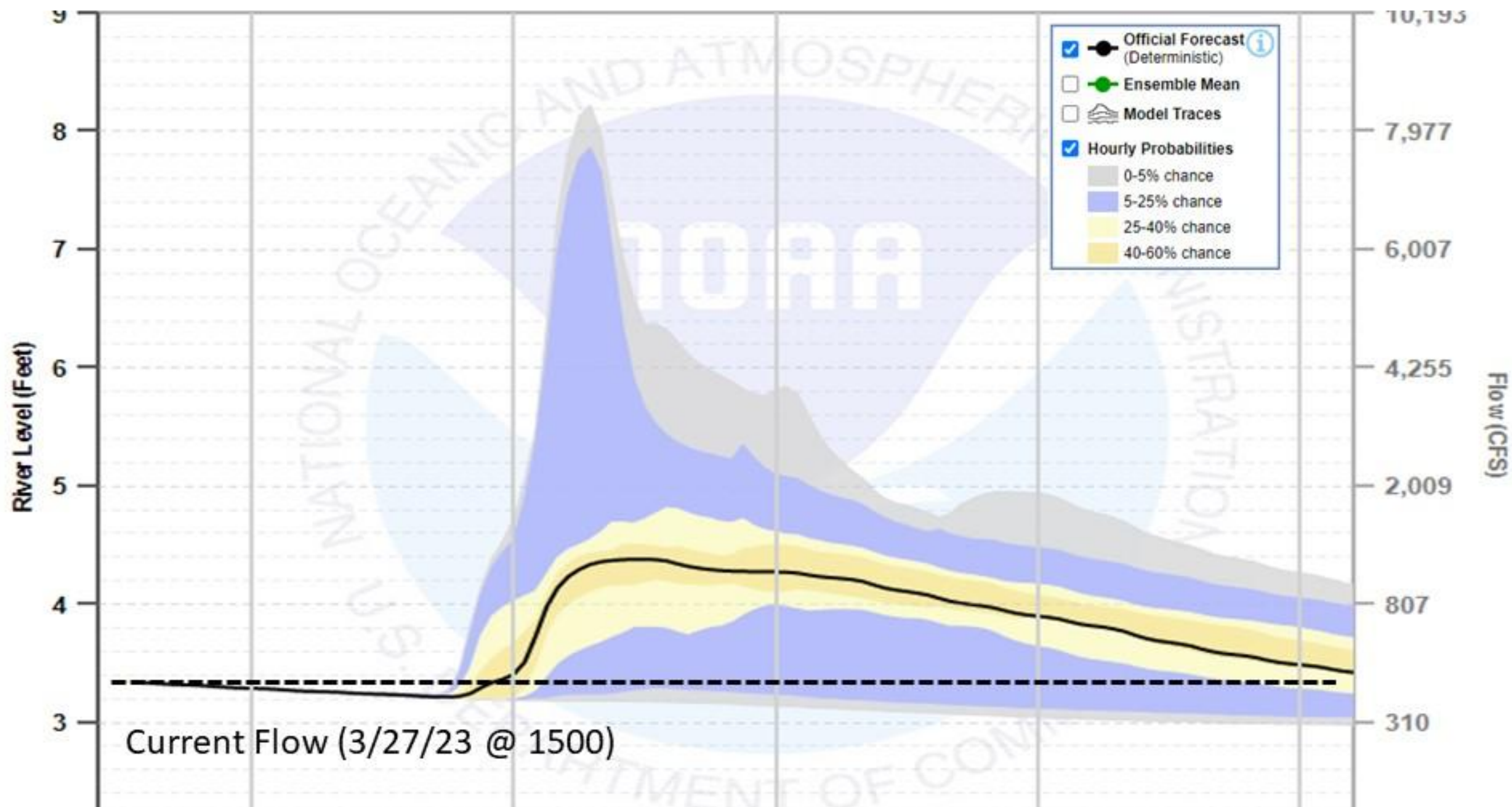






# Mill Creek below Pine Flat Forecast

Weather Forecast Office  
Hanford, CA  
Monday, March 27

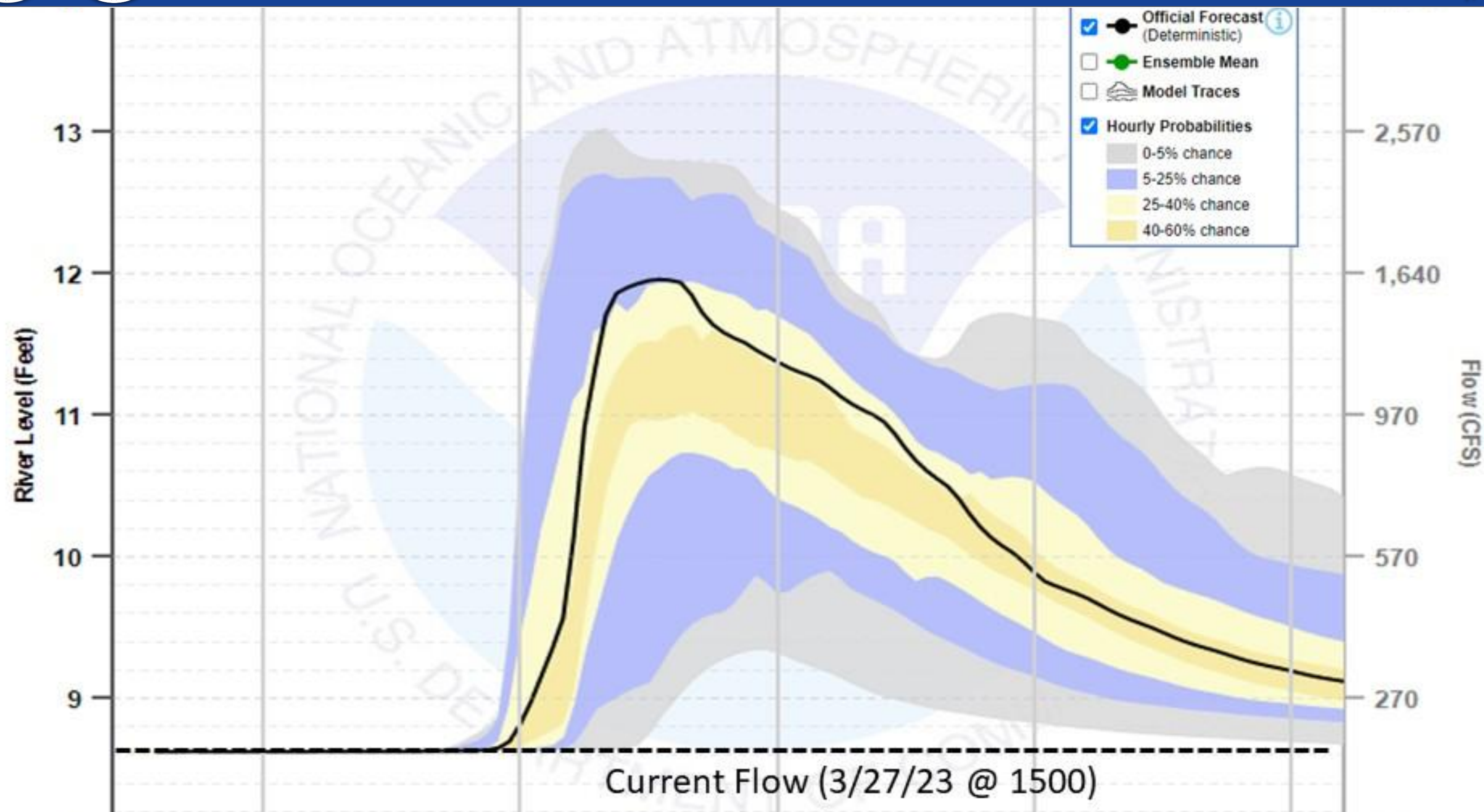






# Dry Creek Forecasted Flows

Weather Forecast Office  
Hanford, CA  
Monday, March 27

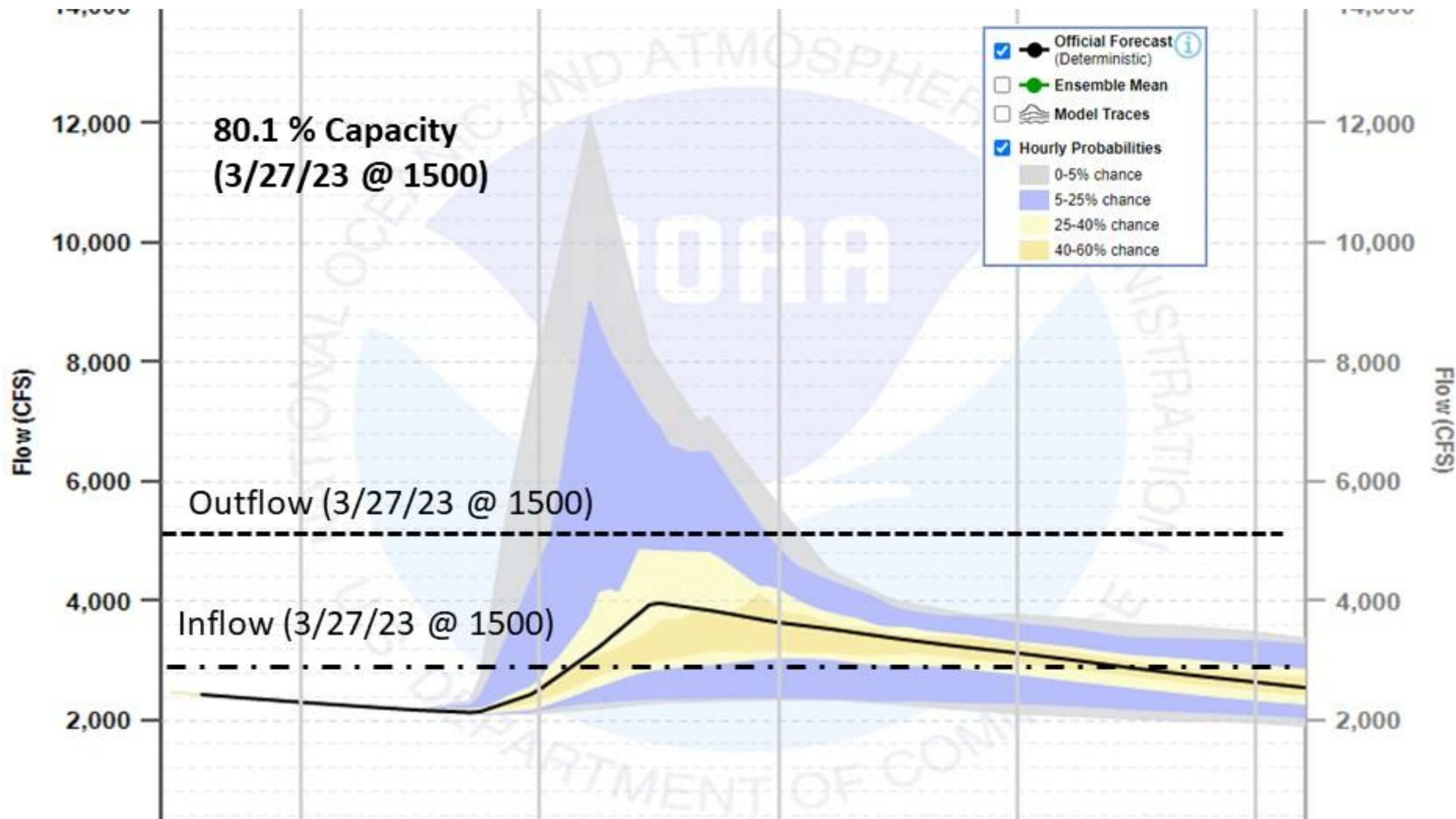






# Kaweah Lake Inflow Forecast

Weather Forecast Office  
Hanford, CA  
Monday, March 27

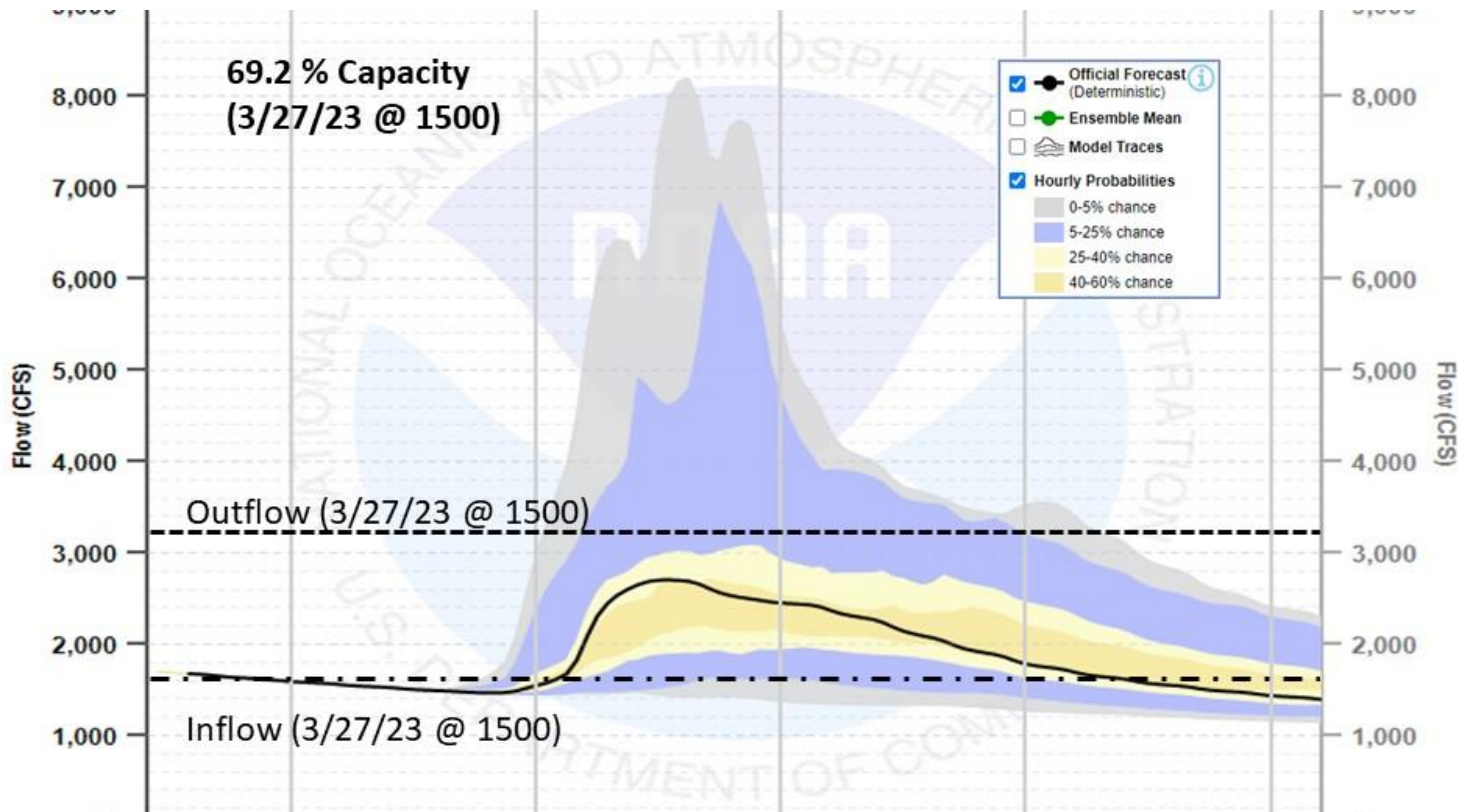






# Lake Success Inflow Forecast

Weather Forecast Office  
Hanford, CA  
Monday, March 27







# 6-10 Day Outlook

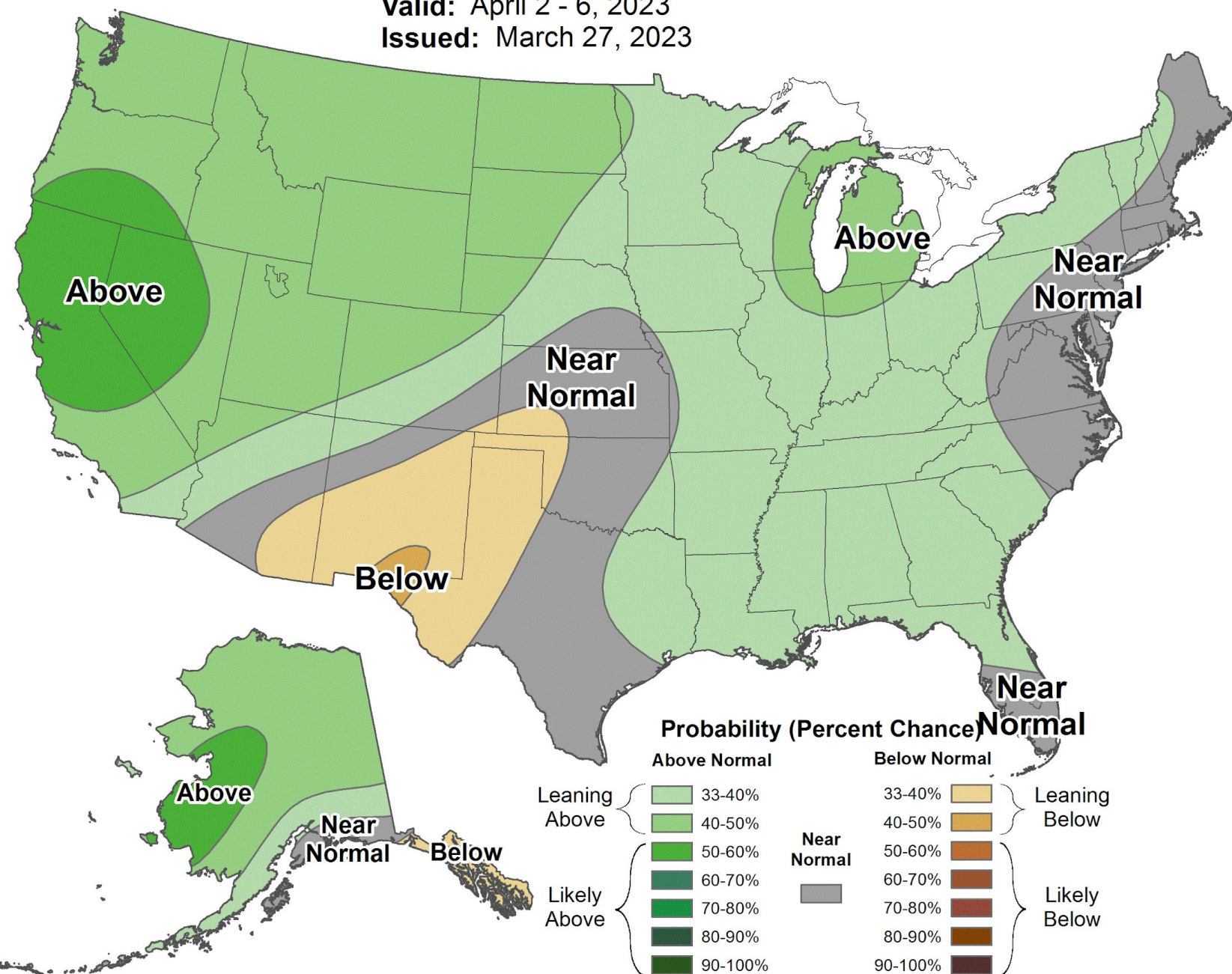
Weather Forecast Office  
Hanford, CA  
Monday, March 27



## 6-10 Day Precipitation Outlook



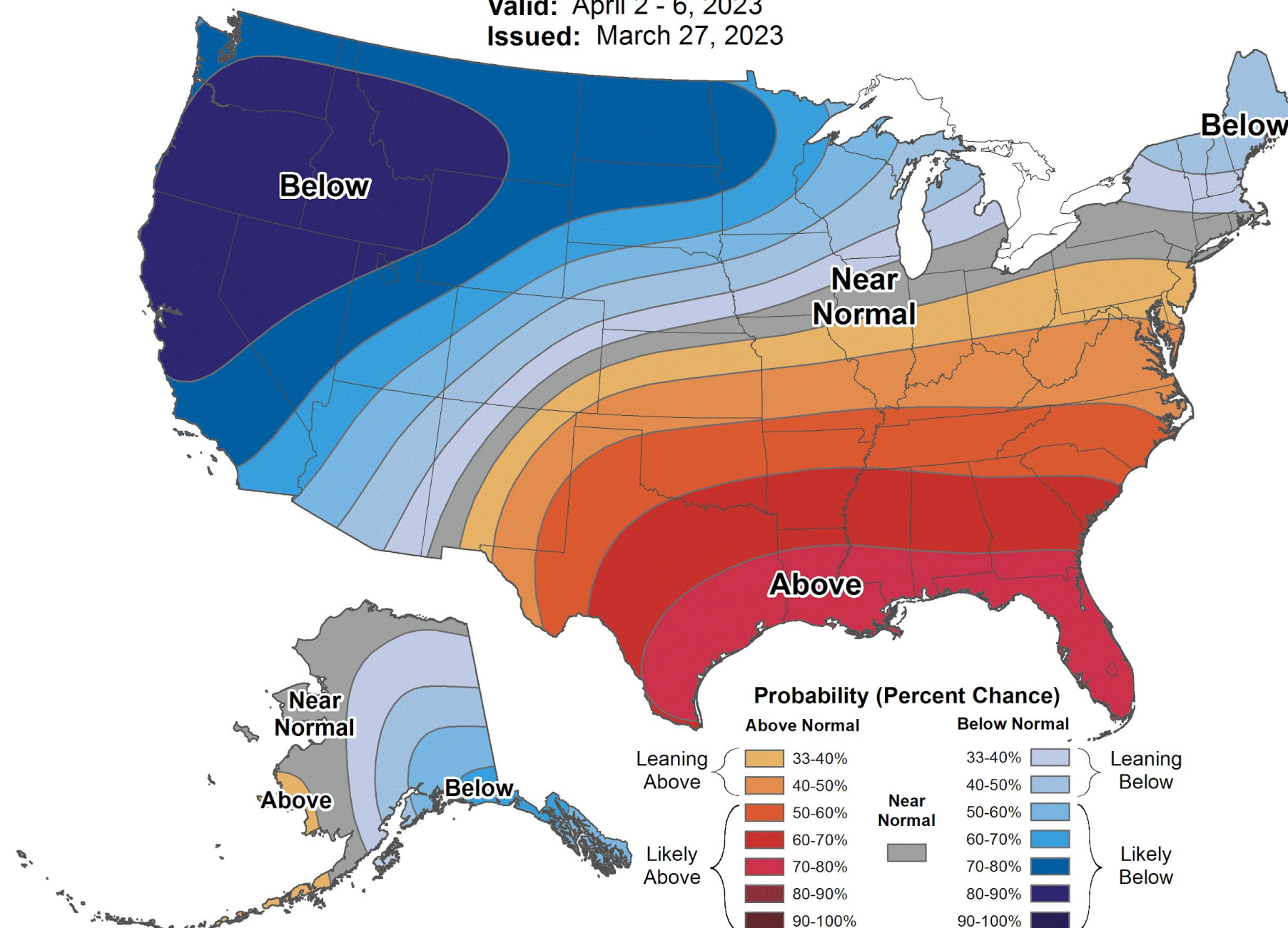
Valid: April 2 - 6, 2023  
Issued: March 27, 2023



## 6-10 Day Temperature Outlook



Valid: April 2 - 6, 2023  
Issued: March 27, 2023







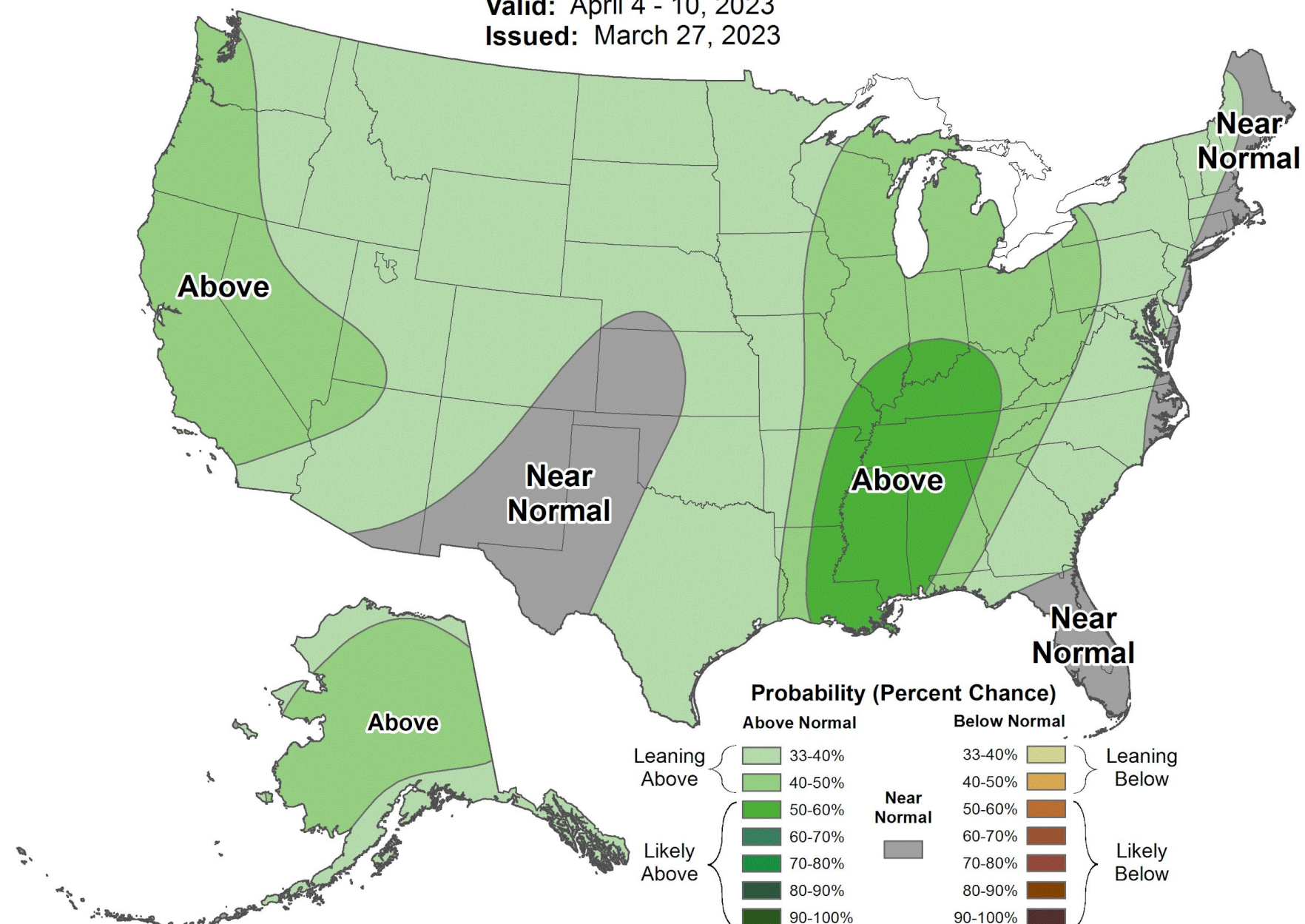
# 8-14 Day Outlook

Weather Forecast Office  
Hanford, CA  
Monday, March 27



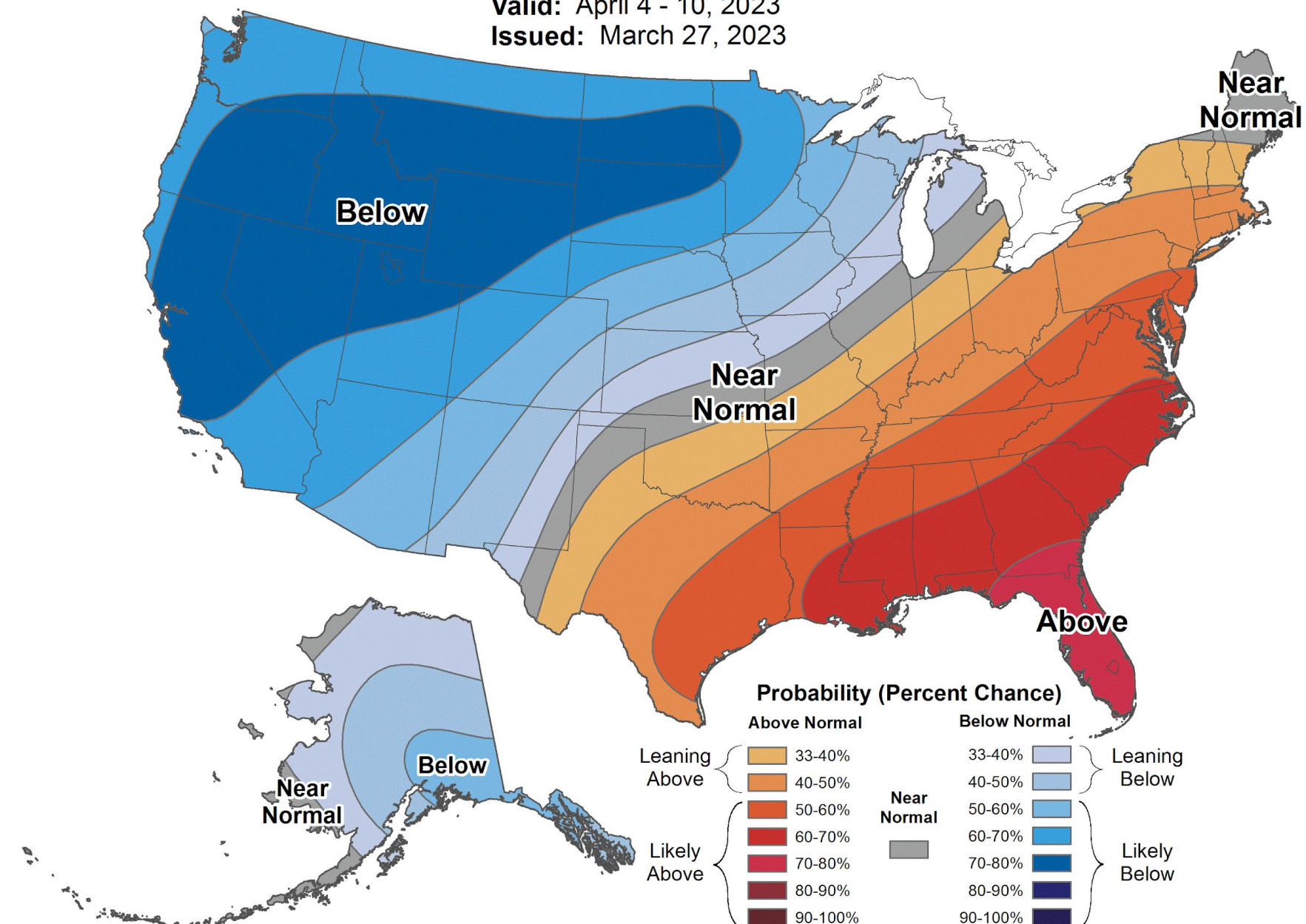
## 8-14 Day Precipitation Outlook

Valid: April 4 - 10, 2023  
Issued: March 27, 2023



## 8-14 Day Temperature Outlook

Valid: April 4 - 10, 2023  
Issued: March 27, 2023







# Summary

Weather Forecast Office  
Hanford, CA  
Monday, March 27

- **The next significant storm system will impact Central California Tuesday through Wednesday**
- **Heavy rainfall is likely Tuesday night, which will worsen existing flooding**
- **Major winter storm impacts in the Sierra Nevada Tuesday and Wednesday with snow amounts of 1 to 3 feet**



[nws.hanford@noaa.gov](mailto:nws.hanford@noaa.gov)



(559) 584-9051



[weather.gov/hanford](https://weather.gov/hanford)



## CHAPTER 9

### CIVIL DEFENSE AND DISASTER

#### SECTION:

#### **9-1: Purpose Of Chapter**

#### **9-2: Definitions**

#### **9-3: Emergency Council**

#### **9-4: Officers Of Emergency Council**

#### **9-5: Emergency Council Meetings**

#### **9-6: Duties Of Emergency Council**

#### **9-7: Powers Of Chairman Of Emergency Council**

#### **9-8: Exercises Or Drills**

#### **9-9: Acts Authorized Under Certain Conditions**

#### **9-10: Emergency Services Coordinator**

#### **9-11: Powers And Duties Of Coordinator**

#### **9-12: Emergency Powers Of Coordinator**

#### **9-13: Emergency Services Organization**

#### **9-14: Functions And Duties Of Emergency Service Organization**

#### **9-15: Acts Unlawful During Disasters**

#### **9-16: Penalty For Violation Of Chapter**

#### **9-1: PURPOSE OF CHAPTER:**

The purposes of this chapter are to provide for the preparation and carrying out of plans for disaster and emergency services, the protection of persons and property within the city of Porterville in the event of a disaster, and to provide for the coordination of the disaster and emergency functions of the city with all other affected persons and agencies, both public and private. Any expenditures made in connection with such disaster or emergency services, including mutual aid activities, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property in the city. (Ord. 987 § A, 10-6-1970)

#### **9-2: DEFINITIONS:**

Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

**DISASTER:** Actual or threatened enemy attack, sabotage, extraordinary fire, flood, storm, epidemic, riot, earthquake or other public calamity. It shall not include, nor does any provision of this chapter apply to, any condition relating to a labor controversy.

**EMERGENCY SERVICES:** The preparation for carrying out disaster functions, other than functions for which military forces are primarily responsible, and to prevent, minimize and repair injury and damage resulting from disasters. It shall not include, nor does any provision of this chapter apply to, any condition relating to a labor controversy.

**EMERGENCY SERVICES OFFICE:** The physical facilities constituting the Tulare operational area's primary emergency operating center, and the necessary staff and personnel to operate such facilities on a day to day or disaster emergency basis.

**TULARE OPERATIONAL AREA:** The unincorporated area of the county, and the cities of Dinuba, Exeter, Farmersville, Lindsay, Porterville, Tulare, Visalia and Woodlake. (Ord. 987 § A, 10-6-1970)

### **9-3: EMERGENCY COUNCIL:**

The emergency council of the Tulare operational area is hereby created and shall consist of the following members:

A. The chairman of the board of supervisors of the county. Said board of supervisors shall appoint an additional member of said board to serve as an alternate member of the emergency council when the chairman is absent from the county or is not immediately available to perform his duties.

B. The mayors of the cities of Dinuba, Exeter, Farmersville, Lindsay, Porterville, Tulare, Visalia and Woodlake, or alternates appointed by the respective city councils.

C. Two (2) persons residing in the unincorporated area of the county who shall be appointed by the other members of the emergency council.

D. The emergency services coordinator of the county, who shall be an ex officio member and who shall not be entitled to a vote at the meetings of the emergency council. (Ord. 987 § A, 10-6-1970)

### **9-4: OFFICERS OF EMERGENCY COUNCIL:**

The officers of the emergency council shall be a chairman, and such other officers as the council may deem necessary. The chairman of the board of supervisors shall serve as chairman of the council. When he is absent from the county or is not immediately available to perform his duties, the other member of the board of supervisors who is a member of the council shall serve as chairman. (Ord. 987 § A, 10-6-1970)

### **9-5: EMERGENCY COUNCIL MEETINGS:**

The emergency council may hold regular meetings at a time and place established by the council. Special meetings of the council shall be called in accordance with section 54950 et seq., of the Government Code of the state of California. Special meetings may be called by the chairman or the alternate chairman designated pursuant to section 9-4 of this chapter. The council shall meet at least four (4) times each year. The council shall have the power to adopt rules and regulations governing the conduct of its meetings. (Ord. 987 § A, 10-6-1970)

### **9-6: DUTIES OF EMERGENCY COUNCIL:**

It shall be the duty of the emergency council to review and recommend for adoption by the board of supervisors and the respective city councils, disaster and mutual aid plans and agreements, and such ordinances, resolutions, rules, regulations and budgets as are necessary to implement such plans and agreements. (Ord. 987 § A, 10-6-1970)

### **9-7: POWERS OF CHAIRMAN OF EMERGENCY COUNCIL:**

The chairman of the emergency council is hereby empowered to perform the following acts:

A. Serve as the emergency services director of the Tulare operational area.

B. Request the city council of the city of Porterville to proclaim the existence or threatened existence of a local emergency and the termination thereof, if the city council is in session, or to issue such a proclamation if the city council is not in session, subject to confirmation by the city council at the earliest practicable time.

C. Request the mayor to request the governor to proclaim a state of disaster when in the opinion of the chairman the resources of the area are inadequate to cope with the disaster on a local basis. (Ord. 987 § A, 10-6-1970)

### **9-8: EXERCISES OR DRILLS:**

The chairman of the emergency council shall order an exercise or drill of the entire emergency services organization at least once each year, and a minimum of two (2) exercises or drills for selected portions of the emergency operating center staff each year. Participation in required state or federal exercises, special drills for communications, radiological, fire, law enforcement or other specific services shall be in addition to the exercises or drills required hereinabove. (Ord. 987 § A, 10-6-1970)

### **9-9: ACTS AUTHORIZED UNDER CERTAIN CONDITIONS:**

In the event of the proclamation of a local emergency as herein provided, or the proclamation of a state of disaster by the governor or the director of the California disaster office, or in the event of a war caused state of

extreme emergency, the chairman, as the emergency services director of the Tulare operational area, is hereby empowered to perform the following acts:

A. Make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such disaster; provided, however, that such rules and regulations must be confirmed at the earliest practicable time by the emergency council.

B. Subject to the approval of the city council, to obtain vital supplies, equipment and such other properties found lacking and needed for the protection of life and property of the people, and to bind the city for the fair value thereof and, if required, to commandeer the same immediately for public use.

C. Require emergency services of any city officer or employee, and in the event of the proclamation of a state of disaster or extreme emergency by the governor in the region in which the city is located, to commandeer the aid of as many citizens as he thinks necessary in the execution of his duties. Such persons shall be entitled to all privileges, benefits and immunities which are provided by state law for registered civil defense and disaster volunteer workers.

D. Requisition any necessary equipment or materials from any city department or agency.

E. Execute all of the special powers conferred upon him by this chapter or by resolution adopted pursuant thereto, all powers conferred upon him by any statute, by any agreement approved by city council, or by any other lawful authority. (Ord. 987 § A, 10-6-1970)

#### **9-10: EMERGENCY SERVICES COORDINATOR:**

There is hereby created the position of emergency services coordinator of the Tulare operational area who may be referred to as the coordinator. He shall serve as the executive officer of the Tulare operational area and his staff shall serve as the staff of the emergency services office. The board of supervisors of the county of Tulare shall consider the recommendations of the emergency council in the appointment or dismissal of the coordinator. (Ord. 987 § A, 10-6-1970)

#### **9-11: POWERS AND DUTIES OF COORDINATOR:**

The coordinator shall have the following general powers and duties:

A. Represent the emergency council and its chairman as their executive officer for the purpose of coordinating all efforts within the Tulare operational area for the accomplishment of the purposes of this chapter.

B. Identify and define questions of authority and responsibility that may arise between persons and agencies referred to in section 9-13 of this chapter and submit recommendations for resolving such matters to the chairman.

C. Represent the Tulare operational area in all dealings with public or private agencies pertaining to disaster or civil defense, when authorized by the chairman.

D. Prepare an operational plan with necessary service annexes and standing operating procedures to provide administrative guides for the Tulare operational area.

E. Plan and conduct exercises and drills, as ordered by the chairman, for the emergency services organization or for the emergency operating center staff. (Ord. 987 § A, 10-6-1970)

#### **9-12: EMERGENCY POWERS OF COORDINATOR:**

In the event of the proclamation of a local emergency as herein provided, or the proclamation of a state of disaster by the governor, or in the event of a war caused state of extreme emergency, the coordinator is hereby empowered to perform the following acts:

A. Activate the emergency operating center including calling in, as necessary, service chiefs, standby staff and service dispatchers.

B. Cause the dissemination of appropriate warning signals and issue suitable advisory information to the emergency council, the emergency services organization and the public.

C. Advise the California disaster office of the local situation.

D. Request mutual aid through the California disaster office if local deficiencies of personnel and/or equipment are indicated by the service chiefs.



E. Order the provision of security for the emergency operating center and communications staff. (Ord. 987 § A, 10-6-1970)

**9-13: EMERGENCY SERVICES ORGANIZATION:**

All officers and employees of the county and the cities included in the Tulare operational area, together with those volunteer forces enrolled to aid them during a disaster and all groups, organizations and persons, including persons commandeered under the provision of subsection 9-9C of this chapter who by operation of law or agreement may be charged with duties incident to the protection of life and property in the city during such disaster, shall constitute the emergency service organization of the Tulare operational area. (Ord. 987 § A, 10-6-1970)

**9-14: FUNCTIONS AND DUTIES OF EMERGENCY SERVICE ORGANIZATION:**

The functions and duties of the emergency services organization shall be distributed among such divisions, services and special staff as the emergency council shall prescribe by resolution, subject to the approval of the board of supervisors of the county and the respective city councils. Insofar as possible, the form of organization, titles and terminology shall conform to the recommendations of the federal government and the California disaster office. (Ord. 987 § A, 10-6-1970)

**9-15: ACTS UNLAWFUL DURING DISASTERS:**

It shall be unlawful for any person to perform any of the following acts during a disaster:

A. Wilfully obstruct, hinder or delay any member of the emergency services organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter or in the performance of any duty imposed upon him by virtue of this chapter.

B. To do any act forbidden by any lawful rules or regulations issued pursuant to this chapter, if such act is of such a nature as to give, or be likely to give, assistance to the enemy, or to imperil the lives or property of inhabitants of the city, or to prevent or delay the defense or protection thereof.

C. To wear, carry or display, without authority, any means of identification specified by the civil defense and disaster agency of the federal government or the state of California. (Ord. 987 § A, 10-6-1970)

**9-16: PENALTY FOR VIOLATION OF CHAPTER:**

Any person violating any of the provisions of this chapter which are declared to be unlawful shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the Tulare County jail for not more than six (6) months, or by both such fine and imprisonment. (Ord. 987 § A, 10-6-1970)

## State of California

### GOVERNMENT CODE

#### Section 8558

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8558. Three conditions or degrees of emergency are established by this chapter:

(a) “State of war emergency” means the condition that exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that an enemy attack is probable or imminent.

(b) “State of emergency” means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, electromagnetic pulse attack, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a “state of war emergency,” which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the Public Utilities Commission.

(c) (1) “Local emergency” means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, deenergization event, electromagnetic pulse attack, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage or deenergization event that requires extraordinary measures beyond the authority vested in the Public Utilities Commission.

(2) A local emergency proclaimed as the result of a deenergization event does not trigger the electric utility obligations set forth in Public Utilities Commission Decision 19-07-015 or its successor decisions as related to deenergization events. A local emergency proclaimed as the result of a deenergization event does not alter the electric

utilities' Public Utilities Commission-approved cost-recovery mechanisms for their own costs associated with deenergization events.

(Amended by Stats. 2022, Ch. 537, Sec. 1. (SB 468) Effective January 1, 2023.)